

MANAGEMENT SERVICES AND CONSTRUCTION OF FULLY AUTOMATED PARKING GARAGE AGREEMENT

THIS Management Services and Construction of Fully Automated Parking Garage Agreement ("Agreement") is made and entered into between the City of San Diego, a municipal corporation ("CITY"), and ACE PARKING III, a limited liability corporation ("MANAGER") to provide management services and to construct a fully automated parking garage to CITY for the real property as defined in Section 1.1, below ("Property") to be effective upon the Effective Date.

RECITALS

- A. The Property is defined in Section 1.1, below.
- B. The name of the Property, "The Evan V. Jones Parkade," is pursuant to City Council Resolution Number R-283162 adopted on December 6, 1993.
- C. The structure on the Property is steel-reinforced concrete. The Property is bounded by First Avenue to the west, Second Avenue to the east, A Street to the north, and B Street to the south. It consists of twelve (12) levels of parking for one thousand one hundred forty one (1,141) vehicles. Entrance and exit may be made on First Avenue and A Street, and entrance may be made on Third Avenue.
- D. CITY seeks to secure from MANAGER management services for the Property as further set forth in this Agreement.
- E. In addition to management services, the CITY desires to convert the Property into a fully automated parking garage as further described in Article 8, below, and for MANAGER to provide the financing and construction for the fully automated parking garage.
- F. On FEBRUARY 9, 2016, the City Council approved the award of this Agreement to the MANAGER pursuant to MANAGER's response to the Request for Proposals, dated November 17, 2015 ("RFP").

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and for valuable consideration, the receipt and sufficiency of which is acknowledged, CITY and MANAGER agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1 The following terms shall be defined as follows:
 - a. "Buildings" is defined as all buildings, structures and improvements now or hereafter located on the Property, including fixtures such as electrical systems.

- b. "Effective Date" is defined as the last date that this Agreement is signed by the parties and approved by the City Attorney in accordance with Charter section 40.
- c. "Management Services" is defined in Section 2.1, below.
- d. "MANAGER" is defined as Ace Parking III, LLC, its officers, agents, representatives, affiliates, contractors, subcontractors, and employees.
- e. "Operating Account" is defined in Section 6.2, below.
- f. "Operating Budget" is defined in Section 6.1, below.
- g. "Operating Equipment" is defined as all furniture, furnishings, fixtures and equipment required for the operation of the Property, including, but not limited to, parking equipment, communication equipment, common area lighting, grounds maintenance equipment, and all other fixtures, equipment and apparatus needed to operate the Property in its current condition and after the conversion to an automated parking garage.
- h. "Operating Period"—is defined as the period commencing on the Effective Date and terminating upon the expiration or earlier termination of this Agreement.
- i. "Operating Year" is defined as the period from the Effective Date through and including the first June 30th thereafter, and each twelve (12) month period thereafter.
- j. "Project" is defined in Section 8.1, below.
- k. "Property" is defined as the real property, commonly known as The Evan V. Jones Parkade, located at 1265 1st Ave, San Diego, California, 92101, as more specifically described as "portion of Horton's addition block 13, lots A thru L," together with all buildings, improvements, parking levels, entrance and exit ramps continuous from street grade, payment kiosks, approximately fifty (50) bicycle lockers, rights of ingress and egress, easements and appurtenances belonging or pertaining to the real property.

ARTICLE 2 - MANAGEMENT SERVICES

- 2.1 Management. CITY hereby retains MANAGER and MANAGER hereby agrees to perform the management and operation of the Property ("Management Services") at the direction of CITY, as further set forth in this Article 2. MANAGER agrees to devote all necessary time and effort to the Management Services. MANAGER shall be responsible for furnishing the equipment required for performing specified tasks, unless otherwise noted. All materials shall be top quality by industry standards. MANAGER shall provide all

cleaning chemicals required to perform the Management Services. MANAGER shall be given a list of CITY approved cleaning chemicals.

- 2.2 Manager's Control and Discretion. Subject to the terms of this Agreement, MANAGER shall have all reasonable control and discretion in the operation, management and supervision of the Property for the purpose of carrying out the terms of this Agreement, except MANAGER shall obtain CITY's written consent before incurring any expense not contained in the approved Operating Budget and the amount payable exceeds two thousand dollars (\$2,000.00). In the event of an emergency requiring immediate action by MANAGER ("Emergency"), MANAGER shall make a reasonable effort to secure CITY'S approval before undertaking any necessary repairs or maintenance. MANAGER shall be available 24 hours per day on a daily basis to respond to an Emergency.
- 2.3 Industry Standards and General Operating Standards. MANAGER shall operate and maintain the Property in a safe, healthy, clean, aesthetically acceptable and good operating condition, in the sole discretion of CITY, and provide skilled customer service and professional traffic flow control on a continuous basis. MANAGER agrees that the Management Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional parking management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by CITY is required, it is understood to be general approval only and does not relieve MANAGER of responsibility for complying with all applicable laws, codes, rules, regulations and good property management practices. MANAGER shall receive all complaints or requests related to the management, operation and maintenance of the Property and shall consider and respond in a systematic manner to the complainant/requestor. Complaints or requests of a serious or substantial nature in terms of safety or habitability of the Property shall be reported to the CITY immediately with appropriate recommendations.
- 2.4 Site Inspections. At the commencement of this Agreement, MANAGER shall initially attend bi-weekly site inspections with CITY. The frequency of subsequent site inspections shall be determined by CITY.
- 2.5 Work Schedules.
- a. Work Schedule Prior to Completion of the Project. Until the Project is completed and functional, MANAGER shall provide weekday ticket booth attendants scheduled at a minimum of twelve (12) hours per weekday. MANAGER shall provide a full-time garage manager ("Garage Manager") to be on-site from Monday to Friday.
 - b. Work Schedule Post Completion of the Project. Commencing on the date the Project is completed and functional, MANAGER shall provide a parking garage ambassador ("Ambassador") at the exit booth for a minimum of eight (8) hours per day from

Monday through Friday, with other work schedules to be determined and approved by CITY. The Ambassador's primary duties shall be to assist customers during the hours from 9 am to 5 pm. MANAGER shall provide a full-time Garage Manager to be on-site from Monday to Friday.

No later than sixty (60) days from the date the Project is completed and functional and thereafter every July 1 during the Term (as defined in Section 3.1, below), MANAGER shall meet with CITY to determine if the minimum work hours of the Ambassador and/or Garage Manager must be changed to provide the best customer service to the Property's customers. Any change to work schedules shall be at the sole discretion of CITY. Any change to the work schedules of the Ambassador and/or Garage Manager shall be reflected in the compensation for Management Services pursuant to the corresponding hourly rate as set forth in Section 4.1, below.

- c. Special Events Work Schedule. Special events ("Special Events") are those events held at the City Concourse and at the Civic Theatre during a time outside the Property's peak hours of operation. For purposes of this Agreement, the Property's "peak hours of operation" shall be from 9 a.m. to 5 p.m. from Monday through Friday, except for official CITY holidays. For Special Events, CITY may require additional hours and coverage from MANAGER. MANAGER will be reimbursed for all Special Event expenses which are pre-approved by CITY, as further set forth in Section 4.3, below. Not less than three (3) business days prior to the commencement of a Special Event, the MANAGER shall meet with the CITY designated San Diego City Concourse staff, and/or the San Diego Theatre staff, depending on the type of special event, to determine and coordinate the scheduling of parking staff for cashiering and other tasks to be assigned for the Special Event.

2.6 Parkade Customers

- a. Monthly Parking Permits for CITY Employees. MANAGER shall issue monthly parking permits ("Monthly Permit") for access to the Property as follows: (1) for weekday access, Monday through Friday; or (2) for evening and/or weekend access. Monthly Permits shall allow for in and out privileges. Monthly Permits shall not allow seven (7) days-a-week access, but shall be programmed to limit access. Upon prior CITY approval, MANAGER shall issue Monthly Permits to certain CITY employees for access to the Property after hours and on weekends.
- b. Validations. MANAGER shall validate parking for CITY users. MANAGER shall keep a record of how many validation tickets each CITY department orders from MANAGER
- c. ETAP. MANAGER shall keep a record of those CITY employees participating in the Employee Transportation Alternatives Program ("ETAP") and of the validated parking tickets ordered and used by each ETAP participant.

- d. Special Events Parking. For Special Events, CITY may require additional hours and coverage from MANAGER to validate prepaid parking tickets or charge a special parking rate.
 - e. Transient Parking. All customers that do not have a monthly parking permit are transient parking customers. MANAGER shall collect all payments from transient parking customers and provide skilled customer service.
 - f. Bicycle Users. MANAGER shall coordinate fifty (50) bicycle lockers and collect deposits for these lockers.
- 2.7 Collection of Parking Revenue. MANAGER shall collect all parking fees and other monies including, but not limited to, cash, check, debit card and credit card payments ("Parking Revenue") due CITY from all parking and other uses on the Property, including, but not limited to, Monthly Permit parking, transient parking, Special Event parking, validations sales, night and weekend parking, ETAP participants, bicycle locker deposits, monthly key card deposits, and overages, if any. The procedures for MANAGER to accept and record Parking Revenue is set forth in the Procedures for Revenue Collection, Reconciliation and Recording attached as **Exhibit 1** and as further set forth in Article 6, below. Any changes to the Procedures for Revenue Collection, Reconciliation and Recording set forth in **Exhibit 1**, shall be subject to the CITY review and approval before being implemented by MANAGER.
- 2.8 Personnel Uniforms. MANAGER's staff on-site at the Property shall at all times wear clean and pressed uniforms and shall wear clearly discernible identification badges provided by MANAGER. All MANAGER contractors and subcontractors performing work on the Property shall also wear clean and pressed uniforms that clearly identify their company.
- 2.9 Security Coordination. MANAGER shall coordinate the work schedule with security staff hired by CITY to patrol and monitor the Property with oversight by the City's Real Estate Assets Department.
- 2.10 Purchase of Operating Supplies. MANAGER shall purchase all supplies, inventories, and Operating Equipment necessary to maintain and operate the Property as required by this Agreement. CITY shall be credited with the full amount of any discounts or commissions obtained by MANAGER on any such purchases.
- 2.11 Janitorial, Maintenance and Repair Services. MANAGER shall, on behalf of and as an agent for CITY, negotiate and enter into service contracts required in the ordinary course of business in operating the Property, including, but not limited to, contracts for landscaping and grounds keeping, preventive and corrective maintenance services, emergency repairs and all other maintenance contractors that MANAGER deems advisable ("Service Contract"). MANAGER shall ensure that all contractors are properly and adequately licensed and insured. MANAGER shall comply with all applicable federal, state and local laws, including, but not limited to, San Diego Municipal Code sections 22.3201

et seq., in the selection and hiring of a contractor for the Service Contracts. The cost for all such Service Contracts shall be paid in accordance with Article 4 without surcharge or mark-up.

a. Janitorial Services.

i. MANAGER shall perform the following janitorial services at the frequency stated unless more frequently is necessary or requested by CITY:

- (1) Keep the Property including stairwells, the perimeter of the Property, and the perimeter sidewalk clean and clear of refuse and obstructions, including dirt around drains.
- (2) Dispose of all garbage, trash and rubbish on a daily basis (weekdays only).
- (3) Clean all stairwells and handrails with a disinfectant on a daily basis (weekdays only), assuring a clean and odor-free stairwell.
- (4) Sweep the entire Property at least twice per month.
- (5) Power-wash at least twice per month the terrace level, the three stairwells leading up to the terrace level, and at least two alternating parking levels of the Property to remove all accumulated dirt, oil, grease and grime.
- (6) Power-wash once per week the Property's perimeter sidewalk and perimeter walls up to approximately hip-height.
- (7) Clean and maintain free from trash and debris the elevators and elevator lobby areas on a daily basis in the morning.
- (8) Disinfect the elevator floors and elevator call buttons and wipe the elevator walls on a weekly basis.
- (9) Empty all trash cans in the elevator lobby areas each morning and mid-afternoon (weekdays only).
- (10) Clean all trash cans on the Property at least on a weekly basis.
- (11) Provide emergency cleaning services ("Emergency Cleaning Services") twenty-four (24) hours a day, seven (7) days a week. Emergency Cleaning Services includes, but is not be limited to, the removal and cleaning of fecal matter, urine, vomit, and other body fluids from the Property. The Emergency Cleaning Services shall be performed immediately upon discovery or within two (2) hours of notification to MANAGER by the CITY.
- (12) Clean and lubricate all entry/exit equipment on a bi-monthly basis. This includes ticket spitters, gate arms, and point-of-sale station equipment.
- (13) Routine cleaning of mag head ticket readers with canned air.

ii. If MANAGER fails to comply with the janitorial services set forth in subsection a, above, within the time frames specified, CITY reserves the right to obtain janitorial services from another source and the MANAGER shall be responsible for reimbursing CITY for said janitorial services obtained by CITY as a result of MANAGER'S non-performance. MANAGER'S non-performance may also be subject to contract termination in accordance with Article IV, Suspension and

Termination, of the General Contract Terms and Provisions, attached hereto as **Exhibit 2.**

- iii. MANAGER is responsible for ensuring that copies of all Material Safety Data Sheets ("MSDS") are available at the work site on the Property. When MANAGER collects CITY-provided chemicals from the CITY store room to be used for this Agreement, MANAGER shall also collect a copy of the MSDS for the work site.
- b. Repairs and Maintenance Services. MANAGER shall cause to be made, on behalf of CITY, all repairs, maintenance, replacements, alterations, additions and improvements ("Work") to the Property necessary, in CITY's sole discretion, for the continued operation of the Property. MANAGER shall obtain CITY's consent before entering into any Service Contract for Work in the case of any of the following instances: (i) the amount payable exceeds two thousand dollars (\$2,000.00); (ii) the amount payable has not previously been approved as part of the Annual Operating Budget; (iii) the Work is not already included as part of the Management Services provided under this Agreement; or (iv) the cost is not included in Management Fee, as defined in Section 4.1, below. If any of the Work is caused by the failure, default or deficiency of labor or materials provided or performed by past contractors prior to the Effective Date of this Agreement as to which any guarantees or warranties exist in favor of CITY, then MANAGER will notify CITY in writing of this fact and then MANAGER will invoke said guarantees or warranties, and MANAGER shall seek to enforce them.
- c. Emergency Work. If MANAGER determines that: (i) a dangerous condition exists at the Property; (ii) repairs, alterations or replacements are required to assure the continued safe operation of the Property or to comply with any applicable legal or insurance requirements; or (iii) expenditures are required arising out of a casualty or other emergency; then MANAGER shall immediately notify CITY of the situation, and then MANAGER, in consultation with CITY, shall take all reasonable steps and may make such expenditures necessary to cure such condition or may make such repairs, alterations, replacements or actions otherwise so required ("Emergency Work").
- d. Graffiti Removal. Manager shall remove graffiti from the Property within 24 hours of its discovery by MANAGER or notification to MANAGER by CITY. If the graffiti is located in an area of the Property that is inaccessible to MANAGER, MANAGER shall immediately notify CITY. Upon CITY's concurrence, in CITY's sole discretion, that the graffiti is inaccessible to MANAGER, CITY will remove the inaccessible graffiti.
- e. Parking Area Painting and Striping. MANAGER shall paint and stripe the parking stalls on the Property in accordance with an approved maintenance plan. Every July 1 during the Term, as defined in Section 3.1, below, MANAGER shall submit to CITY a maintenance plan for CITY approval.

- 2.12 Market Surveys. By November 1st of each year, MANAGER shall provide a survey of current market rate parking fees, specific to downtown San Diego. CITY may request an update to the annual survey throughout the year if necessary.
- 2.13 Reports. MANAGER, on at least a monthly basis by the first Friday of each month, shall report in writing to CITY on the levels of usage (vehicle counts) of the Property for CITY to determine if additional Monthly Permits may be issued pursuant to the CITY-maintained waiting list of CITY employees who wish to obtain Monthly Permits. MANAGER, on at least a monthly basis by the first Friday of each month, shall provide CITY with written reports that describes in detail the following information regarding the Property:
- a. Any incidents or problems encountered in the preceding month.
 - b. All janitorial work, maintenance and repairs that have been conducted in the preceding month.
 - c. A profit and loss statement for the previous calendar month and a fiscal year-to-date profit and loss statement which adhere to the pre-approved Operating Budget, including a computation of the Management Fee, as defined in Section 4.1, below, and an explanation of variances from the Operating Budget which are greater than five hundred dollars (\$500), of the year-to-date budget for any line item.
- 2.14 Operating Standards Manual. MANAGER shall maintain on the Property a manual of standard operating procedures ("Manual") for the Property. The Manual shall include, but not limited to, the following:
- a. An inventory and description of equipment and improvements on the Property and their use;
 - b. Tow-away procedures;
 - c. Procedure for opening and closing of ramps;
 - d. Maintenance and stocking of ticket spitters;
 - e. Maintenance of pay on foot machines and exit pay stations, including, but not limited to, stocking of tickets and receipt paper, emptying cash on a daily basis (weekdays only), and adding change;
 - f. Procedure for addressing malfunctioning elevators;
 - g. Procedure and types of parking validations;
 - h. Procedure for payroll deductions and cash payments;
 - i. Sign-up procedures for Monthly Permits

- j. Cleaning procedures for the Property and equipment;
- k. Refund procedures.

ARTICLE 3 - DURATION OF AGREEMENT

- 3.1 Term. The term of this Agreement shall commence on its Effective Date and terminate on the five (5) year anniversary date ("Term").
- 3.2 Termination for Convenience. CITY may terminate this Agreement upon ninety (90) days written notice to MANAGER, beginning upon receipt of the notice. Such notice shall be delivered by certified mail with return receipt. After termination of this Agreement, MANAGER shall complete any and all additional work necessary for the orderly closing of the Management Services under this Agreement. Notwithstanding the foregoing, on the termination date CITY shall pay MANAGER one (1) month of the average management fee paid during the last twelve (12) month period prior to the termination date to compensate MANAGER for the performance of its tasks required after the termination date.
- 3.3 Rights Upon Expiration or Earlier Termination. Except as otherwise provided herein, upon expiration or earlier termination of this Agreement, the following shall apply:
 - a. All amounts due and owing between the parties shall become immediately due and payable.
 - b. All Operating Equipment and supplies including telephones, fax machines, desks, computers, computer software and programs, billing systems, chairs, file cabinets, landscaping and maintenance equipment, and all other equipment and supplies purchased by MANAGER in furtherance of the Management Services of this Agreement, or reimbursed by CITY is CITY property and shall remain on the Property.
 - c. MANAGER shall have the right to remove all of its personal property from the Property in a peaceful and orderly manner.
 - d. MANAGER shall transfer to CITY all books and records pertaining to the Property which have been in the custody and control of MANAGER.

These rights shall be in addition to and not in exclusion of any and all other rights of the parties.

- 3.4 Force Majeure. If a default is the result of delays in the performance of the Management Services caused by unforeseen events beyond the control of MANAGER, such delay may entitle MANAGER to a reasonable extension of time, but such delay shall not entitle MANAGER to damages or additional compensation. The following conditions may

constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of MANAGER's work; inability to obtain materials, equipment or labor; or other specific reasons agreed to in writing between CITY and MANAGER; provided, however, that this Section 3.4 shall not apply to an inability to perform caused by the acts or omissions of MANAGER.

ARTICLE 4 – COMPENSATION AND PAYMENT

- 4.1 **Compensation for Management Services.** As compensation for the Management Services rendered by MANAGER pursuant to this Agreement, MANAGER will be paid monthly as follows:
- a. Compensation for Management Services rendered prior to completion of the Project shall be paid to MANAGER at the end of each month for the specific services as further set forth in attached **Exhibit 3**.
 - b. Compensation for Management Services rendered upon completion of the Project and through the remainder of the Term shall be paid to MANAGER at the end of each month for the specific services as set forth in attached **Exhibit 3**.
- 4.2 **Compensation for Special Events.** MANAGER agrees that the compensation for costs for the services rendered by MANAGER for Special Events ("Special Events Compensation") shall be in accordance with the price list attached hereto as **Exhibit 3**. The Special Events Compensation shall be paid to MANAGER at the end of the month in which the Special Event was held.
- 4.3 **Reimbursement for Emergency Work.** MANAGER shall be paid from the Operating Account for Emergency Work expenditures reasonably incurred, in the City's sole discretion, within thirty days of submission to CITY of an itemized receipt together with any other documents requested by CITY.
- 4.4 **Cost and Financing of the Project.**
- a. The Project shall cost Two Hundred Fifty Seven Thousand Ninety Dollars (\$257,090.00), hereinafter "Project Cost," as further set forth in attached **Exhibit 4**. MANAGER shall finance the Project Cost at zero (\$0) interest to City. MANAGER shall be responsible, with no reimbursement from CITY, for any amount above the Project Cost.
 - b. The Project Cost will be amortized on a straight line basis from when the expense occurs through the Term of this Agreement, as further set forth in attached **Exhibit 3**,

and shall have an amortized contract value of zero (\$0) at the expiration of the Term. If this Agreement is terminated for any reason other than a default by MANAGER, CITY will pay MANAGER, within 120 days of the date of termination, the unamortized portion of the cost of equipment, if any, which remains on the date of termination. In the event of a termination as a result of a default by MANAGER, CITY will be required to pay MANAGER the unamortized portion of the cost of equipment on the date of termination, but the City will have the right to deduct from the payments to MANAGER any losses incurred by CITY as the result of the default by MANAGER (including attorneys' fees and any other costs incurred in enforcing the rights of CITY under this Agreement).

ARTICLE 5 - CONTRACT ADMINISTRATION

- 5.1 Contract Administrator. The Director of the CITY's Real Estate Assets Department and his or her designee ("Director") is the contract administrator ("CA") for this Agreement. MANAGER shall provide Management Services under the direction of the Director. The Director will communicate with MANAGER on all matters related to the administration of this Agreement and MANAGER's performance of the Management Services rendered hereunder. When this Agreement refers to communications to or with CITY, those communications will be with the Director, unless the Agreement specifies otherwise.

ARTICLE 6 - FINANCIAL - MATTERS

- 6.1 Operating Budget. MANAGER shall submit to CITY on an annual basis a budget itemizing all monthly revenues and operating expenses for the Property estimated by MANAGER for the forthcoming Operating Year ("Operating Budget"). For each line item MANAGER shall provide detail regarding how the budgeted amount was derived. The Operating Budget for the first Operating Year of this Agreement was delivered to CITY and approved prior to the execution of this Agreement. Beginning on the second Operating Year and each Operating Year thereafter, MANAGER shall submit the annual Operating Budget by December 1 of each year, for the upcoming period of July 1 through June 30. The CITY shall review each Operating Budget with MANAGER, and CITY will approve, in its sole discretion, the Operating Budget prior to the commencement of the Operating Year in question.
- 6.2 Operating Budget Reconciliation. MANAGER shall submit to CITY monthly, in arrears, by the fourteenth day of the month in which it is due, the actual monthly operating statement including a variance report for each line item that does not match the City-approved Operating Budget for such items for reconciliation purposes.

Should any budget revisions be necessary, in the sole discretion of CITY, MANAGER may be required to submit a revised Operating Budget for CITY review and approval, in CITY's sole discretion. MANAGER shall submit a revised Operating Budget within ten (10) calendar days from the date of CITY's request.

6.3 Property User Fees and Collection.

- a. Garage Parking Rates. CITY shall set the parking rates for the Property. The following parking rates are in effect on the Effective Date of this Agreement:

\$2 per twenty minutes

\$18 maximum (All day)

Evenings (after 5:30 p.m.) and Weekends - \$10

Monthly Permit - \$170 (City employees pay 50%)

- b. Deposit Rates. CITY shall set the deposit rates. The current deposit rates for monthly parking key cards and bicycle lockers are as follows :

i. Monthly parking key card deposit - \$15

ii. Bicycle locker deposits - \$25

- c. Revenue. All revenue from fees and rates from users and customers of the Property shall be dedicated exclusively to payment of the direct and indirect costs of the Management Services and the direct and indirect capital outlay costs for the Project. Any excess revenue from fees and rates shall be paid into the appropriate government account.

- d. Rates. All rates and fees for use of the Property are subject to change from time to time pursuant to the notice and public hearing requirements set forth in California Government Code section 5956.6, as amended from time to time. CITY will provide MANAGER any change in rates and fees.

- e. Gross Revenue. Gross revenue ("Gross Revenue") shall mean all monies, including, but not limited to, cash, check, debit card and credit card payments, received by MANAGER from the Property, including, but not limited to, the income from transient parking, Monthly Permit parking, Special Event parking, validation sales, night and weekend parking, ETAP, bicycle locker deposits, monthly key card deposits, and overages. On a daily basis, Gross Revenue shall be deposited by MANAGER into a designated CITY bank account, with a daily and monthly statement submitted to the CITY showing daily revenues, including vehicle counts, as further set forth in the Procedures for Revenue Collection, Reconciliation and Recording attached as **Exhibit**

1. Any changes to the Procedures for Revenue Collection, Reconciliation and Recording shall be subject to CITY review and approval before being implemented by MANAGER.

- 6.4 Reporting of Suspected Theft. MANAGER is required to report to CITY immediately, in writing, of any ticket revenue discrepancies, including, but not limited to, situations where theft by any member of the MANAGER'S staff is determined or suspected.
- 6.5 Annual Audited Report. MANAGER shall prepare an annual audited report by December 31st for the preceding July 1 through June 30, accounting for the income received and expenses to operate the Property.
- 6.6 MANAGER Not to Pledge City's Credit. MANAGER shall not pledge CITY's credit and shall not, in the name of CITY, borrow any money or execute any promissory note or other encumbrance without the prior written consent of CITY.

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

7.1 Indemnification.

- a. MANAGER shall defend (with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold harmless CITY and its elected officials, officers, agents, representatives, and employees ("Indemnified Parties") from and against any and all claims, actions, suits, proceedings, losses, costs, damages, deficiencies, fines, penalties, injuries (including, without limitation, injury to or death of an employee of MANAGER or its contractors and subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Agreement by MANAGER, any contractor and subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. MANAGER's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.
- b. MANAGER shall be obligated, at the sole expense of MANAGER, to provide legal counsel selected by CITY and approved by CITY, to provide defense for and on behalf of CITY.
- c. The obligations to indemnify, defend, and hold harmless, as provided in this Agreement, shall continue on or after the expiration or earlier termination of this Agreement as to acts and events occurring before expiration of the Agreement.

- 7.2 MANAGER's Insurance. MANAGER shall not begin any performance under this Agreement until it has (1) provided CITY insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Exhibits; (2) obtained CITY approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the Exhibits. MANAGER's liabilities, including but not limited to MANAGER's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein or in the Exhibits, and MANAGER's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated by CITY as a material breach of contract. CITY reserves the right to require MANAGER to submit copies of any policy upon reasonable request by CITY. The requirements of this section do not apply to contracts for goods, unless otherwise required in this Agreement.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to CITY prior to any material change or cancellation of any of said policies.

MANAGER shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.

a. MANAGER shall maintain insurance coverage at its own expense as follows::

- i. Commercial General Liability Insurance. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- ii. Cyber Liability Insurance. In addition to the requirements of the City of San Diego's General Contract Terms and Provisions Applicable to Goods, Services, and Consultant Contracts Article VII, Contractor shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to Insured and for claims involving any professional services for which Contractor is

engaged with Insured for such length of time as necessary to cover any and all claims.

- iii. Workers' Compensation. For all of MANAGER's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, MANAGER shall keep in full force and effect, a workers' compensation policy. That policy shall also provide employers liability coverage with limits of at least one million dollars (\$1,000,000), and MANAGER shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- iv. Commercial Automobile Liability. For all of MANAGER's automobiles including owned, hired and non-owned automobiles, MANAGER shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage providing coverage for a combined single limit of at least two million dollars (\$2,000,000) per occurrence. The policy must provide coverage for owned, non-owned and hired ("any auto") vehicles, and the City of San Diego and its respective elected officials, officers, employees, agents and representatives, and advisory board members must be named as additional insured.
- v. Crime Insurance. MANAGER shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage shall protect against loss by the theft or mysterious disappearance of property by any of MANAGER's employees or third parties while the Property is in the care, custody, or control of MANAGER resulting directly or indirectly from the performance or execution of this Agreement, a contract or subcontract thereunder.
- vi. Garagekeepers Legal Liability Insurance. MANAGER shall keep in full force and effect a garagekeepers legal liability policy which shall provide coverage with a limit of two million nine hundred thousand dollars (\$2,900,000).
- b. Primary and Non-Contributing. The policy or policies providing liability and auto coverage shall be primary and non-contributory to any insurance that may be carried by the City of San Diego, as reflected in an endorsement which shall be submitted to City.
- c. Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by this Agreement, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- d. Deductibles. All deductibles or retentions on any policy obtained pursuant to Section 7.3 shall be the sole responsibility of MANAGER and shall be disclosed to and approved by City at the time evidence of insurance is provided.
- e. Specific Provisions Required. Each insurance policy required under this Article shall expressly provide, and an endorsement shall be submitted to CITY, that reflects the following:
 - i. Except as to Workers Compensation insurance, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. CITY's Additional Insured status must be reflected on an additional insured endorsement form CG 20 10 (11/85) or equivalent, which shall be submitted to CITY.
 - ii. The policies shall include a waiver of any rights of subrogation.
 - iii. The policies are primary to any insurance or self-insurance of CITY, its elected officials, officers, employees, agents and representatives as respects operations of the named insured, as reflected in an endorsement which shall be submitted to the CITY. Any insurance maintained by CITY, its elected officials, officers, employees, agents and representatives shall be in excess of MANAGER's insurance and shall not contribute to it.
 - iv. The policy or policies must be endorsed to provide that MANAGER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- f. Reservation of Rights. CITY reserves the right, from time to time, to review MANAGER's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to CITY. CITY will reimburse MANAGER for the cost of the additional premium for any coverage requested by CITY in excess of that required by this Agreement, without overhead, profit, or any other markup.
- g. Additional Insurance. MANAGER may obtain additional insurance not required by this Agreement.

- h. **Excess Insurance.** All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 7.3 **Accident Reports.** MANAGER shall promptly investigate and make a full written report to CITY as to all incidents and accidents involving bodily injury and/or claims for property damage relating to the ownership, operation, and maintenance of the Parkade, including the estimated cost of repair. All such accident reports shall be delivered to CITY within forty-eight (24) hours of the accident.

ARTICLE 8 – CONVERSION TO FULLY AUTOMATED PARKING GARAGE

- 8.1 **Scope of Work of the Project.** MANAGER shall convert the Property into a fully automated parking garage, including, but not limited to, those improvements described in the Scope of Work as set forth in attached **Exhibit 5** (“Project”). Prior to commencement of construction of the Project, MANAGER shall provide to CITY a demonstration of all equipment, facilities and software and CITY shall provide approval of the proposed equipment, facilities and software for the Project, in its sole discretion. Upon expiration or earlier termination of this Agreement, CITY will own all rights, software licenses, title and interest in the equipment, facilities, improvements and software installed for the Project, and MANAGER shall execute any and all bills of sale or other documents to memorialize same at CITY’s request.
- 8.2 **Construction of the Project.** MANAGER agrees to construct a complete and operational Project fully suited to the purpose for which it was designed and in accordance with all federal, state and local laws, rules and regulations, including, but not limited to the California Environmental Quality Act, this Agreement, the Construction Requirements set forth in **Exhibit 6**, and within the timeframe as set forth in **Exhibit 7**.
- 8.3 **Liquidated Damages.** The parties agree that the damages to CITY resulting from MANAGER’s failure to complete the Project by the scheduled completion date would be extremely difficult to determine. Therefore, the parties agree that if MANAGER fails to complete the Project as required by this Agreement by the scheduled completion date, MANAGER shall pay to CITY the amount of Eighty-Six Dollars (\$86) as liquidated damages, and not as a penalty, for each day after the scheduled completion date until completion of the Project. Such liquidated damages shall be payable upon CITY’s demand therefor. Notwithstanding the foregoing, MANAGER shall not be subject to said liquidated damages for a delay to the completion of the Project which is caused by factors beyond MANAGER’s control.
- 8.4 **Faithful Performance Bond.** MANAGER shall provide to CITY, prior to commencement of any construction of the Project, a faithful performance bond in the amount of one

hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction to be commenced by MANAGER shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Property restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. This requirement is not intended to be duplicative of a construction bond otherwise required of MANAGER.

- 8.5 Payment Bond. Prior to the commencement of any work on the Project, MANAGER shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction of the Project to satisfy claims of material suppliers and of mechanics and laborers employed on the Project. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. MANAGER shall maintain the bond in full force and effect until all improvements for the Project are accepted by CITY and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, MANAGER shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.

- 8.5 Permits, Licenses and Approvals. MANAGER shall obtain all applicable licenses, permits and approvals by all applicable local, state and federal laws, rules, regulations and policies for the construction, operation and use of the Property for the Project, at MANAGER's sole cost and expense before commencement of construction and operation, as applicable.

MANAGER shall pay for all of CITY'S administrative costs (CITY's Administrative Costs) necessary for the construction of the Project. City's Administrative Costs shall consist of the costs and expenses incurred by CITY to: (i) implement, process, and administer the Project, (ii) review and approve the Plans and Specifications for the Project, and (iii) inspect and approve work performed on the Project during construction until completion and acceptance of the Project by CITY.

ARTICLE 9 - NOTICES

- 9.1 Delivery of Notice. All notices, demands and requests which may or must be given by either party to the other shall be in writing and shall be personally delivered or sent by facsimile and United States certified mail to the address of the party set forth below. Any notice or other document delivered hereunder shall be deemed to have been delivered

effective upon delivery, if delivered personally or by facsimile, and within seventy-two (72) hours following the mailing of notice.

Notice to the MANAGER shall be addressed to:

Ace Parking III, LLC
ATTENTION: Steve Burton, President
645 Ash Street
San Diego, CA 92101

Notice to CITY shall be addressed to:

City of San Diego
Real Estate Assets Department
ATTENTION: Director
1200 Third Avenue, Suite 1700 (MS-51A)
San Diego, California 92101

- 9.2 Required Notice. Notice shall be provided in the event of an occurrence which would give MANAGER or CITY the right to terminate this Agreement, or any event which, after notice or lapse of time or both, would constitute such an event.

ARTICLE 10 – PREVAILING WAGE AND LIVING WAGE

- 10.1 By signing this Agreement, MANAGER certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.
- 10.2 Prevailing Wages. Pursuant to San Diego Municipal Code (“SDMC”) section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the MANAGER and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to SDMC sections 22.4201 through 22.4245. MANAGER must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.
- a. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the bidder and its subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the

prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations ("DIR"). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- i. Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. MANAGER and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - ii. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.
- b. Penalties for Violations. MANAGER and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
 - c. Payroll Records. MANAGER and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. MANAGER shall require its contractors and subcontractors to also comply with section 1776. MANAGER and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. MANAGER is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. Contractors and their subcontractors shall

also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- d. Apprentices. MANAGER and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. MANAGER shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- e. Working Hours. MANAGER and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- f. Required Provisions for Subcontracts. MANAGER shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- g. Labor Code Section 1861 Certification. MANAGER in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, MANAGER certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."
- h. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the CITY's Equal Opportunity Contracting Department at 619-236-6000.
- i. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any

contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- i. A contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- ii. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- iii. By submitting a bid or proposal to the CITY, MANAGER is certifying that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and MANAGER shall provide proof of subcontractor registration to the CITY upon request.

- 10.3 Living Wages. This Agreement is subject to the CITY’s Living Wage Ordinance (“LWO”), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and CITY facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, MANAGER agrees to require all of its contractors, subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

- a. Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, MANAGER must complete the Living Wage Ordinance Application for Exemption.

- 10.4 Highest Wage Rate Applies. MANAGER is required to pay the highest applicable wage rate where more than one wage rate applies.

ARTICLE 11 – PAYMENT CARD PROVISIONS

- 11.1 MANAGER Certification. MANAGER certifies that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. MANAGER will provide written annual confirmation of PCI DSS compliance from the credit card types used by the CITY (i.e. VISA, MasterCard, Discover, and American Express). MANAGER will immediately notify the CITY if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, MANAGER shall provide payment card companies, acquiring financial institutions, and their respective designees required access to the MANAGER's facilities and all pertinent records as deemed necessary by the CITY to verify MANAGER's compliance with the PCI DSS requirements.
- 11.2 Data Security. MANAGER acknowledges responsibility for the security of cardholder data as defined within PCI DSS standards. MANAGER shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, MANAGER will provide the CITY's Chief Information Security Officer with copies of the quarterly scans for verification. MANAGER will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Agreement.
- 11.3 Use of Data. MANAGER acknowledges and agrees that MANAGER may only use cardholder data for completing the work as described in this Agreement consistent with PCI DSS standards or applicable law. MANAGER shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the Management Services.
- 11.4 Notification Requirements. MANAGER shall immediately notify the CITY's Chief Information Security Officer of any breach, intrusion, or unauthorized card access to allow the proper PCI DSS breach notification process to commence. MANAGER agrees to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to:

Chief Information Security Officer
1010 2nd Avenue, Suite 500
San Diego, CA 92101
Cybersecurity@sandiego.gov
619-533-4840

- 11.5 Indemnity. MANAGER shall indemnify and hold harmless the CITY, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or MANAGER's failure to maintain PCI DSS compliance standards.

ARTICLE 12 - GENERAL TERMS AND PROVISIONS

- 12.1 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by MANAGER is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). MANAGER shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the California Public Records Act. If MANAGER notifies CITY that it objects to the disclosure of certain information to a third party, MANAGER shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by MANAGER, MANAGER shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at MANAGER's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, MANAGER shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by MANAGER as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.
- 12.2 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between CITY, its successors and assignees, on the one part, and MANAGER, its successors and assignees, on the other part.

- 12.3 Integration. This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement.
- 12.4 Approval or Consent. Except as otherwise herein provided, whenever under any provision of this Agreement the approval or consent of either party is required, such consent or approval shall be in writing, duly executed by an authorized officer or agent of the party granting such consent or approval, and shall not be unreasonable withheld. Whenever consent of CITY is required under this Agreement, the Mayor or his designee is authorized to provide such consent, unless otherwise expressly provided.
- 12.5 Property Interest. This Agreement shall not be deemed at any time to be an interest in real estate or a lien or security interest of any nature against the Property, including, without limitation any furniture and equipment; inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel papers, general intangibles or other personal property existing or that may be hereafter acquired or entered into with respect to the Property or the construction or development or operation thereof. This Agreement is for the management and operation of the Property only, and does not create any possessory interest.
- 12.6 General Contract Terms and Provisions. The General Contract Terms and Provisions ("GCTP"), attached hereto as **Exhibit 2**, are incorporated herein to this Agreement as if fully set forth in this Agreement. For purposes of this Agreement, the following terms used in the GCTP shall have the following meanings: (1) "Contractor" shall mean MANAGER; (2) "Purchasing Agent" shall mean Director; and (3) "Contract" shall mean this Agreement. If this Agreement conflicts with the GCTP, this Agreement shall control. Varying degrees of stringency among this Agreement, its exhibits and the GCTP are not deemed conflicts, and the most stringent requirement shall control.

ARTICLE 13 - SIGNATURES

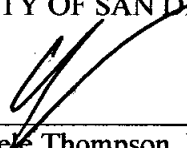
- 13.1 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 13.2 Signing Authority. The representative for each party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other party or parties hereto harmless if it is later determined that such authority does not exist.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Dated this _____ day of _____, 201__.

THE CITY OF SAN DIEGO

By 
Cybele Thompson, Director
Real Estate Assets Department

I HEREBY CERTIFY I can legally bind Ace Parking III, LLC, and that I have read all of this Agreement, this 27 day of January, 2016.

By 
Name John Bongard
Title CEO

I HEREBY APPROVE the form of the foregoing Agreement this 16th day of February, 2016.

JAN I. GOLDSMITH, City Attorney

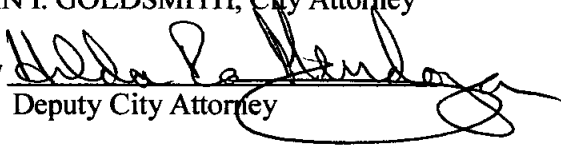
By 
Deputy City Attorney

EXHIBIT 1

PROCEDURES FOR COLLECTING AND RECORDING EVAN V. JONES PARKING REVENUE

I. PURPOSE

To set forth procedures for MANAGER to accept and record parking revenue.

II. DEFINITIONS

1. ACE: Parking facilities management company Ace Parking III, LLC
2. APPLICATION FOR MISCELLANEOUS REFUND FORM
 - i. <http://citynet.sannet.gov/comptroller/pdf/com6app.pdf>
3. BOA: Bank of America
4. CHARGEBACK: The reversal of a credit card initiated by the card issuer as requested by the card holder, usually resulting from a dispute
5. DEPOSIT ADMINISTRATOR: READ staff member responsible for depositing and recording revenue received in SAP.
6. Evan V Jones Parkade (EVJ): Concourse parking plaza located at A Street & 2nd/3rd Street
7. FV60: Transaction code used to enter an invoice payment to refund a customer in SAP.
8. READ: Real Estate Assets Department – Concourse and Parkade staff
9. REFUND/CHARGEBACK LOG: Log showing all refunds and chargebacks that have been processed.
10. REVENUE AND DEPOSIT UPLOAD TEMPLATE (RDUT): Template used to assist READ to record revenue in SAP. A link to the template and directions are located at <http://citynet/treasurer/>
11. SAP: The City of San Diego “Systems Applications & Products” software used for financial transactions.
12. ZGLP ARK- Transaction code used to upload deposit documents for posting to SAP.
13. ZFI VENDOR- Transaction code used to create a vendor record in SAP.

III. PROCEDURES

1. ACE will follow current City procedures when servicing EVJ customers paying with cash/check, or credit/debit card at the Parkade booth.
2. Each transaction, including credit/debit payments, is processed through the cash register in the Parkade booth.
3. At the end of each shift ACE attendant balances all cash/check, debit/credit card receipts, and parking tickets collected at the Parkade booth
 - i. Cash from the cash registered is counted
 - ii. Credit/Debit card machine is batched out
 - iii. Tickets from the cash register are counted

3

- a. ACE tracks the number of tickets issued and the number of tickets collected daily
4. Each transaction type must match the sum of the cash/check, credit/debit, and ticket total per the register tape in order for the attendant's closing shift report to balance.
 - i. If the report is not balancing, all transactions are re-counted for accuracy. If the discrepancy still cannot be resolved the ACE facility manager will assist in resolving the issue.
 - ii. ACE facility manager will periodically review the number of voids in the register to prevent cash being stolen.
5. The cash/check revenue is recorded on a deposit slip, placed in a deposit bag and an ACE employee deposits the revenue at BOA on 4th and B Street daily.
 - i. ACE deposits receipts daily with BOA using deposits slips with a unique identifier, allowing the City Treasurer to identify the deposit if needed.
6. A completed shift report is then entered into ACE's on-line revenue template called Auto Shift.
7. The hard copy report is then sent to ACE's account receivable department where the report is compared to the on-line report for accuracy.
 - i. If a discrepancy is found, ACE's account receivable department works with ACE Parkade staff to resolve the issue
8. ACE prepares the RDUT and sends the template plus the scanned deposit slip(s) and settlement tapes to DEPOSIT ADMINISTRATOR daily.

IV. CHARGEBACKS

1. ACE will notify READ when a CHARGEBACK has occurred and will provide the pertinent documents within 2 business days.
2. ACE will enter the CHARGEBACK information on the REFUND/CHARGEBACK LOG.

V. PROCESSING REFUNDS

1. Customer completes the APPLICATION FOR MISCELLANEOUS REFUND, attaches their receipt, and submits the form to ACE.
2. ACE will verify the transaction and check the REFUND/CHARGEBACK LOG to ensure the amount has not already been refunded.
3. For original payment with credit/debit card , ACE supervisor/manager will process a refund back to the original credit/debit card from which the payment came and will provide READ with the pertinent documents for files.
 - i. Credit/Debit card refunds will not be issued for an amount greater than the original payment amount and will only be issued on the card used for the original payment.
 - ii. If the original payment was made with cash or check, ACE will forward the Refund Form and pertinent documents to READ to process a refund via a check.
 - a. If original payment was made by check:

- a. DEPOSIT ADMINISTRATOR contacts City Treasurer Deposit Approver to ask if the check cleared.
 - b. Do not process a refund until the fifth business day after deposit to make sure the check did not get returned as Non Sufficient Funds or Cancelled Check.
4. READ will provide ACE with the check number and date when the refund check is mailed to the customer. ACE will add refund to the refund/chargeback log.

EXHIBIT 2



**THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

2

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

3

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and conditions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to

3

resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for

anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may

constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business

3

hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Material Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Material Safety Data Sheet for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City

3

premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable

28

Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole

2

discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses

3

incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the Specifications. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Specifications. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. The requirements of this section do not apply to contracts for goods, unless otherwise required in the Contract Specifications.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

Contractor shall maintain insurance coverage at its own expense as follows:

7.2.1 Commercial General Liability. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

7.2.2 Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

7.2.3 Workers' Compensation. For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

7.2.4 Professional Liability. For consultant contracts, Contractor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision of at least three (3) years following completion or termination of the performance of professional services under this Contract.

7.3 Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

7.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least "A-, VT" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

7.5.1 Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

3

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.2 Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.3 Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

7.6 Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract, without overhead, profit, or any other markup.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

3

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and conditions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

3

**ARTICLE IX
CITY-MANDATED CLAUSES AND REQUIREMENTS**

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid

by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

3

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

B

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been

succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2)



subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

B

24

EXHIBIT 3**COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST****PRIOR TO COMPLETION OF THE PROJECT**

Year 1	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	50	\$ 14.86	2,600	\$ 38,636.00	\$ 38,636
Supervisor	40	\$ 17.11	2,080	\$ 35,588.80	\$ 35,589
Janitorial Services	50	\$ 14.86	2,600	\$ 38,636.00	\$ 38,636
Health Plan/Benefits				\$ 29,983	\$ 29,983
Maintenance & Repairs				\$ 1,320	\$ 1,320
Operating Expenses				\$ 38,640	\$ 38,640
Management Fee				\$ 12	\$ 12
Total Annual Cost to City (Compensation for Management Services)					\$ 182,816

*) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.

24

EXHIBIT 3

COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST

UPON COMPLETION OF THE PROJECT

YEAR 1	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	40	\$ 14.86	2,080	\$ 30,908.80	\$ 30,909
Supervisor/Manager	40	\$ 17.11	2,080	\$ 35,588.80	\$ 35,589
Janitorial Services	50	\$ 14.86	2,600	\$ 38,636.00	\$ 38,636
Health Plan/Benefits				\$ 28,192	\$ 28,192
Maintenance & Repairs				\$ 1,320	\$ 1,320
Amortization of Project Cost				\$ 51,800	\$ 51,800
Financing Charges				\$ -	\$ -
Extended Equipment Warranty				\$ -	\$ -
License Fees				\$ -	\$ -
Maintenance Agreements				\$ -	\$ -
Tech Support				\$ -	\$ -
Operating Expenses				\$ 38,640	\$ 38,640
Management Fee				\$ 12	\$ 12
Total Annual Cost to City					\$ 225,098

*) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.

24

EXHIBIT 3

**COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST**

YEAR 2	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	40	\$ 15.30	2,080	\$ 31,824.00	\$ 31,824.00
Supervisor/Manager	40	\$ 17.62	2,080	\$ 36,649.60	\$ 36,649.60
Janitorial Services	50	\$ 15.30	2,600	\$ 39,780.00	\$ 39,780.00
Health Plan/Benefits				\$ 29,037.76	\$ 29,037.76
Maintenance & Repairs				\$ 1,360.00	\$ 1,360.00
Amortization of Project Cost				\$ 51,800.00	\$ 51,800.00
Financing Charges				\$ -	\$ -
Extended Equipment Warranty				\$ -	\$ -
License Fees				\$ -	\$ -
Maintenance Agreements				\$ 12,500.00	\$ 12,500.00
Tech Support				\$ -	\$ -
Operating Expenses				\$ 39,799.20	\$ 39,799.20
Management Fee				\$ 12.00	\$ 12.00
Total Annual Cost to City					\$ 242,762.56

*) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.

AA

EXHIBIT 3

**COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST**

YEAR 3	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	40	\$ 15.76	2,080	\$ 32,780.80	\$ 32,780.80
Supervisor/Manager	40	\$ 18.15	2,080	\$ 37,752.00	\$ 37,752.00
Janitorial Services	50	\$ 15.76	2,600	\$ 40,976.00	\$ 40,976.00
Health Plan/Benefits				\$ 29,908.89	\$ 29,908.89
Maintenance & Repairs				\$ 1,400.00	\$ 1,400.00
Amortization of Project Cost				\$ 51,800.00	\$ 51,800.00
Financing Charges				\$ -	\$ -
Extended Equipment Warranty				\$ -	\$ -
License Fees				\$ -	\$ -
Maintenance Agreements				\$ 12,500.00	\$ 12,500.00
Tech Support				\$ -	\$ -
Operating Expenses				\$ 40,993.18	\$ 40,993.18
Management Fee				\$ 12.00	\$ 12.00
Total Annual Cost to City					\$ 248,122.87

***) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.**

EXHIBIT 3

**COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST**

YEAR 4	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	40	\$ 16.23	2,080	\$ 33,758.40	\$ 33,758
Supervisor/Manager	40	\$ 18.69	2,080	\$ 38,875.20	\$ 38,875
Janitorial Services	50	\$ 16.23	2,600	\$ 42,198.00	\$ 42,198
Health Plan/Benefits				\$ 30,806.16	\$ 30,806
Maintenance & Repairs				\$ 1,442.00	\$ 1,442
Amortization of Project Cost				\$ 51,800.00	\$ 51,800
Financing Charges				\$ -	\$ -
Extended Equipment Warranty				\$ -	\$ -
License Fees				\$ -	\$ -
Maintenance Agreements				\$ 12,500.00	\$ 12,500
Tech Support				\$ -	\$ -
Operating Expenses				\$ 42,222.98	\$ 42,223
Management Fee				\$ 12.00	\$ 12
Total Annual Cost to City					\$ 253,615

***) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.**

24

EXHIBIT 3

**COMPENSATION FOR MANAGEMENT SERVICES AND
AMORTIZATION OF PROJECT COST**

YEAR 5	1	2	3	4	5
	No. of Standard Staffing Hours Per Week	Hourly Wage Paid	No. of Standard Staffing Hours Annual	Contractor's Annual Cost	Annual Cost to City
Parking Attendant	40	\$ 16.72	2,080	\$ 34,777.60	\$ 34,778
Supervisor/Manager	40	\$ 19.25	2,080	\$ 40,040.00	\$ 40,040
Janitorial Services	50	\$ 16.72	2,600	\$ 43,472.00	\$ 43,472
Health Plan/Benefits				\$ 31,730.34	\$ 31,730
Maintenance & Repairs				\$ 1,486.00	\$ 1,486
Amortization of Project Cost				\$ 51,800.00	\$ 51,800
Financing Charges				\$ -	\$ -
Extended Equipment Warranty				\$ -	\$ -
License Fees				\$ -	\$ -
Maintenance Agreements				\$ 12,500.00	\$ 12,500
Tech Support				\$ -	\$ -
Operating Expenses				\$ 43,489.67	\$ 43,490
Management Fee				\$ 12.00	\$ 12
Total Annual Cost to City					\$ 259,308

*) For Special Events and Emergency Work the "Hourly Wage Paid" rate shall be used.

EXHIBIT 4

PROJECT COST

Pricing for Automated Upgrade Work					
	Manufacturer (Brand Name)	No. of Units Required	Cost Per Unit	Extended Cost (No. of Units Required x Cost Per Unit)	TOTAL COST
1. EQUIPMENT					
Ticket Machines	Amano McGann	2	10,000.00	20,000.00	
Pay on Foot Machine	Amano McGann	1	30,500	30,500	
Pay-in-lane Machine (accept credit/debit cards only and ADA compliant)	Amano McGann	1	15,000	15,000	
Credit card only machine (credit/debit card only)	Amano McGann	1	20,000.00	20,000.00	
Barrier Gates	Amano McGann	10	2,000.00	20,000.00	
Magnetic Stripe mass validator, or shared account module (bar code, or QR code)	Amano McGann	1	18,000.00	18,000.00	
Credit Card Verifier	Amano McGann	1	16,000	16,000	
Portable handheld cashiering units	spAce	3	0	0	
Parking Card Readers	Maxiprox	8	650	5,200	
Capacity Count System to control LED "FULL" Signs	Amano McGann	3	Included	0	
"Automated Garage" Signs	Signarama	22	50	1,100	
Wire Connections for Power, Control, and Communications	Amano McGann	1	34,000.00	34,000.00	
Parking Access and Revenue Control System Hardware and Software	Amano McGann	1	30,520	30,520	
Spare lockable note vault	Amano McGann	1	450	450	
Spare note cassette for note dispenser	Amano McGann	1	915	915	
Spare coin vault for pay-on-foot machine	Amano McGann	1	115	115	
Entry tickets	Southland	50,000	-	750	
Validation tickets	Southland	50,000	-	750	
Receipt paper	Office Depot	50,000	-	300	
Total Equipment Cost				213600	\$ 213,600.00
2. CONSTRUCTION COSTS		1			\$ 43,490.00
TOTAL EXTENDED COST (Total Equipment Cost + Construction Costs)					\$ 257,090.00

62

EXHIBIT 5

EVAN V. JONES PARKADE Automated Parking System Requirements - Scope of Work

The following scope of work for a fully-automated parking system ("Project") within the Property, as defined in the Management Service and Construction of Fully Automated Parking Garage Agreement ("Agreement"), shall be constructed and provided by the Manager. The Manager is responsible for complying with all federal, state, and local laws, rules, regulations and requirements applicable to the Project, including, but not limited to, the California Environmental Quality Act.

A. Fully Automated Parking Garage Facilities, Software and Improvements. Pursuant to the Agreement and the Construction Requirements, Manager shall construct a fully automated parking garage on the Property as follows and using the equipment set forth in Section C, below.

1. Pay Stations, Card Readers and Intercom Systems Layout:

- a. Install three automated pay station machines ("Pay Station") on the Property in the following locations: (a) one Pay Station at the street level to allow customers who pay per visit ("Visitor Parker") to park their vehicle and walk to the Pay Station for payment by credit card, debit card, cash and coin ("Pay-on-Foot Pay Station"); (b) one Pay Station at the terrace level to allow Visitor Parkers to park their vehicle and walk to the Pay Station for payment by credit card and debit card only ("Card-Only Pay Station"); and (c) one Pay Station at the exit lane for Visitor Parkers to allow Visitor Parkers to remain in their vehicle for payment by credit and debit card only ("Pay-in-Lane Pay Station").
- b. Install larger card readers at both exits of the Property for Monthly Permit parkers to waive their keycard without having to open their vehicle windows.
- c. At each entry and exit of the Property by vehicle and on each Pay Station, install an intercom system that will be connected to the Manager's on-site office during business hours and transferred to the Manager's 24-hour call center after hours.
- d. The Manager shall have the ability to open the gate remotely at any time.

2. Facilities, Software and Improvements: Manager shall remove the existing equipment and install or provide the following new facilities, software and improvements:

- Two (2) ticket machines (one at each entrance).
- One (1) Pay-on-Foot Pay Station at street level, which shall accept credit and debit cards, cash and coins and shall be Americans with Disabilities Act ("ADA") compliant.

3

- One (1) Pay-in-Lane Pay Station at the exit for Visitor Parks, which shall accept credit and debit cards only.
- One (1) Credit/Debit Card-Only Pay Station at the terrace level, which shall accept credit and debit cards and shall be ADA compliant.
- Five (5) IP based intercoms (one at each entrance, one at each exit, one at the Pay-on-Foot Pay Station, and one at the Credit/Debit Card-Only Pay Station).
- Ten (10) barrier gates. In case of a power outage the barrier gates must either be opened manually, or shall open automatically, depending on the make of the equipment.
- One (1) magnetic stripe mass validator, or a shared account module for City Departments to log in and print their own bar code validations (also known as the “chaser ticket system”).
- One (1) credit card verifier.
- Wire connections for power, control and communications.
- Hardware and software – Parking Access and Revenue Control System (P.A.R.C.S.).
- Three (3) portable handheld cashiering units.
- Eight (8) card readers for Monthly Permit parkers (one at each vehicle exit and entrance).
- Three (3) capacity count systems to control LED “FULL” signs.
- Twenty-two (22) “Automated Garage” signs.
- Replace and upgrade existing signs (all “Entrance” signs, all “Exit” signs, all height clearance signs, all clearance bar signs and booth rate signs)
- Three (3) parking rate signs (one at each Pay Station).
- Install either a mass validator, which uses magnetic stripe technology, or an on-line bar code system with chaser tickets shall be used to print validation tickets. If a mass validator is used, Manager shall print the validation tickets. The control system shall keep track of how many tickets each City Department orders.

3. Safety and Regulatory Requirements: All parking control equipment including, but not limited to, Entry Stations, Exit Stations, barrier gates, card readers and Payment Stations, shall be compliant with all applicable safety and regulatory requirements, including, but not limited to, the following:

- All ADA requirements
- UL approved
- Manufacturers’ quality assurance program must be in compliance with ISO 9001 standard.
- Current proof of P.C.I./PA DSS validated Payment application (credit card certification).

B. Fully Automated Parking Operations .

1. Monthly Permit Parkers. When a Monthly Permit parker arrives at the entry control lanes, the Monthly Permit parker will waive his or her keycard near the card reader. The card reader will then send the open signal to the barrier gate allowing the Monthly Permit parker to enter. The barrier gate automatically closes after the vehicle crosses the closing gate loop. Upon exiting the Property, the Monthly



his or her keycard near the card reader. The card reader will then send the open signal to the barrier gate allowing the Monthly Permit parker to exit with the barrier gate closing automatically when the vehicle crosses the closing gate loop.

2. Visitor Parkers. When arriving at one of the two entry control lanes, Visitor Parkers will automatically be issued a date and time stamped parking ticket from the ticket issuing machine ("Entry Station"). The Entry Station will then send the open signal to the barrier gate allowing the Visitor Parker to enter. The barrier gate automatically closes after the vehicle crosses the closing gate loop. The closing gate loop will then add one vehicle to the vehicle count.

When exiting the Property, the Visitor Parker will proceed to the Pay-on-Foot Pay Station or to the Card-Only Pay Station and insert their parking ticket into the Pay Station. The ticket may have validation encoding to reduce or completely pay for the parking. The parking fee will be automatically calculated including any fee reductions due to validations. The Visitor Parker will pay any fee owed to the Pay Station and the Pay Station will process the ticket as paid and return it to the Visitor Parker. The Pay Station will also issue a receipt to the Visitor Parker. The Visitor Parker will then proceed to their vehicle, drive to the exit for Visitor Parkers and insert the ticket in the Exit Station. If there is no additional fee owed, the Exit Station will then send the open signal to the barrier gate. The barrier gate will open allowing the Visitor Parker to exit with the barrier gate closing automatically when the vehicle crosses the closing gate loop.

Should the Visitor Parker forget to use the Pay-on-Foot Pay Station or the Card-Only Pay Station and proceed directly to their vehicle and drive to the exit for Visitor Parkers, the Visitor Parker will have the option of inserting the parking ticket into the Pay-In-Lane Pay Station next to the Exit Station. The ticket may have validation encoding to reduce or completely pay for the parking. The parking fee will be automatically calculated including any fee reductions due to validations. The Visitor Parker will pay any fee owed to the Pay Station, and the Pay Station will issue a receipt. The barrier gate will open allowing the Visitor Parker to exit with the barrier gate closing automatically when the vehicle crosses the closing gate loop.

3. **Special Event Parking:** Special Event parking customers shall be able to pre-pay on-line or pay when they enter the Property. Ambassadors shall utilize handheld cashiering units that will issue tickets from the portable printers. At the end of the shift, the cashiering unit shall upload the cashier's shift report information onto the central computer network in the Manager's on-site office.
4. **Employee Transportation Alternatives Program (ETAP):** Employees participating in ETAP shall be provided in-and-out privileges.

C. Equipment.
The following equipment shall be provided:

<u>Description</u>	<u>Model</u>	<u>Entry</u>	<u>Exit</u>	<u>Total</u>
<u>Software Interface</u>				
Amano McGann iParc Professional Revenue S/W	AMS1156IP	1	0	1
Count Monitor	AMS7050IP	1	0	1
Access with Debit	AMS4255DIP	1	0	1
Data Server	DPE T310	1	0	1
Laser Printer	B1160	1	0	1
19" Flat Panel & KVM Switch	D19KVM	1	0	1
TC Converters	AGP-0509	0	5	5
Digiportserver	TSMEI	0	2	2
Router	SWTZ105	0	1	1
Battery Back Up	BR-1500G	0	2	2

3

<u>Description</u>	<u>Model</u>	<u>Entry</u>	<u>Exit</u>	<u>Total</u>
McGann CC Server	DPE T310	0	1	1
SQL Server Database Software	SQL	0	1	1
Credit Card S/W Suite	AMS6958IP	0	1	1
<u>Lane Equipment</u>				
Ticket Dispenser Entry Station	AMG-2570	2	0	2
Card Reader Pedestal – White	RM100W	2	6	8
Maxiprox Card Readers	5375	2	6	8
Maxiprox Power Supply	24VDC1.2AMP	2	6	8
Knox Key Switch	3502	1	1	2
Exit Station Magnetic stripe ticket credit card, receipt printer	AMG-4570	0	1	1
Intercom VoIP Card	GRM-VC	2	1	3
Intercom POE Switch	GRM-POE 84	2	1	3
Amano Barrier Gate	AMG-1750	2	8	10
IO100 Universal Lane Controller	O-0100	2	8	10
IO100 Configuration File	O-0100/CONFIG	1	0	1
Ethernet Extender	LB200A-R3	1	0	1
Folding Aluminum Gate Arm 12'	AL25	4	8	12
Loop Cuts	SAS	4	16	20
Protective Bollards	SAS	0	1	1
Non-Resettable Counters	5XV51	4	2	6
24VDC Relay	2W930/10E075	4	2	6
<u>Pay on Foot Station</u>				
Pay Station, PA-DSS Compliant - Cash, Coin & CC	AMG-7850	0	1	1
Pay Station, PA-DSS Compliant – CC only	AMG-4570	0	1	1
Intercom VoIP Card	GRM-VC	0	2	2
Intercom POE Switch	GRM-POE 84	0	2	2
Spare Lockable Note Vault	AGP-0528	0	1	1
Spare Note Cassette for Note Dispenser	AGP-0529	0	1	1
Spare Coin Vault	AGP-0530	0	1	1
"Lost" Ticket Option	AGP-0550	0	2	2
<u>LED Signs</u>				
LED Open/Full Sign	5898	3	0	3
Triple Gang Plate w/ 3 Three Position Switches	6645	3	0	3

3

Sign Mount Brackets	16230	3	0	3
<u>Validations</u>				
Mass Validation Production System	AMS5150IPB	0	1	1
Portable Handheld Cashiering Units (spAce)	3			

EXHIBIT 6

CONSTRUCTION REQUIREMENTS

I. Competitive Bidding; Equal Opportunity and Equal Benefits

1. **Compliance.** Manager shall bid and award contracts to complete the Project in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for City contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Manager shall consult with City. Manager shall work with City to ensure that all Required Contracting Procedures are met. Manager understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of the Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement.
2. **Bidding Documents.** Manager, following City review of the Construction Documents (See sections V and VII of this exhibit), shall address all review comments and requirements to the satisfaction of the City for final approval of Construction Documents, in accordance with City's standard review procedures prior to solicitation of bids.
 - A. *Submission of Bidding Documents.* Manager shall submit bidding documents to City for approval before soliciting bids for a construction contract work for the Project. City retains the right to notify Manager of necessary corrections and will notify Manager of corrections within thirty (30) Working Days of submittal date.
 - B. *Obtain all Permits and Approvals.* Manager shall obtain all necessary permits required by local, City, State and Federal regulatory permitting agencies for the construction of the Project, including, but not limited to, environmental and land development, building, grading and public improvement permits. Approval of Construction Documents will be contingent upon Manager obtaining all necessary permits and then City approval will be required before bidding can proceed and this approval will be evidenced by City's issuance of a letter indicating Manager may proceed with competitive bidding.
3. **Solicitation of Bids.** Manager shall solicit sealed bids for the construction of Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Manager shall notify City of the time and place of each bid opening. Manager shall work with City to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.
4. **Bid Opening and Award of Contract.** Manager shall open bids and award contracts in accordance with all the Required Contracting Procedures. Manager shall work with City to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Manager shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be provided with all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Manager's completion. Contract(s) for the construction of the Project shall be awarded by Manager to lowest responsible and reliable bidder in accordance with Required Contracting Procedures.
5. **Equal Benefits.** City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the San Diego Municipal Code, is applicable to contracts that Manager enters into with respect to the Project. Therefore, Manager shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Developer shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of

those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. Municipal Code § 22.4304(e)-(f). In addition, Manager's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. Municipal Code § 22.4304(a)-(b). Manager's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the Equal Benefits Ordinance requirements. Municipal Code § 22.4304(c). Additionally, Manager's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. Municipal Code § 22.4304(d). Manager shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance.

II. Prevailing Wage

1. Prevailing wages apply to the Project. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, Manager shall ensure that its contractors and its subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.
 - A. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, Manager and its contractors and subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - i. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Manager and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - ii. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration

date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

- B. Penalties for Violations. Manager and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
- C. Payroll Records. Manager and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Manager shall require its contractors and subcontractors to also comply with section 1776. Manager and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Manager is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. Manager and its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- D. Apprentices. Manager and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Manager shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- E. Working Hours. Manager and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours as applicable on City contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- F. Required Provisions for Subcontracts. Manager shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- G. Labor Code Section 1861 Certification. Manager in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Manager certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

- H. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- I. Contractor and Subcontractor Registration Requirements. This Project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- i. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- ii. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- iii. Manager is certifies that he or she has verified or will verify that all contractors and subcontractors used on this project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Manager shall provide proof of contractor or subcontractor registration to the City upon request.

III. Project Schedule Obligations and Components

1. Manager's Obligation. To the extent required by City, Manager shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
- A. *Project Initiation.* During Project initiation and design phases, Manager shall submit an updated Project Schedule on a quarterly basis to City for approval.
- B. *Construction Phase.* During Construction, Manager shall submit an updated Project

Schedule monthly to City and shall include:

- i. Forecast Data with the intended plan for the remainder of the contract duration.
 - ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
 - iii. Logic changes or other changes required to maintain the Project Schedule
2. Detail and Format. Unless otherwise directed by City, the Project Schedule shall include all phases of the Project.
 - A. *Identification of design and construction activities and their sequence.*
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - C. *Milestones.* Show Milestones with beginning and ending dates.
 1. Milestones shall include: site development plan, 30% design, 60% design, 90% design, 100% design, bid opening date, Notice to Proceed, start construction, end construction, Notice of Completion and Project Completion.

IV. Consultant Provisions

Manager shall cause the following provisions to be included in all consultant contracts for the Project.

1. Third Party Beneficiary. The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Manager, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. Competitive Bidding. Consultant shall ensure that all design plans and contract specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. Professional Services Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any liabilities arising from the sole gross negligence or sole willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all

liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. Enforcement Costs. Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.
7. Reserved.
8. Commercial General Liability (CGL) Insurance. Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. Insurance Policy Requirements. Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.
10. Workers Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. Compliance Provision. Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts

of the ADA and Title 24.

12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.
13. **Equal Benefits and Equal Opportunity.** Consultant shall comply with the City's nondiscrimination requirements as set forth in the Agreement.

V. Design and Construction Standards

1. **Laws.** Manager shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits, other applicable permits to the Project for the construction of the Project.
 - B. *Building Codes.* State and local Building Codes
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code [Title 24].* It is Manager's sole responsibility to comply with all ADA and Title 24 regulations.
 - D. *Environmental.* Manager shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring and reporting.
 - E. *Air, Water, and Discharge.* Manager shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Manager shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *City Directives.* Manager shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Manager shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Greenbook.* Standard Specifications for Public Works Construction [Greenbook], including the Regional and City of San Diego Supplement Amendments [Whitebook].
 - B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
3. **City Standards.** Manager's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual.*

- B. *City of San Diego's Street Design Manual.*
- C. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*
- D. *City of San Diego's Technical Guidelines for Geotechnical Reports.*
- E. *City of San Diego Standard Drawings including all Regional Standard Drawings.*
- F. *City of San Diego Data Standards for Improvement Plans.*
- G. *City of San Diego Storm Water Standards.*

VI. Approval of Design, Plans, and Specification

UNLESS OTHERWISE DIRECTED BY THE CITY IN WRITING, MANAGER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval.** Manager shall obtain City approval of the design, in writing, schematic design, 60% Design, 90% Design, and 100% Design.
 - A. *Condition Precedent.* City approval of the schematic design documents is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Manager in writing after receipt of Design Documents of approval, or of request for modifications. If modifications are requested, Manager shall modify and resubmit Schematics for City approval.
 - B. *Sixty (60) Percent Design.* At 60% design, City will notify Manager in writing after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Manager shall modify and resubmit Design Documents for City approval.
 - C. *Ninety (90) Percent Design.* At 90% design, City will notify Manager in writing after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Manager shall modify and resubmit Design Documents for City approval.
 - D. *Citywide Review of 100% Plans and Specifications.* City agrees to review the Plans and Specifications and provide City's written comments to Manager within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in the Agreement. Plans and Specifications shall include City's standard drawings and specifications as described in this Exhibit. If requested by City, Manager shall make changes to the Plans and Specifications.
2. **Submittal of Plans, Specifications and Budget.** Within three (3) months of City Council approval of this Agreement, Manager shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.
3. **Final Approval and Permit Review.** City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City for review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City. City approval will be comprised of approval by Development Services Department, and Real Estate Assets Department.

VII. Construction Obligations

1. **Site Safety, Security, and Compliance.** Manager shall be responsible for all site safety, security,

and compliance with all related laws and regulations.

2. Access to Project Site.

- A. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Manager.
- B. *Site Tours.* Site tours may be necessary throughout completion of the Project. Manager shall allow City to conduct site tours from time to time as the City deems necessary. City will give Manager notice of a prospective tour and a mutually agreeable time shall be set. Manager is not obligated to conduct tours or allow access for tours when City failed to give prior notice.

3. Surveying and Testing. Manager shall coordinate, perform, and complete all surveying, materials testing and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation.

4. Public Right of Way. All work, including, materials testing, special testing, and surveying to be conducted in the public right of way shall be coordinated with the City.

5. Traffic Control. Manager shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

6. Inspections. Manager shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.

- A. *Reports.* Manager shall provide City all special inspection reports within seven (7) calendar days of inspection. Manager shall report all failures of special inspections to City.
- B. *Remedies.* Remedies for compliance shall be approved by Manager, Manager's consultants, City's Development Services Department, and City representatives.
- C. *Concealing Work.* Prior to concealing work, Manager shall obtain approval of the work from the following three entities: 1) City Department; 2) Development Services Department; and 3) Special Inspections- as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Manager of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Manager shall fulfill all requirements of each of these four entities.

6. Permits. The Parties acknowledge the construction work to be performed on the Project by Manager in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Manager. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Manager is relieved from its obligation to construct those improvements covered by the denial of said permit(s). All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City.

7. Maintenance. Manager shall maintain and be responsible for the Project site throughout the term of the Agreement.

8. Drug-Free Workplace. The Manager agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Manager shall certify to the City that it will provide a drug-free workplace by submitting a Manager Certification for a Drug-Free Workplace form attached as part of this Exhibit.

- A. *Manager Notice to Employees.* The Manager shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance

is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

- B. *Drug-Free Awareness Program.* The Manager shall establish a drug free awareness program to inform employees about all of the following:
- i. The dangers of drug abuse in the work place.
 - n. The policy of maintaining a drug free work place.
 - iii. Available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - v. In addition to section 8.A above, the Manager shall post the drug free policy in a prominent place.
- C. *Manager's Agreements.* The Manager further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of this section 8 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

VIII. Project Deliverables

1. Master Contract Documents.

- A. *Working Drawings.* Manager shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- B. *Surveys.* Manager shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Manager shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
- D. *Design Development Documents.* Manager shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
- i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
 - iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.
- E. *Construction Documents.* Manager shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications [throughout the Agreement and attached exhibits referred to as Construction Documents] setting forth in detail the requirements for construction of the Project, including the necessary bidding information.

- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Manager shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- G. *Cost Estimate.* Manager shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G & E Reports.* Manager shall provide hydrologic, geotechnical, environmental document, and other related documents or reports as required by City.
- I. *As-Builts.* Manager shall provide As-Builts.
 - i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Manager shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Manager shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Manager shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. Manager shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, and discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Manager shall maintain a set of As-Builts at the Project site for reference. Manager shall also deliver to the City a set of As-Builts at the completion of construction. This will be a condition precedent to the City accepting the improvements. Manager shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.
- J. *Operation and Maintenance Manuals.* Manager shall submit all Operation and Maintenance manuals prepared in the following manner:
 - i. In triplicate, bound in 8 1/2 x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.
 - ii. A separate volume for each system, including but not limited to mechanical, electrical,

3

plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:

- a. Part 1: Directory, listing names, addresses, and telephone numbers of Manager's agents, suppliers, manufacturers, and installers.
- b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Manager's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

IX. BONDS AND OTHER ACCEPTABLE SECURITIES

1. Payment Bond. If applicable, MANAGER shall provide or require its construction contractor to provide CITY with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of CITY for 100 percent of the proposed construction costs, as determined by competitive bidding (Payment Bond).
2. Performance Bond. If applicable, MANAGER shall provide or require its construction contractor to provide CITY with a bond, Letter Of Credit, cash or other acceptable security guaranteeing the performance in favor of CITY for 100 percent of the proposed construction costs, as determined by competitive bidding (Performance Bond).
3. Warranty Bond. MANAGER shall provide or require its construction contractor to provide CITY with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of CITY (Warranty Bond). MANAGER shall provide the Warranty Bond to CITY upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
4. Term. The Payment Bond shall remain in full force and effect until final completion of the Project and acceptance of the Project by CITY to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until acceptance of the Project by CITY. Upon acceptance, CITY shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty period.
5. Certificate of Agency. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
6. Licensing and Rating. The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.
7. Insolvency or Bankruptcy. If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, MANAGER shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to CITY.

X. INDEMNIFICATION

1. Indemnification and Hold Harmless Agreement. Other than in the performance of design professional services which shall be solely as addressed in Sections 6.2 and 6.3 below, to the fullest extent permitted by law, Manager shall require its contractor to defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses,

costs, damages, injuries (including, without limitation, injury to or death of an employee of Manager's contractor or Manager's contractor's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Manager's contractor or Manager's contractor's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Manager's contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

2. Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Manager shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Manager's design professional or design professional's officers or employees.
3. Design Professional Services Defense. The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.
4. Insurance. The provisions of this Section X are not limited by the requirements of Section XI, related to insurance.
5. Enforcement Costs. Manager agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Section X.
6. Indemnification for Liens and Stop Notices. Manager shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Manager shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Manager shall be responsible for payment of all persons entitled to assert liens and stop notices.

XI. Insurance

1. General. Manager shall not cause work to begin on the Project under this Agreement until it has: (i) obtained or caused Manager's contractor to obtain, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Section IX; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Section IX.
2. Type and Amount of Insurance. The City shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project (Required Insurance). Manager shall obtain the Required Insurance prior to the commencement of work. City's Typical Insurance Provisions are specified in Article 7 of the Management Services and Construction of Fully Automated Parking Garage Agreement between the City and Manager. If Manager is not informed otherwise in writing of Required Insurance, City's Typical Insurance Provisions included in Article 7 of the Management Services and Construction of Fully Automated Parking Garage Agreement shall be the Required Insurance for the Project.
3. Written Notice. Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Manager to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.

Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.

4. **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VI" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
5. **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
6. **Additional Insurance.** Manager may obtain additional insurance not required by this Agreement.
7. **Obligation to Provide Documents.** Prior to performing any work on the Project, Manager shall provide copies of documents including, but not limited to, certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
8. **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Manager. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
9. **Policy Changes.** Manager shall not modify or allow Manager's contractor to modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.
10. **Reservation of Rights.** City reserves the right, from time to time, to review the Manager's or Manager's contractor's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City.
11. **Not a Limitation of Other Obligations.** Insurance provisions under this Section 7 shall not be construed to limit Manager's obligations under this Agreement, including indemnity.
12. **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance by Manager or Manager's contractor during the term of this Agreement, and for a period of ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

XII. WARRANTIES

1. **Warranties Required.** Manager shall require the contractor and its subcontractors and agents to provide the warranties listed below, if applicable. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
 - i. **Materials and Workmanship.** All work on the Project shall be guaranteed against defective workmanship and all materials furnished by Manager's contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Project's final completion and acceptance by City. Manager's contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
 - ii. **New Materials and Equipment.** Manager's contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into the Project are new unless otherwise specified.

- iii. Design, Construction, and Other Defects. Manager's contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all work is in accordance with the approved plans and specifications and is not defective in any way in design, construction, or otherwise.
2. Form and Content. Except manufacturer's standard printed warranties, all warranties shall be on Manager's and Manager's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to CITY. All warranties shall be submitted in the format specified in this Section.
 - i. Durable Binder. Obtain warranties, executed in triplicate by Manager, Manager's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.
 - ii. Table of Contents. All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.
 - iii. Index Tabs. Each warranty shall be separated with index tab sheets keyed to the table of contents listing.
 - iv. Detail. Provide full information, using separate typewritten sheets, as necessary. List MANAGER's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.
 - v. Warranty Start Date. This date shall be left blank until the date of Final Completion.
 - vi. Signature and Notarization. All warranties shall be signed and notarized. Signatures shall be required from Manager's construction contractor and where appropriate, the responsible subcontractor.
3. Term of Warranties. Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of final completion and acceptance of the Project by City
4. Meetings. During the one (1) year warranty period described in Section 8.3, Manager shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

XIII. DEFECTIVE WORK

1. Correction, Removal, or Replacement. All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved construction documents is defective (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Manager shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work or cause the Defective Work to be corrected, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
2. City's Right to Correct. If circumstances warrant, including an emergency or Manager's failure to adhere to Section 9.1, City may correct, remove, or replace the Defective Work. In such circumstances, Manager shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.
3. Defects Constitute Non-Reimbursable Costs. City is entitled to an appropriate decrease in reimbursement for Defective Work from Manager and Manager's contractor or to make a claim

against Manager's or the Manager's contractor's bond if Manager has been paid in full.

4. Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
5. No Limitation on other Remedies. Exercise of the remedies for Defective Work pursuant to this Section XIII shall not limit the remedies City may pursue under this Agreement, at law, or in equity.
6. Resolution of Disputes. If Manager and City are unable to reach agreement on disputed work, payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Manager shall maintain and keep all records relating to disputed work in accordance with Section XIV.
7. Prior to Final Acceptance and Reimbursement to the Manager. Where Defective Work has been identified prior to the final completion and acceptance by City of the Project, Manager shall promptly, and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Where Defective Work is not remedied, City is entitled to make a claim against the Manager's or Manager's contractor's bond or any other remedy available at law or in equity.

XIV. RECORDS AND AUDITS

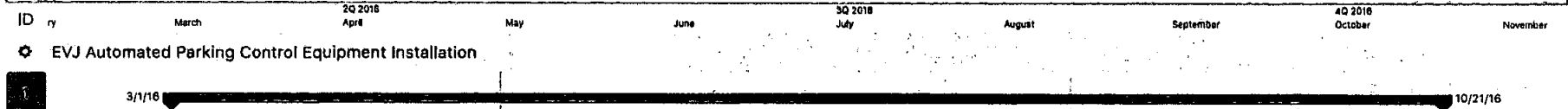
1. Retention of Records. Manager and Manager's agents shall maintain data and records related to the Project for a period of not less than five (5) years following the Effective Date of this Agreement.
2. Audit of Records. At any time during normal business hours and as often as City deems necessary, Manager and all Manager's contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Manager and all Manager's contractors or subcontractors shall permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Manager's contractor shall pay all City's travel-related costs to audit the records associated with the Project at the location where the records are maintained.

Costs. Manager and Manager's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred or anticipated to be incurred.

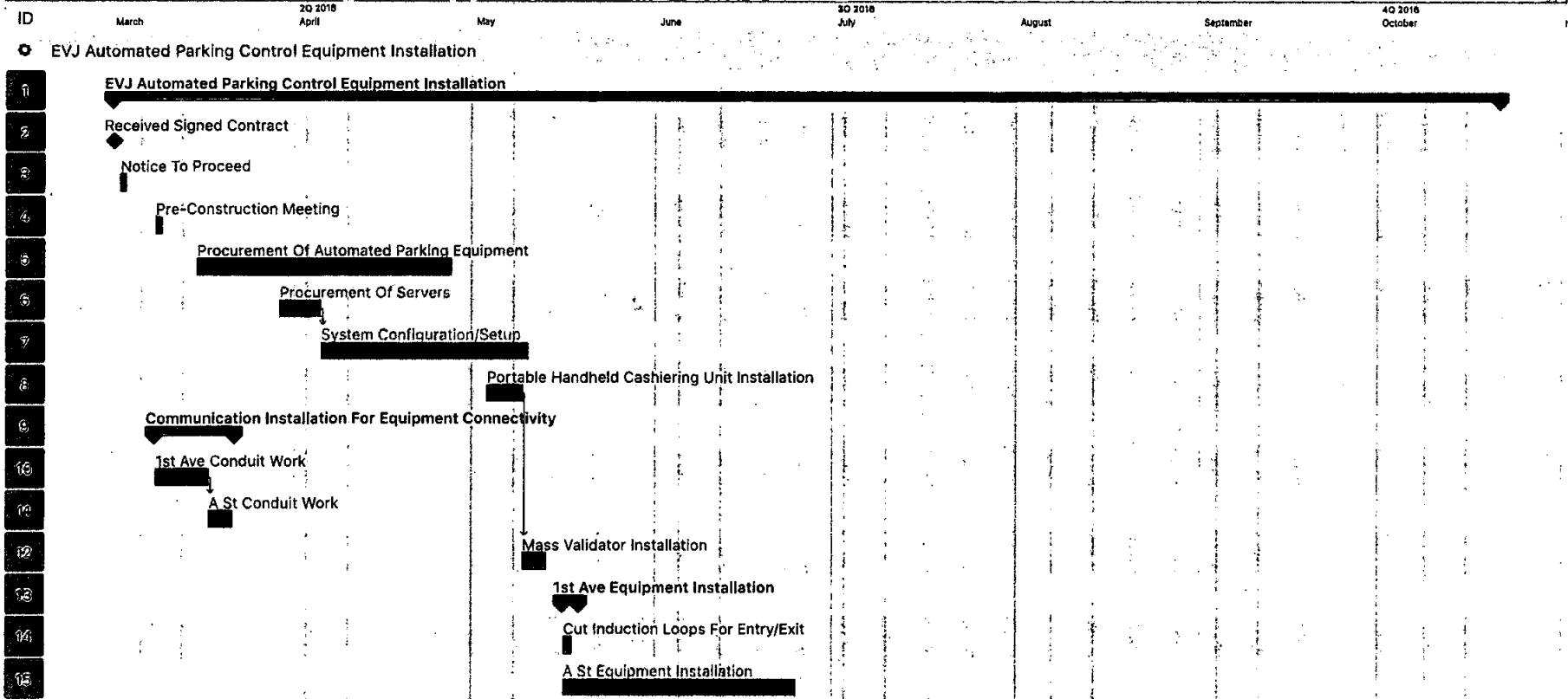
EXHIBIT 7

EVJ Automated Parking Control Equipment

Top Level Chart

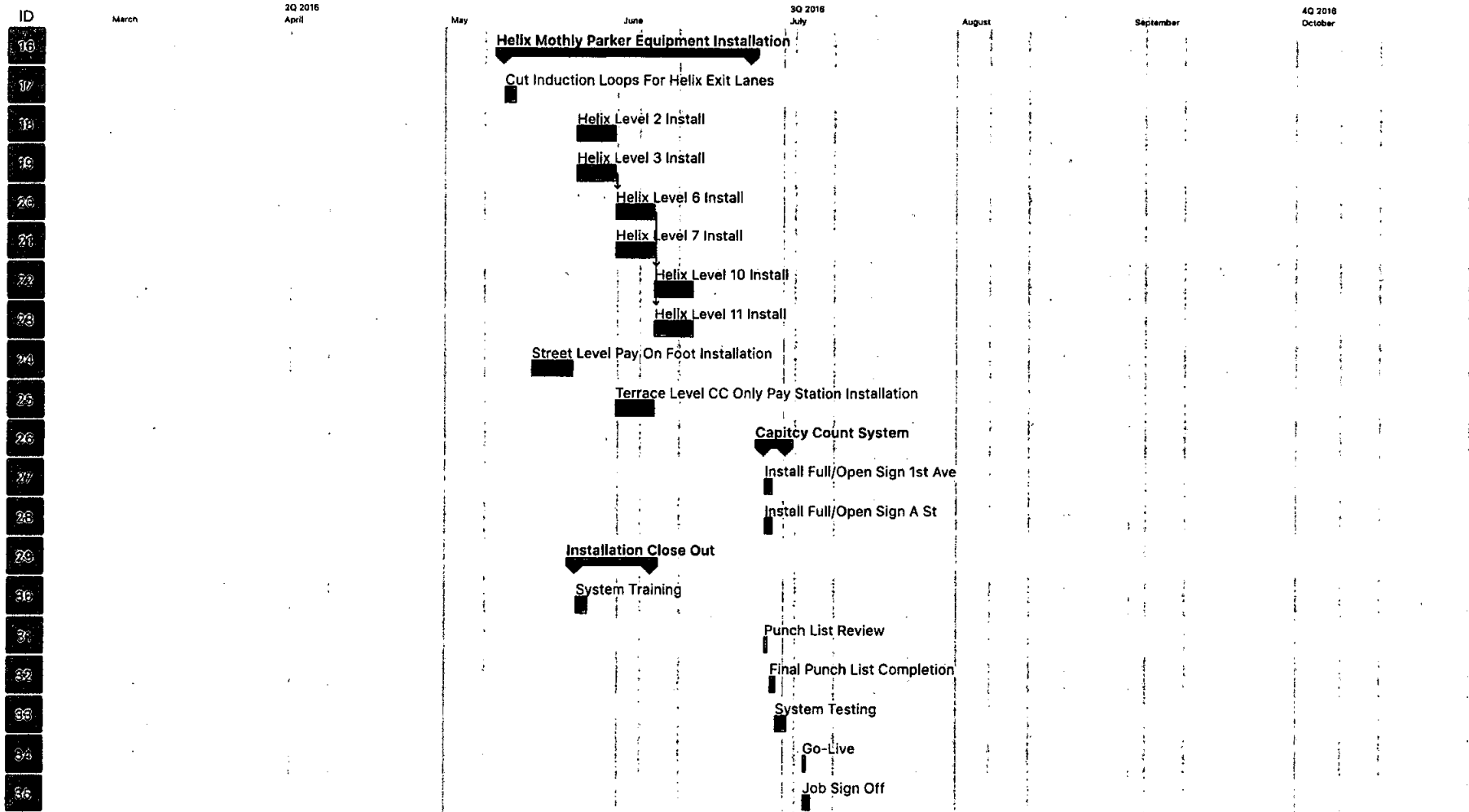


Task Chart for EVJ Automated Parking Control Equipment Installation



3

EVJ Automated Parking Control Equipment



27

EVJ Automated Parking Control Equipment

Task List				
ID	Task Name	Work	Start	End
1	EVJ Automated Parking Control Equipment Installation	168 days	Tuesday 3/1/16	Friday 10/21/16
2	Received Signed Contract	Milestone	Tuesday 3/1/16	Tuesday 3/1/16
3	Notice To Proceed	1 days	Wednesday 3/2/16	Thursday 3/3/16
4	Pre-Construction Meeting	1 days	Tuesday 3/8/16	Wednesday 3/9/16
5	Procurement Of Automated Parking Equipment	31 days	Tuesday 3/15/16	Wednesday 4/27/16
6	Procurement Of Servers	5 days	Tuesday 3/29/16	Tuesday 4/5/16
7	System Configuration/Setup	25 days	Tuesday 4/5/16	Tuesday 5/10/16
8	Portable Handheld Cashiering Unit Installation	4 days	Tuesday 5/3/16	Monday 5/9/16
9	Communication Installation For Equipment Connectivity	9 days	Tuesday 3/8/16	Monday 3/21/16
10	1st Ave Conduit Work	7 days	Tuesday 3/8/16	Thursday 3/17/16
11	A St Conduit Work	2 days	Thursday 3/17/16	Monday 3/21/16
12	Mass Validator Installation	4 days	Monday 5/9/16	Friday 5/13/16
13	1st Ave Equipment Installation	2 days	Monday 5/16/16	Tuesday 5/17/16
14	Cut Induction Loops For Entry/Exit	2 days	Monday 5/16/16	Tuesday 5/17/16
15	A St Equipment Installation	30 days	Monday 5/16/16	Friday 6/24/16
16	Helix Mothly Parker Equipment Installation	32 days	Wednesday 5/11/16	Friday 6/24/16
17	Cut Induction Loops For Helix Exit Lanes	2 days	Wednesday 5/11/16	Friday 5/13/16
18	Helix Level 2 Install	5 days	Tuesday 5/24/16	Tuesday 5/31/16
19	Helix Level 3 Install	5 days	Tuesday 5/24/16	Tuesday 5/31/16

CA

EVJ Automated Parking Control Equipment

ID	Task Name	Work	Start	End
24	Helix Level 6 Install	5 days	Tuesday 5/31/16	Tuesday 6/7/16
25	Helix Level 7 Install	5 days	Tuesday 5/31/16	Tuesday 6/7/16
26	Helix Level 10 Install	5 days	Tuesday 6/7/16	Tuesday 6/14/16
28	Helix Level 11 Install	5 days	Tuesday 6/7/16	Tuesday 6/14/16
30	Street Level Pay On Foot Installation	6 days	Monday 5/16/16	Monday 5/23/16
34	Terrace Level CC Only Pay Station Installation	5 days	Tuesday 5/31/16	Tuesday 6/7/16
246	Capitcy Count System	4 days	Monday 6/27/16	Thursday 6/30/16
27	Install Full/Open Sign 1st Ave	2 days	Monday 6/27/16	Tuesday 6/28/16
28	Install Full/Open Sign A St	2 days	Monday 6/27/16	Tuesday 6/28/16
29	Installation Close Out	9 days	Tuesday 5/24/16	Monday 6/6/16
30	System Training	2 days	Tuesday 5/24/16	Thursday 5/26/16
31	Punch List Review	1 days	Monday 6/27/16	Monday 6/27/16
32	Final Punch List Completion	1 days	Tuesday 6/28/16	Wednesday 6/29/16
33	System Testing	2 days	Wednesday 6/29/16	Friday 7/1/16
34	Go-Live	1 days	Monday 7/4/16	Monday 7/4/16
35	Job Sign Off	2 days	Monday 7/4/16	Tuesday 7/5/16

RESOLUTION NUMBER R- **310248**

DATE OF FINAL PASSAGE **FEB 10 2016**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND ACE PARKING III, LLC FOR PARKING MANAGEMENT SERVICES AND AUTOMATED PARKING SYSTEM UPGRADE FOR THE EVAN V. JONES PARKADE.

WHEREAS, the Evan V. Jones Parkade (Parkade) parking garage was constructed in 1964 as part of the Community Concourse complex and consists of twelve levels of parking for 1,141 vehicles; and

WHEREAS, the Parkade is used by a large number of City employees, as well as daily customers and visitors; and

WHEREAS, the current parking controls, including the access gates, of the Parkade were installed in 1988; and

WHEREAS, in 2010, the Parkade's parking services contract was awarded to ACE Parking Management Inc. for a three-year term with two one-year options and a month-to-month holdover provision. Since February 17, 2015, the contract has been on a month-to-month holdover; and

WHEREAS, a request for proposals (RFP) was issued on November 17, 2015, requesting proposals for the equipment upgrade and the management and operations of the Parkade, including improved customer service levels, and increase revenue for the City by reducing labor costs and increasing the accuracy of accounting with the aid of automation; and

WHEREAS, the RFP was closed on December 17, 2015, and resulted in one response from Ace Parking III, LLC (Ace). The Ace proposal was made in accordance with the evaluation criteria specified in the RFP, and is responsive, responsible and delivers the best overall value to the City; NOW THEREFORE,

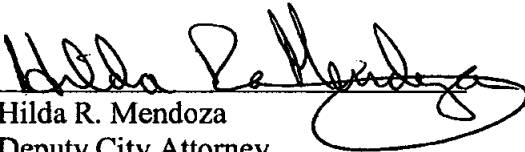
BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor or his designee is authorized to establish contract funding phases and execute, for and on behalf of City, the Management Services and Construction of Fully Automated Parking Garage Agreement with Ace Parking III, LLC, which is on file in the Office of the City Clerk as Document No. RR- 310248 (Agreement), for the management and the automated parking system upgrade of the Parkade as set forth in the Agreement, a phase funded contract for a total cost in an amount not to exceed \$1,393,498.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds under the established contract funding phases in an amount not to exceed \$92,175 for Fiscal Year 2016 (phase1) from Fund 200300, Concourse/Park Garage Operating Fund, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure under the established contract funding phases are, or will be, on deposit with the City Treasurer.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend an amount not to exceed of \$274,046 for Fiscal Year 2017 (phases 2), an amount not to exceed \$277,531 for Fiscal Year 18 (phase 3), an amount not to exceed \$276,289 for Fiscal Year 19 (phase 4), an amount not to exceed \$282,404 for Fiscal Year 20 (phase 5), and an amount not to exceed \$191,053 for Fiscal Year 21 (phase 6) from Fund 200300, Concourse/Park Garage Operating Fund, contingent upon the adoption of the Appropriation Ordinance for the applicable

fiscal years and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure under the established contract funding phases are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:meb
January 22, 2016
Or. Dept: READ
CC No. 3000008483
Doc. No.: 1210400

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB. 9, 2016.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2/10/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000008483
DEPT. NO. 1614

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$92,175.00

Vendor: Ace Parking Management, Inc.

Purpose: E1472 - To authorize the expenditures of funds not to exceed \$92,175.00 with Ace Parking Management, Inc. for the mangement and the implementation of an automated parking system upgrade to the Evan V. Jones Parkade.

Date: January 12, 2016 By: Van Nguyen

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
001		200300		512059	OTHR-00000000-TR	1614	1614000001		\$92,175.00
TOTAL AMOUNT									\$92,175.00

FUND OVERRIDE ☐

CC 3000008483

Passed by the Council of The City of San Diego on FEB 09 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage FEB 10 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310248



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

REVISED

DATE ISSUED: January 7, 2016 REPORT NO: 16-004
ATTENTION: Honorable Council President and City Council
SUBJECT: Contract for Parking Management Services and Automated Parking System Upgrade for Evan V. Jones Parkade.
REFERENCE: None

REQUESTED ACTION:

Authorize the resolution executing a management agreement for the operation and the automated parking system upgrade of the Evan V. Jones Parkade between the City of San Diego and Ace Parking Management.

STAFF RECOMMENDATION:

Approve requested action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The Evan V. Jones Parkade (Parkade) parking garage is managed by Real Estate Assets (READ) and is a part of the Concourse/Parking special fund. The garage is budgeted to generate gross revenue of approximately \$1,990,000 in Fiscal Year 2016.

The Parkade was constructed in 1964 as part of the Community Concourse complex and consists of 12 levels of parking for 1,141 cars. The parking controls such as the access gates currently in place were installed in 1988. The Parkade is used by a large number of City employees, as well as daily customers and visitors.

In 2010, the Parkade's parking services contract was awarded to ACE Parking Management Inc. for a three-year term with two one-year options and a month to month holdover provision. Since February 17, 2015, the contract has been on a month-to-month holdover.

This Request for Proposal (RFP) included provisions to improve customer service levels, provide for capital investment, and potentially increase revenue for the City by reducing labor costs and increasing the accuracy of accounting with the aid of automation. To this end, READ solicited ideas for improvements to the Parkade's operations from City Council, employees and stakeholders and included these requirements in the RFP.

Based on the input of various City departments it was decided to upgrade the Parkade by removing the existing parking control equipment and by converting the Parkade to a fully automated facility, which will allow visitors to utilize self-service pay machines in combination with having ambassadors for support during peak hours. The project will improve the overall traffic flow by reducing the time to exit due to transactions occurring in advance. The project will also centralize the supervision via a command center operation. Intercoms will facilitate immediate response to customers' issues and monitoring of entrance and exit gate activity. In addition to the equipment upgrade, the Parkade will get new graphic upgrades, including new signage.

Lighting improvements were also requested via feedback from stakeholders although lighting improvements were not included in the RFP due to a separate lighting upgrade project that is being managed by the Environmental Services Department. The City is responsible for the maintenance and/or replacement of the Parkade elevators. Funding to replace the controllers and modernize the elevators would need to be included in a future City budget. Security is not part of the parking management contract and has not been addressed in this RFP. The level of janitorial services has increased over the past 6 months and this increased cleaning schedule was a requirement of the RFP.

Parking management consultant, Clyde Wilson, CEO of The Parking Network, was retained to advise the City with regard to the preparation and process for the RFP as parking technology has changed significantly since the last RFP was issued. An RFP for parking management service and an automated parking system upgrade was issued by the Purchasing and Contracting Department. Respondents were asked to submit proposals for services for a five-year contract. The objective of the RFP was to make an award to a qualified contractor that delivers the best overall value to the City considering the evaluation factors in the RFP. This included a contractor who is customer service orientated, knowledgeable, experienced and able to provide timely delivery of the requirements. The Contractor will be required to meet the City's needs while maximizing quality, effective and efficient management of the parking operations and offer the most competitive price to the City.

The RFP was published and in addition, several major parking management companies were contacted individually by the Purchasing & Contracting Department. The RFP resulted in one response from ACE Parking Management, Inc. (Ace). The source selection committee completed the review of the proposal and found that the Ace proposal was made in accordance with the evaluation criteria specified in the RFP. Since the proposal meets City requirements, staff recommends that the City of San Diego enter into the proposed contract with Ace, the qualified contractor that delivers the best overall value to the City.

The conversion of the Parkade to an automated parking garage will take approximately 180 days from the issuance of the "Notice to Proceed" to the installation and testing of the new equipment. During construction, the Parkade will remain open. Ace will provide traffic ambassadors at entry or exits if there is to be any disruption of service.

The proposed equipment manufacturer is Amano McGann, which is one of the largest parking equipment manufacturers currently on the market. The proposed parking system solution is currently installed throughout San Diego and includes: San Diego International Airport, San Diego Convention Center, University Towne Center, Emerald Plaza, and Horton Plaza. The equipment will include three pre-pay machines – one on the street level next to the elevators, one on the terrace level next to the elevators, and

one at the visitor exit lane. It will include new barrier gates, a new intercom system with larger card readers, and software, which includes features such as remote connectivity, access control, revenue management, count management systems, custom reporting, and many other options. It will also include a capacity count system that controls three LED signs, which will read "FULL" when all parking spaces are occupied. Ace will install the system at a wholesale cost with zero percent interest financing of the equipment over a 5-year amortization period.

The pre-pay machines will allow users to use cash or credit cards to pay the parking fee prior to reaching the gate thus improving exit times. City provided "parking validation stamps" will be replaced with parking validations printed on a mass-validator by Ace. These validated tickets will be accepted at the exit station. The parking access control system will keep track of how many tickets each department orders.

The conversion of the Parkade to an automated parking garage will allow the collection of parking fees during off-hours when Parkade staff has not been typically present such as on weekends or holidays. City staff has not been able to forecast potential revenue increase because of lack of historical data. The usage of the Parkade will vary depending on surrounding activities or future development. It is not anticipated that usage from Gaslamp patrons will have a significant impact on the Parkade, although there could some advertising or marketing campaigns that could increase weekend usage. Usage marketing was not included in the RFP.

FISCAL CONSIDERATIONS:

Firm-fixed pricing has been secured for the entire five-year term of the contract. The total cost of the five-year contract to the City shall not exceed \$1,393,498. The total cost includes \$939,225 for maintenance and operating expenses (which includes a \$60 management fee over 5 years), \$62,500 for maintenance agreements, \$259,000 for the upgrade project (equipment & construction), 10% contingency (\$93,923) for maintenance and operation to cover possible emergency repairs, occasional special events labor costs, and Living Wage increases. The total cost also includes a 15% upgrade project contingency (\$38,850) for unforeseen construction issues.

The cost for Fiscal Year 2016 is not to exceed \$92,175. The cost is not to exceed \$274,046 for Fiscal Year 2017; \$277,531 for Fiscal Year 2018; \$276,289 for Fiscal Year 2019; \$282,404 for Fiscal Year 2020; and \$191,053 for Fiscal Year 2021.

Revenue from the operation of the garages is budgeted to be approximately \$1,990,000 in FY2016. The revenue that is net of the operating expenses is deposited in the General Fund.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #1: Provide high quality public service

Objective #1: Promote a customer-focused culture that prizes accessible, consistent and predictable delivery of services.

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3: Invest in infrastructure

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This contract is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No.18173, Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

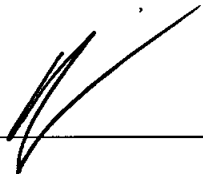
This action was heard by the Committee on Smart Growth and Land Use of the City Council on January 20, 2016 and forwarded to the full Council with a recommendation to approve.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

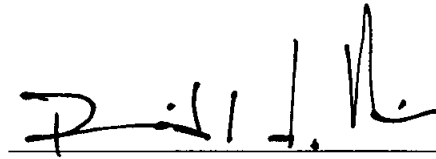
No public outreach efforts have been made.

KEY STAKEHOLDERS:

The key stakeholders include City employees, City Hall visitors, and Civic Theater visitors.



Cybele L. Thompson
Director, Real Estate Assets



Ronald H. Villa
Deputy Chief Operating Officer



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: February 4, 2016

TO: Honorable Council President and Members of the City Council

FROM: Cybele L. Thompson, RPA, FMA, CCIM, LEED AP, Director, Real Estate Assets via
Ronald H. Villa, Deputy Chief Operating Officer, Internal Operations Branch

SUBJECT: Smart Growth Committee Questions Regarding the Contract for Parking
Management Services and Automated Parking System Upgrade for Evan V. Jones
Parkade

At the Smart Growth and Land Use Committee meeting on January 20, 2016, several questions were raised regarding the five-year agreement between the City and Ace Parking for the operation of the Parkade and the replacement of existing parking control equipment to convert the Parkade to a fully automated parking facility. Please find our responses below:

1. *What will happen to the current staffing level at the Parkade under the new contract and where will any labor which is reduced be placed?*

There will be a savings in labor with the installation of the pay on foot machines compared with what the City currently pays, however, ambassadors (Ace staff) will still staff the parking booth during peak traffic hours for the Parkade and Darnell Williams will remain as the fulltime parking manager. The City is not authorized to direct Ace's personnel assignments. Ace has verbally indicated that parking staff which is reduced has the ability to be placed at other Ace Parking lots throughout San Diego.

2. *Where will the prepaid stations be placed and what forms of payment will they accept?*

- (1) One pay station will be placed at the street level and allow for payment by credit card, debit card, cash, and validated parking tickets.
- (2) One pay station will be placed at the terrace level and allow for payment by credit card and debit card only and validated parking tickets.
- (3) One pay station will be placed at the exit lane and allow for payment by credit and debit card only and validated parking tickets.

3. *Why was there only one proposal submitted in this RFP process?*

The RFP was advertised effectively with 20 different bidders downloading the RFP from Planet Bits and 4 bidders attending the pre-proposal meeting and site visit (ABM, Ace Parking, Joe's Auto Parks, and SP+). Ultimately, however, the only proposal submitted was from Ace Parking.

4. *How does the City know it got the best deal available if there was only one proposal submitted?*

Ace is charging the City \$1 per month for their management fee. The fees for a parking garage the size of the Parkade vary from approximately \$1,200 to \$1,500 per month throughout the industry. Ace will install the new parking equipment at wholesale cost with 0% financing. In addition, READ contracted with an outside parking consultant to review Ace's proposal to confirm its accuracy and determined the Ace proposal was an excellent deal for the City.

5. *What are the penalties if Ace does not have all equipment installed within 180 days?*

The "Management Services and Construction of Fully Automated Parking Garage Agreement" includes liquidated damages that will be charged per day, beyond 180 days from the commencement of the contract, in the event that the project is not completed on time and the delay is not beyond Ace Parking's control.

6. *Are improved lighting, elevator and security services included in this Ace Parking contract?*

Lighting improvements were not included in the RFP due to a separate lighting upgrade project in the Parkade that is being managed by the Environmental Services Department. The City is responsible for the maintenance and/or replacement of the Parkade elevators. Also, security is not part of the parking management contract because the City contracts separately for this service.

7. *How will the new validation system work?*

City departments will be able to order pre-validated parking tickets from the parking manager in pre-set time increments, such as 1-hour, 2-hour, or full day) These validated tickets will be accepted at the exit stations. The parking access control system will keep track of how many tickets each department orders.

8. *Do we have plans to include charging stations and room for Zipcars in the Parkade?*

Charging stations and room for Zipcars were not part of this RFP, but if the City so chooses they can be added at a later date.

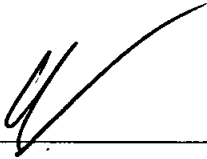
9. *Will the gate arms still be up at the end of the day as they are now and, if not, when are the times when they would manually be placed in the up position?*

The exit gate arms will be in the down position 24 hours a day, 7 days a week, with the exception of special events where customers pre-pay a fixed amount for parking, either online or at the Parkade entrance.

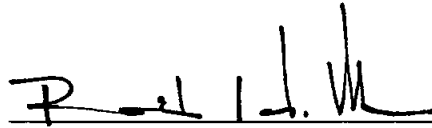
10. How can people contact Ace Parking after hours if they have any exiting issues?

An intercom system will be installed at all entrances and at the visitor exit gate. This intercom system will connect the parker with an Ace Parking call center which operates 24 hours a day, 7 days a week and is able to open the gates remotely.

Thank you for your time and consideration of this matter.



Cybele L. Thompson, RPA, FMA, CCIM, LEED AP
Director, Real Estate Assets



Ronald H. Villa
Deputy Chief Operating Officer