

INSURANCE ON FILE
WORK MAY PROCEED
UNTIL INSURANCE EXPIRES

1-1-2014

CLERK OF COUNCIL

DATE: 4-30-13

**OPERATING AGREEMENT
FOR PUBLIC PARKING GARAGES & SURFACE LOT STAFFING
AND FIELD MANAGEMENT BETWEEN THE CITY OF SANTA ANA
AND CENTRAL PARKING SYSTEM, INC.**

This Agreement is made and entered into on this 1st day of May, 2013 by and between the CITY OF SANTA ANA, a charter city and municipal corporation of the State of California ("City") and CENTRAL PARKING SYSTEM, INC. ("Operator").

W-I-T-N-E-S-S-E-T-H

Recitals:

- A. City has issued a Request for Proposals 12-060 (Exhibit A) for the operation of the downtown parking garages and surface parking lots. City desires to procure adequate and efficient management of certain public parking garages and surface parking lots for which it has operational responsibility, which structures are currently described as follows:
1. **Parking Garage A: 440-space garage existing on the northeast corner of Broadway and Third Street.**
 2. Parking Garage B: 700-space garage on the south side of Fifth Street between Bush and French Streets.
 3. Parking Garage C: 400-space garage on the northwest corner of Birch and Third Streets.
 4. Parking Garage D: 400-space garage on the southwest corner of Fifth and Main Streets.
 5. Surface Parking Lot #1: 62 space surface parking lot on the northeast corner of Bush and Third Street.
- B. Operator is experienced in the operation and management of automobile parking garages and surface parking lots, and is ready, able and willing to undertake the operation and management of the above-described parking garages and lots.
- C. The City can, at any time during the Term of this Agreement, request to have additional locations not listed above be managed under this Agreement subject to additional fees.
- D. In undertaking the performance of this Agreement, Operator represents that it is knowledgeable in its field and that any services performed by Operator under this

Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

Wherefore, in consideration of their mutual and respective promises and subject to the terms and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following meanings shall apply:

- A. "Premises" shall initially mean Parking Garages A, B, C, and D, along with Surface Parking Lot #1, used interchangeably with the term "Parking Facilities" (see Exhibit A, attached hereto and incorporated herein). Additional Premises may be added by the City during the term hereof.
- B. "City" shall mean the City of Santa Ana, California, a charter city and municipal corporation.
- C. "Contract Administrator" shall mean the City Manager or his/her designee; the person on City staff that is appointed to be the contact person with regard to this Agreement.
- D. "Fiscal Year" shall mean January 1 through December 31.
- E. "Gross Revenue" shall mean the total amount of all parking receipts, admission, rentals, and other fees of any nature or kind charge, received, or collected by Operator in the course of operating the Premises, whether such monies are received at the Premises or elsewhere.
- F. "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under an Environmental Law, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste, or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products or waste.

- G. "Management Fee" shall mean the fee that the City pays the Operator for performing those obligations set forth in the Agreement. The fee is proposed as an annual maximum fixed amount and is paid on a monthly prorated basis.
- H. "Parking Manager" shall mean the person that the Operator selects and appoints whose responsibility shall be overseeing the operation of the Parking Facilities, as further discussed in Sections 12 and 13 hereof.
- I. "Operating Expenses" shall mean expenses incurred by Operator for equipment or supplies, or paid to a third party vendor, which are not included as part of the Management Fee and which shall be reimbursed by the City up to a maximum of One Million One Hundred Eighty Thousand Dollars (\$1,180,000) per year in accordance with the terms of this Agreement.

2. SCOPE OF SERVICES

Operator shall perform those services as specified in detail in the RFP and the attached Proposal dated January 2, 2013, attached hereto and incorporated as Exhibit B. Optional additional services shall include valet parking services and the installation of certain improvements to enhance garage/parking lot security and operations, as requested by the City. These improvements may include, but are not limited to: upgrading/adding lighting, installation of security cameras, and improving circulation, where possible. Said optional services are not included under the Operating Expenses.

Budgets detailing the proposed Operating Expenses shall be submitted for each Fiscal Year or portion thereof occurring during the term of this Agreement. The budgets shall show the estimated Operating Expenses for such Fiscal Year or portion thereof occurring during the term of this Agreement, in such format as is required by the Contract Administrator, or his/her designee. The initial proposed budget shall be submitted by Operator to the Contract Administrator prior to the commencement date set forth herein. Subsequent proposed budgets should be submitted prior to the commencement of the Fiscal Year to which they pertain. Operator and the Contract Administrator shall cooperate in good faith to develop reasonable approved budgets, provided, however, that the Contract Administrator shall retain ultimate authority to determine each approved budget in the event of disagreement. Any approved budget may be amended at any time by a written amendment approved by the Contract Administrator and Operator. In the event that the City incurs any obligation for Operating Expenses, which are not in accordance with an approved budget, City may deduct the amount of such obligation from the Management Fee.

3. TERM OF AGREEMENT

3.1 *Initial Term* - The initial term of this Agreement is a two (2) year term, commencing on May 1, 2013 ("Commencement Date") and ending on April 30, 2015.

4. COMPENSATION AND REIMBURSEMENT OF OPERATING EXPENSES

a. As total compensation for Operator's services under this Agreement, City agrees to pay and Operator agrees to accept, a Management Fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) per month. Further, Operator shall recover its Operating Expenses in an amount not to exceed One Million One Hundred Eighty Thousand Dollars (\$1,180,000) each Fiscal Year or the prorated portion thereof, in accordance with the terms of this Agreement.

b. Adjustments to Charges. The parties may agree to an annual adjustment (not to exceed 2%) at the end of the first year of the Agreement every year thereafter, utilizing the month of December statistics and supporting documentation. The two indices which will be used for determining adjustments shall be the most recent December Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Anaheim-Riverside CMSA, published by the United States Department of Labor Bureau of Labor Statistics or any relevant successor for the Orange County area.

c. Extra Work. No new work of any kind shall be considered as extra unless a separate estimate is given for said work and the estimate is approved by the City in writing before work is commenced. The Operator will be required to provide detailed information of such extra work. Documentation of contract compliance may be required on some occasions.

5. DESIGNATION OF OPERATOR AS MANAGER: PARKING FACILITIES TO BE OPERATED

- A. Non-exclusive Agreement. Operator's right to operate the Parking Facilities is non-exclusive.
- B. Designation of Operator as Manager. City hereby designates and hires Operator as the operator and manager of the hereinafter described Parking Facilities and Operator accepts such designation and agrees to operate and manage the Parking Facilities subject to the terms, covenants and conditions of this Agreement. Operator acknowledges that this Agreement conveys no interest in nor attaches to any underlying real property comprising the Parking Facilities. Accordingly, City and Operator agree that nothing in this Agreement shall entitle or permit or be construed to permit Operator to file any claim, lien or notice against any real property. As material consideration for this Agreement, Operator waives any rights it may now or hereafter have to record a lis pendens against the Parking Facilities under Section 405 *et. seq.* of the California Code of Civil Procedures, or any other provision of law, if a dispute arises under this Agreement.
- C. Parking Facilities to be Operated. Operator shall operate those certain vehicular Parking Facilities, together with all incidental and appurtenant improvements

constructed thereon, shown on Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the "Parking Facilities," in accordance with the terms and conditions set forth in this Agreement.

- D. Performance. The hours of operation of each Parking Facility are set by the City. Operator must staff each facility sufficiently during all operating hours. It is expected that the parties will discuss and agree upon levels of staffing; however, if the parties cannot agree, the decision of the Contract Administrator shall control. Maintenance tasks should be performed at such hours as to minimize the impact on customers.
- E. Modification by City. The City may, during the term of this Agreement, modify the list of Parking Facilities listed in the Recitals and on Exhibit A, attached hereto and incorporated herein. It may also modify parking space inventory. **Such modifications shall not be considered a breach of this Agreement; nor shall City Council approval be required for such modification unless the management fee increases.**

6. COVENANTS OF THE OPERATOR

A. Operator agrees throughout the term of this Agreement to manage, operate, supervise, and maintain the Premises economically, professionally, diligently, effectively, and to the best of its ability. The Operator agrees not to use or permit the use of the Premises for any purpose other than for vehicular parking, nor to engage in or permit any other business activity on, within or from the Premises. The Operator must manage and operate the Parking Facilities in a manner that reflects the City's commitment to customer service, careful stewardship of the public's capital investments, adequate safeguards on City's revenues and professional management of the City's services.

B. The Operator, as operator and manager of the Premises, shall comply with and conform to all provisions of law including, without limiting the generality of the foregoing, all requirements of all Federal, State and local enactments, bylaws, and other governmental or municipal regulations now or hereafter in force which relate to the operation, management, and supervision of the Premises, and the Operator shall comply with all Police, Fire, and safety regulations imposed by any governmental, State, or City authorities, or made by property insurance companies, and shall obtain and maintain all licenses and consents necessary for the proper and lawful operation, management, and supervision of the Premises.

C. Operator agrees that this Agreement shall not be construed as granting any right of possession, estate, title or interest in the Parking Facilities. Operator agrees that this Agreement shall not impair the City, its agents or employees from entering the Parking Facilities at any time.

D. Operator agrees and acknowledges that it is an independent contractor and not an employee of the City. Operator shall maintain complete control over all of its employees and any subcontractors. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Operator performs the services which are the subject matter of this Agreement; however, the services to be provided by Operator shall be provided in a manner consistent with all applicable standards and regulations governing such services and the terms of this Agreement. Operator shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Neither Operator nor City is granted any right or authority to assume or create any obligation on behalf of the other.

7. COLLECTION OF REVENUES AND OPERATOR'S PAYMENT OF EXPENSES

The Operator shall deposit daily in a separate interest bearing account in a chartered bank approved by City all Gross Revenue received by the Operator in the performances of this Agreement.

The Operator shall promptly pay when due all operating expenses. All such expenses shall be promptly paid by the Operator from the Gross Revenues deposited as set forth herein. If at the end of a given month Gross Revenues previously collected are insufficient to pay all expenses, the Operator will carry-over that amount, up to Ten Thousand Dollars (\$10,000), to the subsequent month(s) where future revenues can be used to reimburse these expenses. For the amount exceeding Ten Thousand Dollars (\$10,000) of unreimbursed expenses for a given month the City shall promptly pay the Operator upon submission of the monthly statement.

On or before the fifteenth (15th) day of each month, Operator shall remit to City the funds remaining after deducting from Gross Revenues the Operating Expenses and Management Fee for the preceding month.

8. RECORDS AND ACCOUNTS

- A. Records. The Operator shall, at all times during the term of this Agreement, keep or cause to be kept true and complete books, records, and accounts of all gross receipts from the operation of the Parking Facilities within each of the Parking Facilities. The books, records, and accounts shall be supported by source documents such as computer records and printouts, cash register tapes, and/or other pertinent documents.

Computer and/or cash register totals shall be read and recorded by the Operator at the beginning and end of each business day for each exit lane.

The Operator shall provide, subject to reimbursement by the City, serially numbered tickets compatible with and for use in operating the parking control equipment provided by the City for monitoring vehicular parking and shall keep a record of said tickets acceptable to the City.

- B. Accounting Year. For this Agreement, the accounting year shall be January to December. The accounting year shall be maintained throughout the term of the Agreement unless the Contract Administrator approves in writing a different accounting year. Contract Administrator shall approve a change in accounting years only in the event the accounting year in use results in undue hardship for either the Operator or the City and not because of mere convenience or inconvenience.
- C. Financial Statements. Within ninety (90) days after the end of each accounting year, the Operator shall, at the Operator's sole expense, submit to the City a Statement of Gross Receipts, audited by a Certified Public Accountant, for each accounting year.
- D. Failure to Submit Financial Statements. In the event Operator fails to submit the financial statements required in paragraph C above by the due date, Contract Administrator may require that Operator pay to the City any and all costs incurred by City to prepare the required financial statement, plus an administrative fee equal to 50% of those costs.
- E. Audits. All the Operator's books of accounts and records and supporting source documents related to this Agreement or to business operations conducted within or from the Parking Facilities shall be kept and made available at one location within the limits of Orange County, California. The City shall, through its duly authorized agents or representatives, have the right to examine and audit said books of accounts and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements made and monies received.

The City upon request of the Operator and at the City's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided the Operator shall agree to pay all expenses, including but not limited to transportation, food, and lodging, necessary for the City to audit said books and records.

The full cost of any audit by the City, as determined by the City, shall be borne by the Operator if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than five percent (5%)

of gross receipts reported and paid by the Operator in accordance with this Agreement when compared with the gross receipts which should have been reported and paid as revealed by audit;

2. The Operator has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Paragraph A (Records) of this Section. The adequacy of such books, records, accounts, and supporting source documents shall be determined at the sole discretion of the City. Otherwise, the City shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon request of the City, the Operator shall promptly provide, at the Operator's expense, necessary data to enable the City to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Agreement.

F. Records and Audits:

1. Except as otherwise provided herein, all parking charges shall be recorded by means of cash registers or other comparable devices as provided for Operator's use by City which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices, which lock, in parking charge total and other transaction numbers and details. Totals registered shall be read and recorded at the beginning and end of each day. Cash register tapes tickets, and reconciliation of the proceeding day's transaction shall be submitted to the City monthly, or as required by the Contract Administrator. Operator shall issue serial numbered tickets for each admission, and shall keep an adequate record of said tickets; both issued and un-issued, and shall be responsible for the distribution and collection of monthly parking card and monthly revenues.
2. The Operator's book of account, records, and supporting source documents related to this agreement or to business operations conducted within or from the Premises shall be kept and made available at one location within the limits of the County of Orange. City shall, through its duly authorized agents or representative, have the right to examine and audit said books of account, records, and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received.

3. The City, upon request of Operator and, at the City's sole discretion, may authorize the above-referenced books and records to be kept in a single location outside the limits of Orange County provided Operator shall agree to pay all expenses including, but not limited to, transportation, food, and lodging necessary for the City to send a representative to audit said books and records. The Contract Administrator shall not exercise said right more than twice each accounting year.
4. The full cost of said audit, as determined by City, shall be paid by Operator if either or both of the following conditions exist:
 - (a) The audit reveals an underpayment of more than five percent (5%) between the balance of revenue due as reported and paid by Operator in accordance with this Agreement, and the balance of revenue due as determined by said audit.
 - (b) Operator has failed to maintain true and complete books, records, accounts, and/or supportive source documents in accordance with this agreement. The adequacy of records shall be determined at the sole discretion of the City. Otherwise, City shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.
5. Upon the request of City, Operator shall promptly provide, at Operator's expense, necessary data to enable City to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Agreement, and to Operator's management of the Premises. Such data shall include, if required, a detailed breakdown of Operator's receipts and expenses.

G. Failure to Maintain Adequate Records. In addition to any other remedies available to the City at law, in equity, or under this Agreement, in the event the Operator fails to maintain and keep books, records, and accounts relating to the Operator's operations on or from the Parking Facilities and source documents relating thereto, or to make the same available to the City for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to the City regarding gross receipts as required by this Agreement, the City, at the City's option, may:

1. Perform such examinations, audits, and/or investigations itself or through contractors, agents, or employees as the City may deem appropriate to confirm the amount of gross receipts payable to the

City by the Operator under this Agreement and any and all costs and/or expenses incurred by the City in connection therewith shall be promptly reimbursed to the City by the Operator upon demand.

2. Provide accounting services and/or a system for recording gross receipts, including without limitation, cash registers, for use by the Operator in conducting business transactions upon or from the Parking Facilities, and, at the City's option, maintain personnel on the Parking Facilities to observe and/or record such transactions during the Operator's business hours, or from time to time, all at the Operator's sole cost and expense and, in such event, the Operator shall promptly reimburse the City for any and all costs incurred by the City in connection therewith; and/or
3. Require that Operator pay to the City, upon demand amounts equal to and based on the City's reasonable estimate of the actual gross receipts from parking operations conducted on or from the Parking Facilities. Any such estimate made by the City in good faith shall be conclusive and binding upon the Operator.

Costs payable by Operator pursuant to this Section shall include reimbursement to City, for City provided services at such rates as the City may from time to time in good faith establish for such services. In the case of services provided by the City's employees, such rates shall be sufficient to reimburse the City for employees' salaries, including employee taxes and benefits and the City's overhead or, may be the rate for such services that would be charged by a qualified third party or parties, if engaged by the City to perform such services.

H. Retention Period/Ownership of materials. All reports, documents, or other materials developed or discovered by Operator or any other person engaged directly or indirectly by Operator to perform Operator's services for the City are to be maintained and retained for a period of three (3) years. Said documents shall be the property of the City without restriction or limitation upon their use.

9. INSURANCE

The Operator shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement, which cost shall be a reimbursable Operating Expense. The policy of policies of insurance maintained by Operator shall provide the following limits and coverage:

1. **Commercial General Liability (CGL) or Garage Liability:** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with

limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

A. "This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after thirty (30) days' written notice has been given to the Community Development Agency of the City of Santa Ana."

B. Such insurance shall be primary. "It is agreed that any insurance maintained by the City of Santa Ana will apply in excess of, and not contribute with, insurance provided by this policy."

C. "The City of Santa Ana and its officers, agents, and employees are added as additional insured as respects operation of the named insured at the Parking Garage located at the northeast corner of Broadway and Third Street, the Garage on the south side of Fifth Street between Bush and French Streets, the Garage on the southwest corner of Fifth and Main Streets, the Garage on the northwest corner of Birch and Third Streets, and the surface parking lot located on the northeast corner of Bush and Third Street in the City of Santa Ana." A sample Additional Insured Endorsement is attached hereto and incorporated herein as Exhibit C. The Additional Insured Endorsement shall be amended periodically to reflect all parking garages/parking lots that Operator manages on behalf of the City.

2. **Garage Keeper's Legal Liability:** with limits no less than **\$2,000,000** covering the Operator and the City against claims, liabilities, losses, or suits covering exposures for loss of or damage to vehicles in Operator's care, custody and control.
3. **Commercial Crime including Employee Dishonesty:** with limits not less than **\$100,000** for Employee Dishonesty and **\$10,000** for depositors forgery, loss of money and securities, inside or outside the premises and including safe robbery or burglary
4. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
5. **General Insurance Requirements:**

Operator agrees to deposit with City, on or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of the Agreement have been complied with and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Agreement.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City, the insurance provisions in this Agreement do not provide adequate protection for City and for

members of the public using the Premises, City may require Operator to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. City's requirement shall be reasonable, but shall be designed to assure protection from and against the kind and extent of the risks, which exist at the time a change in insurance is required.

City shall notify Operator in writing of changes in the insurance requirements, and if Operator does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty days (60) of receipt of such notice, Operator shall be in default without further notice to Operator, and City shall be entitled to exercise all legal remedies.

The procuring of such required policy or policies of insurance should not be construed to limit Operator's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

10. INDEMNIFICATION

The Operator shall indemnify and hold the City of Santa Ana, its officers, employees and agents harmless from and against:

(a) Any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of any injury to any person or persons, or any damage to any property as a result of any accident or other occurrence during the term of this Agreement occasioned by any negligent act or omission of the Operator, its officers, employees, agents, servants, subtenants, concessionaires, licensees, contractors, or arising from or growing out of the negligent use, maintenance, or operation of the Premises during the term of this Agreement.

(b) From and against all legal costs and charges, including reasonable attorney's fees, incurred with respect to any of such matters and the defense of any action out of the same, or in discharging the Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any negligent act or omission of the Operator.

(c) The Operator shall further indemnify and hold harmless the City from any loss of Gross Revenue due to dishonesty, theft, or negligence of any officer, agent, or employee of the Operator. The Operator may protect itself from such liability for such fidelity losses through higher fidelity bonding of its officers, agents, or employees than is required by this Section, but failure to do so shall in no way relieve the Operator from its obligation to indemnify the City of any such losses.

(d) Notwithstanding the foregoing, nothing herein shall be construed to require Operator to indemnify the Indemnified Parties from any Claim arising from the gross negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the

terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Operator.

11. PUBLIC PARKING RATES

A. Parking Rates. The City shall determine parking rates. The implementation of any parking rate adjustment shall be the responsibility of the Operator. As part of such implementation, the Operator shall be responsible for replacement of all parking rate signs in accordance with Section 12 ("Maintenance Obligations of Operator"), and for notifying the public of the new parking rates and their effective date. Such public notice shall be given by posting notices conspicuously at each entrance and exit to Parking Facilities for a minimum of ten (10) business days before the date the adjustment becomes effective.

Parking rates shall at all times be posted by Operator within one place at each entrance and exit to the Parking Facilities on clearly legible signs of the type, character and locations approved by the Contract Administrator. Operator must install new parking rate signs within one month of the start date of this Agreement. All new signs must be compatible with existing signs at the Facility and be approved by the Contract Administrator.

B. Validated Parking. Validated parking shall be permitted as authorized by the City. The Operator will bill those agencies authorized to validate parking tickets for their respective validations. The Operator shall make no other arrangements for validation without prior written authorization by the Contract Administrator.

C. Monthly Parking Permits. The Operator shall issue permits and collect monthly fees at the Parking Manager's office at the Parking Facilities and provide for online payment capabilities. The City shall establish monthly parking rates. The Operator shall be responsible for monitoring payment for monthly permits and for invalidating un-renewed permits the first day of each month.

D. There shall be no free parking except as follows:

1. One space per cashier booth in each Facility to accommodate the Operator's employees.
2. City of Santa Ana and/or their contractor's vehicles only while performing construction or conducting building and grounds maintenance/repair activities.

12. MAINTENANCE OBLIGATIONS OF OPERATOR

A. The Operator expressly agrees to maintain the Parking Facilities in a safe, clean, sanitary condition, to the complete satisfaction of the Contract

Administrator, and in compliance with all applicable laws. The Operator shall conduct all routine maintenance in accordance with the Parking Facilities Maintenance Schedule (Exhibit A) attached hereto and made a part hereof, all of which shall be a reimbursable operating expense. Operator shall make minor repairs (defined as repairs costing \$500.00 or less per incident) promptly and as needed. Repairs in excess of \$500.00 which do not create an imminent threat to public safety shall be made after consultation with the Contract Administrator, and as he/she directs.

- B. The Operator shall be responsible for routine daily maintenance of the Parking Facilities including, but not limited to:
1. Keeping the Parking Facilities, including stairwells, free and clear of rubbish, litter, and animal or human waste. If animal and/or human waste are present, Operator shall clean and sanitize the affected areas as needed.
 2. Providing janitorial services to the employee restrooms, including servicing clogged plumbing and cleaning floors and fixtures.
 3. Maintenance of attendant booths, Parking Manager's office and storage areas to assure a clean and neat appearance
 4. Elevator cleaning including elevator lobby area.
 5. Checking ceiling-mounted signage for loose connections or damage.
 6. Checking illuminated signs for damage and necessary bulb replacement.
 7. Checking parking and revenue control equipment for proper operations.
 8. Immediate removal of graffiti from buildings and walls. The Contract Administrator shall approve method(s) used to remove graffiti.
- C. The Operator shall provide containers for trash and garbage as approved by the City and provide for daily removal of trash and garbage from the Parking Facilities.
- D. The Operator shall be responsible for weekly scheduled machine sweeping in each parking structure and each surface lot, and semi-annual garage steam cleaning. Any areas not accessible to machine sweeping shall be swept by hand prior to the mechanical sweeping process. The first steam

cleaning shall be completed no later than July 2013 and every six (6) months thereafter.

- E. The Operator shall remove excessive accumulations of grease or oil on parking surfaces on a weekly basis. Any grease or oil spill that constitutes a hazard shall be removed immediately.
- F. The Operator shall maintain adequate portable fire extinguishers, charged and ready for use, in accordance with governing fire regulations and ordinances.
- G. The Operator shall keep and maintain, to the satisfaction of the City, all signs and graphics in a clean and legible condition free from graffiti. Any replacement of signs or additional signs shall be provided by the Operator and the cost thereof shall be reimbursable by the City. Replacement materials shall be of the same quality material, letter style, design, and color as other similar signs within the facility. All signs placed by the Operator in the Parking Facilities, attendant booths, or Parking Manager's office must have the prior approval of the Contract Administrator.
- H. The Operator shall keep all glass surfaces in and around attendant booths, Parking Manager's office, stairwells and elevators clean.
- I. The Operator shall keep all parking control equipment, including housings, clean and well maintained as recommended by service manuals.
- J. The Operator shall be responsible for maintaining all painted surfaces on parking equipment, attendant booths, posts, curbs and islands. Painting shall be provided in a professional manner including but not limited to surface preparation and priming as needed. The Contract Administrator must approve paint colors.

If the Operator fails to maintain or make repairs or replacements as required herein, the Contract Administrator shall notify the Operator in writing of said failure. Should the Operator fail to correct the situation within three (3) days after receipt of written notice, the Contract Administrator may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment, and an administrative fee equal to twenty five percent (25%) of the sum of such items, shall be paid by the Operator by means of deduction from the monthly compensation due the Operator.

13. RESPONSIBILITIES AND REQUIREMENTS OF OPERATOR

The Operator shall, in the manner and method of operating the Parking Facilities, assure the highest degree and standards of courtesy, politeness, conduct, and demeanor on the part of its officers, agents, employees, and representatives, and

shall at all times during the term of this Agreement, comply fully with the following conditions and requirements:

- A. The Operator shall charge and collect from all persons utilizing the parking facilities within the Parking Facilities the fees or charges established by the City.
- B. The Operator shall conduct its operations in a manner so as not to annoy, disturb, or be offensive or rude to customers, patrons, or other users of the Parking Facilities.
- C. Language Proficiency. The Operator shall select personnel that have the ability to read signs, labels, work schedules and simple instructions in both English and Spanish; understand and follow oral directions in English and Spanish; write simple messages in English and Spanish, and speak both languages sufficiently to communicate clearly with the public.
- D. Parking Manager. The Operator shall select and appoint a Parking Manager whose responsibility shall be overseeing the operation of the Parking Facilities. Such person must be highly qualified, experienced, and successful manager of parking facilities, vested with full power and authority with respect to the method and manner of operating the Parking Facilities. The Parking Manager shall be present on-site a minimum of eight hours per day between the hours of 7:00 am and 6:00 pm. The Parking Manager shall maintain an office on-site and shall be available upon 15 minutes notice during regular business hours. At all times during his/her absence from the Parking Facilities, a shift supervisor shall be in charge of the parking operation and available at such on-site location.
- E. Conduct of Employees. The Operator shall control the conduct, demeanor, and appearance of its officers, agents, employees, and representatives. Cashiers and shift supervisors while on duty shall wear uniforms with clearly visible and readable nametags, which shall at all times be maintained in a neat and clean condition. The Contract Administrator shall approve the uniforms and nametags. All personnel shall be trained by the Operator to render a high degree of courteous and efficient service, and it shall be the responsibility of the Operator to maintain close supervision over such personnel to assure a high standard of service to patrons of the Parking Facilities. Upon objection by the Contract Administrator to the unprofessional conduct, demeanor, or appearance of such personnel, the Operator shall immediately take all steps necessary to correct the conduct, demeanor, or appearance, which is the cause of the objection.
- F. Employee Honesty. The Operator shall take every precaution to protect the City's revenue, and to ensure that all sums due and owing the City

from patrons of the Parking Facilities are properly assessed, collected, accounted for, and deposited into a depository selected and approved by the City. The Operator shall not knowingly employ or keep in its employ for purposes of conducting operations under this Agreement any individual who has been convicted in a court of competent jurisdiction of theft or misappropriating funds.

- G. **Monthly Parking Permits.** In addition to the monthly fee, the Operator shall collect a \$25 administrative fee for the establishment of each new monthly account. Records for the administrative fee shall be maintained for twelve months after the account has been closed. Should the cardholder return with his/her previously assigned card key within that twelve-month period, no additional administrative fee shall be charged.

The Operator shall charge a \$15 replacement fee for replacement of a lost card key. The Operator shall identify administrative fees and fees collected for replacement card keys separately on the daily reports and in other records and accounts and shall include the fees collected in the daily receipts.

- H. **Unauthorized Activities.** The Operator shall not engage in nor permit any of its officers, agents, employees, or representatives to engage in the sale of supplies, products, or services of any kind, except those authorized by this Agreement, at retail or wholesale, on or from the Parking Facilities, nor install, maintain or operate or permit the installation, maintenance or operation on the Parking Facilities of any vending machine or device designed to dispense or sell food beverages, tobacco products or merchandise of any kind whether or not included in the foregoing categories.
- I. **Daily Inspection.** The Operator shall inspect the Parking Facilities described in this Agreement on a daily basis to determine if any inherently or potentially dangerous conditions or defects exist, said inspection to include, but not be limited to, the following:

- Abnormal accumulations of grease or oil on the pavement
- Pot holes
- Dangerous grade changes
- Broken glass
- Broken tire guards
- Protruding pipes
- Leaking gas tanks
- Broken or burned out lighting fixtures
- Graffiti
- Conditions likely to cause a pedestrian to trip or fall

- Hazards to tires, and other unsafe conditions

The results of each daily inspection shall be recorded in a written report and maintained by Operator. Operator shall notify Contract Administrator immediately of any hazardous conditions or defects.

If the Operator defaults in the performance of any covenant, condition, or agreement contained in this clause, and such default is not corrected within twenty-four (24) hours after the Operator receives written notice from the City, the City may impose a penalty as set forth in the Liquidated Damages term (Section 29) hereof, for each day the Operator remains in default, or the City may terminate this Agreement and take over possession and operation of the Parking Facilities in accordance with the provisions of Section 28 ("Termination By City") herein.

14. HAZARDOUS MATERIALS

13.1. Prohibited. The use and storage of Hazardous Materials by the Operator in the Parking Facilities is prohibited except as necessary to perform the services required under this Operating Agreement. To the extent the Operator must use Hazardous Materials to perform the services required under this Operating Agreement, the Operator shall comply with the following conditions:

- a. The Operator shall comply with all Federal, State and local laws and regulations regarding the use, storage and disposal for such Hazardous Materials.
- b. The Operator shall be solely responsible for obtaining all permits necessary to use, store, or dispose of the Hazardous Materials it uses.
- c. The Operator shall take all necessary precautions to prevent any Hazardous Materials it uses from entering into any storm or sewage drain system, or into the air or groundwater or from being released on the Parking Facilities.
- d. The Operator shall be solely and fully responsible for the release of any Hazardous Material that it uses. The Operator shall timely comply with all requirements of all appropriate governmental agencies and authorities in its investigation, remediation and clean up of any release of a Hazardous Material. If the Operator does not promptly commence and diligently pursue the remediation and clean up any release of such Hazardous Material, the City, in its discretion, may pay, to have the release remediated and cleaned up, and the Operator shall reimburse the City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and clean-up and to provide City with a schedule for diligent completion of the remediation within sixty (60) days after discovery of such release, or danger of release, of such Hazardous Material shall constitute *prima facie* evidence of failure to promptly commence remediation.

e. The Operator agrees to defend, indemnify and hold harmless the City, its trustees, officers, officials and employees from any and all losses, claims, actions costs, expenses, judgments, subrogation or other damages resulting from injury to any person or damage to property, including, without limitation, the cost of any cleanup and remediation of Hazardous Materials, which the City may sustain as a result of the presence, use, storage or cleanup of Hazardous Materials in the Parking Facilities that are attributable in any manner to the Operator.

The obligations set forth in this Section shall survive the expiration or earlier termination of this Operating Agreement.

13.2. Reporting Obligation. Upon becoming aware of any release of a Hazardous Material in a Parking Facility, the Operator shall immediately report such release to the City and to any other appropriate public agency. The Operator shall immediately report the release of any Hazardous Material to the City even where the quantities released would not be otherwise reportable to another public entity. This reporting obligation exists with regard to any release to Hazardous Material within a Parking Facility and is not limited to releases of those Hazardous Materials used by the Operator.

15. DAMAGE BY OPERATION

If Operator, its agents or employees, causes any injury, damage or loss at any Parking Facility, Operator shall repair, at its sole cost and expense, such injury, damage or loss at City's direction and upon City's prior approval. City reserves the right to perform such repairs, and bill Operator for such costs and deduct such costs from any compensation then due and owing to the Operator. The rights of City set forth in this Section are in addition to, and do not in any manner limit, any right of City to be indemnified by Operator for any such injury, damage or loss.

16. IMPROVEMENTS AND ALTERATIONS

No structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without the City's prior written consent. At all times during the term of this Agreement, City shall have the right to enter the Premises for the purpose of revising the automobile parking spaces; changing or rearranging the entrances and exits; using temporarily or permanently such portions thereof as are necessary for construction of improvements, and/or repairs thereto; or for the installation of improvements, or other facilities necessary for the efficient operation and maintenance of the Premises.

17. CONDITIONS GOVERNING IMPROVEMENTS AND ALTERATIONS

a. No facilities shall be installed or maintained, or alterations or additions made in, to, or upon the Parking Facilities by the Operator without the prior written consent of the Contract Administrator, and all such work shall be completed in accordance with plans approved and conditions imposed by the Contract Administrator.

Upon completion of said facilities, the Operator shall furnish to the Contract Administrator, at no charge two complete sets of as built drawings and detailed costs of the facilities constructed and installed.

b. All facilities, alterations, or additions constructed by the Operator within the Parking Facilities, including the plans and specifications therefore, shall conform in all respects to the applicable statutes, ordinances, building codes, rules, and regulations of the City and such other authorities, as may have jurisdiction. The City's approval given as provided shall not constitute a representation or warranty of such conformity, and conformance shall remain the Operator's responsibility. The Operator shall procure all permits necessary for such construction. The cost of all permits and construction by the Operator shall be at the Operator's sole cost and expense.

18. MECHANICS LIENS OR STOP NOTICES

The Operator shall at all times defend, indemnify and hold harmless the City, its officers, employees and agents against all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities which have been contracted by Operator to be performed within the Parking Facilities, and from the cost of defending against such claims, including attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Parking Facilities as a result of such Operator contracted construction, repair, alteration, or installation, the Operator shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Parking Facilities from the claim of the lien of stop-notice and from any action brought to foreclose the lien.

If the Operator fails to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Agreement shall be in default and shall be subject to immediate termination.

19. REMOVAL AND RESTORATION

Subject to the provisions of Section 31 ("Title To Improvements"), upon termination of this Agreement, the Operator shall redeliver possession of the Parking Facilities and equipment to the City in substantially the same condition that existed immediately prior to the Operator's entry thereon, reasonable wear and tear, damage by the elements, earthquakes, acts of God, war and any act of war, excepted.

20. MAJOR REPAIRS AND DAMAGES

- A. City shall be responsible for all structural repairs, any major repairs, surfacing, and resurfacing of the Premises.
- B. In the event of damage or destruction of any of the Parking Facilities, which are a part of the Premises, which, in the opinion of City, makes the continued operation of such garage unfeasible or uneconomical, City may terminate this Agreement as to such Facility.

21. OPERATOR IS SOLE EMPLOYER – DUTY TO INFORM

Operator agrees to notify each employee of the Operator prior to the time such employee begins to work at the Parking Facilities, and all unions or bargaining units representing such employees, 1) that the Operator is the only employing agency and employer, 2) that the City of Santa Ana is not an employer with regard to the parking operation, but rather is a contractor hiring the Operator to operate the Parking Facilities in accordance with the terms of this Agreement, and 3) that continued employment in connection with operation of the Parking Facilities cannot be expected beyond the term of this Agreement.

Operator agrees to inform each employee in writing of the above and to obtain a signed acknowledgement by the employee of such notification.

22. OPERATING MANUAL

a. The Operator shall be responsible for developing written procedures based upon administrative guidelines, procedures and directions promulgated by the City relating to the management, operation and maintenance of the Parking Facilities. All such guidelines, procedures and directions shall be consistent with the terms and conditions of this Agreement. Operator shall maintain a current Standard Operating Procedures Manual (SOP Manual) specifying the operating procedures to be followed by the Operator for operating within each of the Parking Facilities.

b. Within thirty (30) days after award of this Agreement, a copy of the written procedures for operations, management, maintenance, cash handling and auditing procedures for each Parking Facility shall be submitted to the Contract Administrator for review and approval. Thereafter the Operator shall make necessary revisions on an as-needed basis, but at least on an annual basis and no later than January 31 of each year, submitted to and approved, in writing by the Contract Administrator shall approve any subsequent changes or revisions in writing. The SOP Manual shall be kept up to date at all times and pertinent parts shall be provided and explained to each of the Operator's employees.

23. ASSIGNABILITY

The parties agree that the expertise and experience of Operator are material considerations for this Agreement. Operator may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City, not to be unreasonably withheld or delayed. .

Any attempt by Operator to assign this Agreement in violation of this Section will be voidable at City's sole option.

If the Operator hereunder is a corporation or an unincorporated association or partnership, the transfer of any stock or interest in said corporation, association, or partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of this clause.

24. NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U.S. mail, or sent via courier service, addressed to the respective parties as follows:

To City:
Contract Administrator
City of Santa Ana
Community Development Agency
P.O. Box 1988, M-25
Santa Ana, CA 92702

To Operator:
Central Parking System, Inc
3420 Bristol Street, Suite 225
Costa Mesa, CA 92626
Attn: Muhammad Mansoor

With a Copy To:
Central Parking System
Attn: Legal Department
2401 21st Ave S.
Nashville, TN 37212

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The parties may change their respective addresses in accordance with the provisions of this Section.

25. NONDISCRIMINATION

During the performance of this Agreement, the Operator agrees as follows:

A. Operator will not discriminate against any employee or applicant for

employment because of race, color, religion, sex, disability, or national origin. Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment of compensation: and selection of training, including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

B. Operator will, in all solicitation or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

26. RESTRICTIONS AND REGULATIONS

This Agreement, including the Parking Facilities and the operations thereof by the Operator, shall be subject to:

- A. Any and all applicable rules, regulations, order and restrictions that are now in force, or which the City may hereafter adopt.
- B. Any and all orders, directions or conditions issued, given or imposed by the Contract Administrator with respect to the use of the roadways, driveways, curbs, sidewalks or parking areas, and public areas adjacent to the Parking Facilities.
- C. Any and all applicable laws, ordinances, statutes, rules, regulations or orders of any governmental authority lawfully exercising authority over the Operator's business hereunder.

The City shall not be liable to the Operator for any damage to, or for any diminution or deprivation of the Operator's rights hereunder on account of the exercise of any such authority as in this clause provided, nor shall the Operator be entitled to terminate the whole or any portion of this Agreement by reason thereof unless the exercise of such authority shall so interfere with the Operator's operation of the Parking Facilities in the exercise of its rights under this Agreement as to constitute a termination in whole or in part of this Agreement by operations of law in accordance with the laws of the State of California.

27. DEFAULT

- A. Any material failure or delay by either party to perform any material term or provision of this Agreement, constitutes a default under this Agreement. Except as otherwise provided below, upon the occurrence of a default, the non-defaulting party may terminate this Agreement and may institute legal action to cure, correct, or remedy the default or to recover damages for the default.
- B. Prior to terminating this Agreement or instituting any legal action due to a default, the non-defaulting party shall give written notice of the default to the defaulting party, specifying the nature to the default. The defaulting party shall have thirty (30) days to cure, correct, or remedy the default, and if the default is cured, corrected, or remedied within such time period, the non-defaulting party shall be entitled to terminate this Agreement or institute legal action due to the default.
- C. Legal actions instituted due to any default must be instituted in the court located in the County of Orange, State of California.
- D. The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

28. TERMINATION BY CITY

- A. *Termination with Cause.* In addition to any other legal or equitable rights available to the City hereunder, the City shall have the right to terminate and cancel this Agreement in its entirety and all rights ensuring there from upon five (5) days written notice if any one or more of the following events shall occur:
 - 1. The Operator fails to duly and punctually deposit the gross receipts and deliver the deposit receipt to the City, or fails to make any other payments required hereunder when due to the City within two (2) business days after written notice from the City of such failure to comply.
 - 2. Failure of the Operator to maintain a quality of service satisfactory to the Contract Administrator as required by Sections 12 and 13 hereof, after service of a Three-Day Notice to correct the unsatisfactory condition.
 - 3. The happening of any act, which results in the suspension or revocation of the rights, power, licenses, permits and authorities

necessary for the conduct and operation of the Parking Facilities as herein authorized.

4. The transfer of the interest of the Operator under this Agreement by operation of law, or otherwise, to any other person, firm or corporation.
5. Any substantial change in the ownership or proprietorship of the Operator, which in the opinion of the City, is not in the best interest of the City or the public.
6. Failure of the Operator to keep, perform and observe each and every other promise, covenant, condition and agreement set forth in this Agreement on its part to be kept, performed or observed within three (3) days after receipt of written notice of default there under from the City, except where fulfillment of the Operator's obligation requires activity over a period of time and the Operator shall have commenced to perform whatever may be required for fulfillment within three (3) days after receipt of such notice and continues such performance without interruption except for causes beyond its control.
7. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which does or as a direct consequence of such process will interfere with the Operator's occupation of the Parking Facilities and will interfere with its operations under this Agreement, and which attachment, execution, receivership, or other process of such court is not vacated, dismissed, or set aside within a period of thirty (30) days.
8. The Operator shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other laws or statute of the United States, or of any state law, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.
9. By order or decree of a court the Operator shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of the creditors, or by any of the stockholders of the Operator seeking its reorganization or the readjustments of its indebtedness

under the federal bankruptcy laws, or under law or statute of the United States, or any state thereof.

10. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute shall be filed against the Operator and shall not be dismissed within thirty (30) days after the filing thereof.
11. By or pursuant to, or under authority of any legislative act, resolution or rule of any order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Operator and such possession or control shall continue in effect for a period of thirty (30) days.
12. Cessation or deterioration of service for a period, which in the opinion of the City, materially and adversely affects operation of the public service required to be performed by the Operator under this Agreement.
13. Any lien is filed against the Parking Facilities because of any act or omission of the Operator and is not removed within thirty (30) days.
14. The Operator shall voluntarily abandon, desert, vacate or discontinue its operations of the business herein authorized in the Parking Facilities.

Notwithstanding any of the foregoing provisions of this Section, the City shall have the absolute right to forthwith terminate and cancel this Agreement and take over the operation of the Parking Facilities, either by itself or through another operator of its choice, if Parking Facilities should become closed by reason of the Operator being unable for any reason whatsoever, to maintain in its employ the personnel necessary to keep the Parking Facilities open for public patronage, including, but not limited to, delays caused by work stoppage.

In the event that the City shall so elect to terminate this Agreement, then the City may recover from the Operator:

- (a) Any amount necessary to compensate the City for the detriment proximately caused by the Operator's failure to perform its obligations under this Agreement or which in the ordinary course of business would be likely to result there from, including, but not limited to, the cost of recovering possession of the Parking Facilities, including necessary repair, renovation

and alteration of the Parking Facilities, reasonable attorney's fees, expert witness costs, and any other reasonable costs; and

- (b) Any other amount, which the City may by law hereafter be permitted to recover from the Operator to compensate the City for the detriment caused by the Operator.

The Operator shall construe no delay or omission of the City to exercise any right or remedy as a waiver of such right or remedy or any default hereunder. The acceptance by the City of any sums hereunder due shall not be (i) a waiver of any preceding breach or default by the Operator of any provision thereof, other than the failure of the Operator to pay the particular sum accepted, regardless of the City's knowledge of such preceding breach or default at the time of acceptance of such sum, or (ii) waiver of the City's right to exercise any remedy available to the City by virtue of such breach or default. No act or thing done by the City or the City's agents during the term of this Agreement shall be deemed an acceptance of the surrender of the Parking Facilities, and no agreement to accept a surrender shall be valid unless in writing and signed by the City.

B. *Termination Without Cause.* The City reserves the right, at any time during the term of this Agreement, at the sole discretion of the City, to terminate this Agreement without cause; provided, however, that if any such termination is to be effected, the City shall give the Operator written notice thereof not less than one hundred twenty (120) days prior to the effective date of such termination.

C. *Consequences of Termination.* In the event of termination, Operator shall deliver to City copies of all reports, documents, City-owned equipment and materials within ten (10) days after termination. Upon receipt thereof, City shall pay Operator for all services performed and reimbursable expenses incurred to the date of termination.

29. LIQUIDATED DAMAGES

THE PARTIES HERETO AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE TO THE CITY IF OPERATOR WERE TO TERMINATE THIS AGREEMENT PRIOR TO EXPIRATION OR OTHERWISE BREACH. IN ADDITION TO THE SERVICES PROVIDED, CITY EXPECTS TO RECEIVE OTHER BENEFIT FROM OPERATOR'S SERVICES. THE PARTIES MUTUALLY AGREE THAT THE TERMS SET FORTH IN THIS SECTION ARE ACCEPTABLE TO EACH PARTY AND ARE A REASONABLE ESTIMATE OF CITY'S LOSS IF OPERATOR FAILS TO COMPLETE SERVICES IN ACCORDANCE WITH THE SCHEDULE OF PERFORMANCE.

BY SIGNING THIS BELOW, CITY AND OPERATOR ACKNOWLEDGE THAT THE INCENTIVE AMOUNTS SET FORTH BELOW HAVE BEEN

AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES.

"CITY"

"OPERATOR"

By: _____

By: _____

a. Failure to make daily deposits of all receipts, for each day, or portion thereof, that deposit is delayed beyond the deposit deadline. (The only exception shall be for Acts of God, such as earthquakes, in which delay is beyond the Operator's control.) **One Hundred Dollars (\$100) a day for each failure to perform.**

b. Failure to deliver, on time, required items such as reports, schedules, manuals, budgets or other materials as specified in the Operating Agreement. **Twenty-five dollars (\$25) per item or set of materials.**

c. Failure to have revenue control tickets available and installed and each and every ticket-dispensing machine. **Fifty dollars (\$50) per failure.**

d. Failure to maintain accurate monthly parking records, including monthly parking applications, accurate access log, notification to the City of delinquent accounts, and maintenance of activation/deactivation of monthly access. **The current applicable monthly rate per record or access occurrence.**

e. Failure to properly notify the City of any unpaid individual monthly permit account or event parking pass. **The current applicable monthly rate for each month that the unpaid individual monthly permit remains active after the seventh day (7) of each month or the maximum daily parking rate for each unpaid event parking pass that was created and used at a Parking Facility.**

f. Failure to follow the Routine Maintenance and Minor Repair requirements in any part. **Twenty-five dollars (\$25) per occurrence.**

g. Failure to maintain revenue control equipment to ensure accuracy and Consistency of operations or failure to schedule or follow up on the repair of revenue control equipment malfunctions within twenty-four (24) hours of occurrence. **One hundred dollars (\$100) per occurrence per day.**

Notification of Failure to Perform

Upon determining the existence of a breach under a-g above, the Contract Administrator shall issue a written notice to Operator of the occurrence of such breach and the City's claim for liquidated damages.

i. The notice of breach shall become final unless the City receives from Operator not later than ten (10) business days after the date of the notice of breach, a written statement from Operator, accompanied by evidence, that the breach did not occur. If such written statement and evidence is not received by the City Manager within ten (10) business days of the date of the notice of breach, the Contract Administrator's determination shall be final. Operator agrees that the Contract Administrator shall deduct the amount of such liquidated damages from the next monthly payment due to Operator.

ii. If the Operator contests the imposition of a liquidated damage, the Contract Administrator shall review Operator's written statement and evidence as soon as reasonably possible, and render a decision sustaining or reversing the determination that a breach occurred and the claim for liquidated damages. Contract Administrator shall deliver to Operator a written notice of such decision no later than ten (10) business days after receipt of Operator's written statement and evidence.

30. TRANSITION OF OPERATION AND MANAGEMENT

Upon the expiration of this Operating Agreement or its earlier termination, the Operator agrees to cooperate fully with the City in the smooth and businesslike transition of the management and operation of the Parking Facilities to a new operator.

31. TITLE TO IMPROVEMENTS

Title to all equipment and improvements shall remain with the City. All signs and gate arms installed by the Operator shall immediately upon installation become the property of the City.

32. INSPECTION

The City and/or its authorized representatives shall have the right at all reasonable times to inspect the Parking Facilities to determine if Operator is complying with the provisions of this Agreement. The City reserves the right, at any time, at the request of the Contract Administrator to call a conference of representatives of the City and the Operator for the purpose of making a complete inspection of the Parking Facilities and reviewing the operation, maintenance, quality of service and such other items as the City may wish to review.

If evidence of discrepancies is discovered in the operational and accounting

procedures being conducted at the Parking Facilities, relative to funds received and maintained, the City shall have the right to make immediate contact with the responsible employee of the Operator, at his/her workstation without any prior required notice to affected employee or the Operator. City further reserves the right to have made available for immediate inspection and review any and all materials, receipts, records and equipment relative to all revenues and the accounting for all funds maintained at the Parking Facilities, to resolve any issue at questions and provide for the integrity and security of the operations being conducted.

The City reserves the right, at any time, to install surveillance equipment, both audio and visual, anywhere on the Parking Facilities to monitor operations and procedures for security purposes. No further notice of installation shall be given to the Operator.

33. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Operator, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Operator. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Operator nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not embodied herein.

34. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS

Operator shall carry out all services pursuant to this Agreement in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County of Orange, the City, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the City, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, prevailing wage requirements, the City zoning and development standards, City permits and approvals, building, plumbing, mechanical and electrical codes, as they may apply, and all other provisions of the City and its Municipal Code (as they may apply), and all applicable disabled and handicapped access requirements, including, without limitation, the Americans With Disability Act, 42 U.S.C. § 12101 *et seq.*, Government Code § 4450 *et seq.*, and the Unruh Civil Rights Act, Civil Code § 51 *et seq.*

35. MISCELLANEOUS

- A. Survival of Provisions. If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.
- B. This Agreement binds and inures to the benefit of the parties and their respective successors.
- C. Time of the Essence. Time is of the essence regarding this Agreement.
- D. Agreement Organization. The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only, and shall not be considered otherwise.
- E. Inspection. City or its authorized representative shall have the right at all times to inspect the Premises to determine if the provisions of this Agreement are being complied with.
- F. Conflict of Interest. Operator shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.
- G. Successors in Interest. Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.
- G. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- H. Waiver of Rights. The failure of City or Operator to insist upon strict performance of any of the terms, covenants or conditions of this agreement shall not be deemed a waiver of any right or remedy that City or Operator may have and shall not be deemed a waiver of the right of the Agreement thereafter.
- I. Governing Law. This Agreement must be construed, and its performance enforced, under California law.
- J. No Property Interest. Operator agrees that this Operating Agreement shall not be construed as granting any right of possession, estate, title or interest in the Parking Facilities. Operator agrees that this Operating Agreement shall not impair the City, its agents, or employees from entering the Parking Facilities at any time.

K. Drug Free Workplace. Operator certifies that it has established the following drug-free workplace policy:

1. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace for any employee.
2. The employees of Operator will be required to:
 - a) Abide by the terms above in statement 1.
 - b) Notify appropriate officials of the City of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.
 - c) Within 30 days of receiving such notice, appropriate personnel action will be taken by Operator against such employee, up to and including termination.

36. ATTACHMENTS TO AGREEMENT

This Agreement includes the following, which are attached hereto and made a part hereof:

- Exhibit A – RFP 12-060: Parking Operations and Management Services
- Exhibit B – Operator's Proposal
- Exhibit C – Additional Insured Endorsement

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

ATTEST:

Maria D. Huizar
Maria D. Huizar
Clerk of the Council

CITY OF SANTA ANA

[Signature]
Kevin O'Rourke
Interim City Manager

APPROVED AS TO FORM:

Sonia R. Carvalho
City Attorney

By: [Signature]
Lisa Storeck
Assistant City Attorney

OPERATOR

[Signature]
By: _____
Central Parking System, Inc.
Edward E. Simmons
Executive Vice President

Tax ID# 62-0789510

APPROVED AS TO FORM:

By: Tracy H. Pelham
Tracy H. Pelham
Associate ~~Council~~ Counsel