Resolution No. 2013-10-08-1202

STOCKTON CITY COUNCIL

RESOLUTION APPROVING A PARKING MANAGEMENT AGREEMENT BETWEEN THE CITY OF STOCKTON AND THE COUNTY OF SAN JOAQUIN FOR THE OPERATION OF THE PUBLIC PARKING FACILITY WITHIN THE COUNTY'S HUNTER STREET PARKING STRUCTURE

The County of San Joaquin (County) built a parking structure in 1993 at the corner of Hunter and Market Streets; and

On November 1, 1993, the City of Stockton (City) first entered into an Agreement with the County to operate the facility through the City's Central Parking District, and that Agreement has been renewed and extended up to the present time; and

The County now desires to enter into a new agreement for parking management services; and

The City is willing to manage said facilities for the County; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized to execute the Professional Services Parking Management Agreement on behalf of the City of Stockton, a copy is attached hereto as Exhibit 1 and incorporated by this reference.

2. The City Manager is hereby authorized and directed to take whatever actions are necessary and appropriate to carry out the intent of this resolution.

PASSED, APPROVED, and ADOPTED October 8, 2013.

ATTEST:

ANTHONY SILVA, Mayor
of the City of Stockton

BONNIE PAIGE
City Clerk of the City of Stockton
PROFESSIONAL SERVICES
PARKING MANAGEMENT AGREEMENT

Parties: COUNTY: County of San Joaquin
44 N. San Joaquin Street, Room 590
Stockton, CA 95202
Attention: Director of General Services

CONTRACTOR: City of Stockton
Central Parking District
425 N. El Dorado, 3rd Floor
Stockton, CA 95202
Attention: Economic Development Director

Agreement: The parties hereby agree as follows:

1. Professional Services

CONTRACTOR shall supervise the operation and routine maintenance of the public parking facility within the COUNTY’s Hunter Street parking structure. COUNTY hereby specifically contracts and agrees with CONTRACTOR, pursuant to the terms, conditions and provisions as herein set forth, that the CONTRACTOR shall at all times collect gross receipts and operate revenue control systems and provide administrative supervision of the premises in a first-class manner, with employees and supervisory employees trained and disciplined in the performance of their duties and courtesy to the public utilizing said premises. Said premises are to be operated by CONTRACTOR as a commercial parking facility and shall be used for no other purpose without prior written consent of COUNTY.

COUNTY shall have the right to approve all operating policies of the CONTRACTOR as they pertain to the premises and by written notice to CONTRACTOR, making such changes in policy from time-to-time in the COUNTY’s judgment may be appropriate. CONTRACTOR agrees to carry out, execute and perform COUNTY’s directives as they relate to all matters of policy pertaining to management of the revenue control system not specifically provided for herein, including, but not limited to, operating procedures, traffic controls, hours of operation, uniforms and customer public relations.

It is understood and agreed that the COUNTY, in no event, shall be construed to be a partner, associate or joint venture with CONTRACTOR in the operation of said premises or in the conduct of CONTRACTOR’s business thereon, nor shall COUNTY be liable, except to the extent provided herein, for any debts, expenses or other financial responsibilities incurred by CONTRACTOR. CONTRACTOR is an independent contractor and neither party, its officers, directors nor employees shall be considered to be the agent of the other for any purpose whatsoever.

A list of specific tasks is outlined in Attachment A, Scope of Services.
2. **Operating Revenues**

CONTRACTOR covenants that it will collect or cause to be collected, all of the gross receipts from the operation and use of the premises. All gross receipts received by CONTRACTOR for monthly parking as well as twenty percent (20%) of all event revenue collected shall be deposited once a month with the County Treasurer-Tax Collector.

A. **Records**

CONTRACTOR agrees that it will keep true, accurate, full and complete records of all gross receipts and disbursements (Operating Expenses) pertaining to the operation of the parking functions and on or before the 20th of each month (beginning with the second month of the term hereof and continuing through and including the 20th day of each month following the termination hereof), shall render to COUNTY Director of General Services a complete accounting of all said receipts and disbursements for the preceding month. Said accounting shall be referred to as the monthly operating report. In addition, CONTRACTOR agrees to keep all other necessary and customary records which should be utilized in the prudent, first-class operation of parking facilities.

B. **Maintenance, Inspection, and Audit of Books and Records**

CONTRACTOR shall maintain in accordance with accepted accounting practices and principles during the term hereof and for one (1) year thereafter, records and books of account recording all transactions at, through or in any way connected with CONTRACTOR's business operation of the premises. Audits of CONTRACTOR's books, records and accounts may be undertaken by COUNTY or representatives of COUNTY, or by a reputable firm of Certified Public Accountants satisfactory to the COUNTY. The cost of such audit shall be borne by COUNTY unless the results of such audit reveal that a discrepancy of more than five percent (5%) between the gross receipts recorded and what should have or did constitute the gross receipts as determined by the audit. In the case of such discrepancy, the full cost of the audit shall be borne by CONTRACTOR and CONTRACTOR shall promptly pay all additional fees owing to COUNTY, in addition to interest at the rate of eighteen percent (18%) per annum.

3. **Term of Agreement**

The term of this Agreement shall be for three (3) years beginning September 1, 2013 through August 31, 2016. The Agreement will be extended automatically each year on the anniversary of the commencement date for up to three additional years unless 90 day written notice is given by either party prior to the anniversary of the agreement. Annual base rates for any such extension(s) shall increase three percent (3%).

4. **Compensation**

Work performed under this Agreement will be compensated at rates not to exceed those specified in Attachment B. Reimbursable expenses (including purchase of maintenance materials directly related and necessary to the successful completion of this
Agreement) will be based on actual costs and will be itemized on invoices separately from professional services. CONTRACTOR shall require any subcontractor to provide it with evidence of Workers’ Compensation and Employer’s Liability Insurance, all in strict compliance with California State Laws.

5. **Special Event Parking**

   CONTRACTOR shall have the right to utilize the Hunter Street parking structure for any special events throughout the year. The CONTRACTOR will provide and pay for staffing and security of the garage during the special events. The CONTRACTOR will provide the COUNTY 20% of the gross parking revenue from each special event in which the Hunter Street Parking Garage is utilized. A special event is defined as an after-hours function in the Downtown area, e.g., event at the Bob Hope Theater, concerts, or the Asparagus Festival.

6. **Indemnity**

   CONTRACTOR shall protect, defend and hold COUNTY and its officers, commissioners, and/or employees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of (1) injury or death of any person; (2) damage to any property, or (3) violation of any law, rule or regulation relating to discrimination including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement (or the use or occupancy of the leased premises) or the acts or omissions of CONTRACTOR’s officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the loss may occur, unless such loss is caused by the negligence of the COUNTY. The COUNTY shall give to CONTRACTOR notice with a reasonable time frame not to exceed 3 months of any such claims or actions. The CONTRACTOR shall also use counsel reasonably acceptable to COUNTY in carrying out its obligations hereunder.

7. **Public Liability Insurance**

   CONTRACTOR shall maintain insurance policies, self-insurance, and/or other coverage programs including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement to fund its liabilities throughout the term of this agreement. Coverage shall be provided for comprehensive general liability, automobile liability, and professional liability, property, and workers’ compensation exposures. The coverage does not include defects in the facility.

8. **Discrimination**

   CONTRACTOR and subcontractors shall not discriminate against any individual based on race, color, religion, nationality, sex, age, or disability in accordance to State and Federal law.

9. **Termination**

   This Agreement may be terminated by either party upon 90 days written notice. In such event, CONTRACTOR shall be compensated for services completed to the date of
termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Paragraph 4, together with such additional services performed after termination which are authorized by COUNTY to complete the work performed to date of termination.

10. Assignment and Subcontracting

CONTRACTOR shall not assign or subcontract any of its rights under this Agreement or any interest therein without the prior, unqualified written consent of COUNTY.

11. Attorneys Fees

In the event of a breach of the terms of this Agreement by either party the prevailing party shall be entitled to payment of reasonable attorney's fees and costs.

12. Notices

All notices, certificates, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations or other communication sufficient to have been given on the second day following the day on which the same are mailed by registered or certified mail, postage prepaid addressed as follows:

COUNTY: County of San Joaquin
44 N. San Joaquin Street, Room 590
Stockton, CA 95202
Attn: Director of General Services

CONTRACTOR: City of Stockton
Central Parking District
425 N. El Dorado, 3rd Floor
Stockton, CA 95202
Attention: Economic Development Director

COUNTY and CONTRACTOR may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates of other communication shall be sent.

13. Report of Accident, Claims and Unusual Occurrences

CONTRACTOR shall report promptly within 72 hours of CONTRACTOR'S knowledge to COUNTY every accident, claim, demand, legal process or other unusual occurrence arising out of CONTRACTOR's operation of the premises hereunder; provided, such report shall be made in writing to COUNTY at the address herein provided.

14. Severability

In the event any terms, covenants, conditions or provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition or provision hereof.
15. **Descriptive Headings**

   The descriptive headings of the Sections of this Agreement do not constitute part of this Agreement, and shall not affect the meaning, construction, interpretation or effect of this Agreement.

16. **Consent Not Unreasonably Withheld**

   Whenever it is provided herein that the consent or approval of COUNTY or CONTRACTOR is required, such consent or approval shall not be withheld or delayed unreasonably unless otherwise specifically provided herein.

17. **Construction of Management Agreement**

   In the event of ambiguity in any of the terms or substance of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

18. **Construction and Enforcement**

   This Agreement shall be construed and enforced in accordance with the laws of the State of California. Whenever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing, any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

19. **Entire Agreement**

   This Agreement (including the Attachments hereto) expresses the entire understanding of COUNTY and the CONTRACTOR concerning the premises, and neither COUNTY nor CONTRACTOR has made or shall be bound by any agreement or any representation to the other concerning the premises which is not expressly set forth in this Agreement (including the Attachments hereto). This Agreement (including the Attachments hereto) may be modified only by a subsequent written agreement signed by COUNTY and the CONTRACTOR.

20. **Binding Effect**

   This Agreement shall inure to the benefit of and shall be binding upon COUNTY, CONTRACTOR, and their respective successors and assigns if such assignment shall have been made in conformity with the provisions of this Agreement.
21. Interpretation of Management Agreement

Notwithstanding all provisions of this Agreement, it is mutually understood between the parties hereto that this Agreement shall not in any way be construed to be a lease, but is merely recitation of contract provisions for a Management Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on:
______________.

"COUNTY"
COUNTY OF SAN JOAQUIN, a political subdivision of the State of California

By____________________
Ken Vogel, Chairman
Board of Supervisors

ATTEST:
CLERK OF THE BOARD
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

By____________________
Mimi Duzenski

"CONTRACTOR"
CITY OF STOCKTON
Central Parking District

By____________________
Bob Deis
City Manager

ATTEST:

By____________________
Bonnie Paige
City Clerk

APPROVED:
DEPARTMENT OF FACILITIES MANAGEMENT

By____________________
Gabriel Karam, Director

APPROVED AS TO FORM:

By____________________
Guy D. Petzold
Deputy City Attorney

APPROVED AS TO FORM:
DAVID WOOTEN, COUNTY COUNSEL

By____________________
Jason R. Morrish
Deputy County Counsel
ATTACHMENT "A"

COUNTY PARKING STRUCTURE
Scope of Services

CITY OF STOCKTON
(Central Parking District)

Provide adequate trained personnel to operate and maintain the public parking facility in the County parking structure weekdays (Monday through Friday) from 6:00 a.m. to 7:00 p.m., except on all holidays observed by the County of San Joaquin. The parking garage will not be utilized after regular business hours, except for special events (Item 5. Special Event parking). Subject to the direction or approval of the County, services include, but are not limited to:

General
- Establish and enforce rules and regulations
- Set monthly and hourly rates
- Monitor traffic and utilization of spaces
- Resolve patrons problems and complaints regarding operations

Security
- Open and close the facility
- Reasonable security precautions in the daily operations
- Control keys and entry protocols for customers
- Manage and control card access system; deleting old cards and issuing new ones
- Secure doors and access from nonpublic areas i.e., booth, restroom, storeroom
- Report suspicious activities to Stockton Police Department
- Arrange removal of unauthorized vehicles
- Report incidents and accidents upon discovery during hours of operation
- Maintain found articles

Maintenance
- General maintenance, cleaning, and sweeping of garage
- Removal of graffiti with solvent if possible. Areas not accessible or that need painting will be the responsibility of the County
- Appropriate and necessary temporary signage
- General Maintenance of Federal APD Parking Equipment only
- Report unsafe conditions and maintenance needs
- Maintenance of all other equipment shall be at the sole responsibility of the County

Records
- Collect monthly and hourly parking and special event fees
- Deposit collections as directed by County Auditor
- Record monthly, hourly, and validation activity
- Maintain accounting for audits
- Cooperate with audit and information requests
COMPENSATION

Payments: Yearly payments shall be made by the COUNTY to the CONTRACTOR in equal monthly installments, according to the following terms and time periods:

<table>
<thead>
<tr>
<th>Time Period 1 – September 1, 2013 to August 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Category</td>
</tr>
<tr>
<td>-------------------</td>
</tr>
<tr>
<td>Attendants, Operations &amp; Maintenance</td>
</tr>
<tr>
<td>Records &amp; Accounts</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td>Management</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Time Period 2 – Base rates shall be increased by 3% for the period September 1, 2014 to August 31, 2015</th>
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<tbody>
<tr>
<td>Payment Category</td>
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<tr>
<td>-------------------</td>
</tr>
<tr>
<td>Attendants, Operations &amp; Maintenance</td>
</tr>
<tr>
<td>Records &amp; Accounts</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td>Management</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
</tr>
</tbody>
</table>
Time Period 3 – Base rates shall be increased by 3% for the period September 1, 2015 to August 31, 2016

<table>
<thead>
<tr>
<th>Payment Category</th>
<th>Monthly Payment</th>
<th>Yearly Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendants, Operations &amp; Maintenance</td>
<td>$ 6,684.78</td>
<td>$ 80,217.36</td>
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<tr>
<td>Records &amp; Accounts</td>
<td>$ 537.20</td>
<td>$ 6,446.40</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$ 7,221.98</strong></td>
<td><strong>$ 86,663.76</strong></td>
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<tr>
<td>Management</td>
<td>$ 895.33</td>
<td>$ 10,743.96</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 8,117.31</strong></td>
<td><strong>$ 97,407.72</strong></td>
</tr>
</tbody>
</table>

**Base Rate Increase for Future Time Periods** – If the Parking Management Agreement is extended beyond August 31, 2016 pursuant to Section 3 of this agreement, annual base rates for such extension(s) shall increase by three percent (3%) per year.