

AGREEMENT

BETWEEN

**THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, A
DEPARTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO**

AND

IMCO Parking, LLC

FOR OPERATION AND MANAGEMENT OF OFF-STREET PARKING FACILITIES

GROUP B

**Golden Gateway Garage
St. Mary's Square Garage**

Contract No. SFMTA-2011/12-10

Dated: December 12, 2011

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AGREEMENT FOR MANAGEMENT OF OFF-STREET PARKING FACILITIES GROUP B

This Agreement for the management of the off-street parking facilities described in Exhibit A ("Agreement"), dated for convenience as December 12, 2011 is entered into by and between the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, hereinafter referred to as "SFMTA" or "City," and IMCO Parking, LLC, hereinafter referred to as "Manager" or "Contractor," a California LLC and joint venture, doing business in the City and County of San Francisco, State of California, for the services and under the terms described herein.

1. RECITALS

WHEREAS, Manager is engaged in the business of providing skilled management and supervision of parking facilities; and

WHEREAS, the City and County of San Francisco owns the land and improvements described in **Exhibit A** attached hereto as sites for public off-street parking facilities ("Facilities"); and

WHEREAS, the SFMTA desires to hire a Manager to provide management and supervisory services at the Facilities under the terms and conditions of this Agreement; and

WHEREAS, the SFMTA published a Request for Proposals ("RFP") and conducted a competitive selection process to identify a qualified parking management company to manage this group of Facilities; and

WHEREAS, Manager was selected as one of the three highest-ranked proposers, and in accordance with the terms of the RFP was awarded this group of Facilities; and

WHEREAS, by Resolution No. 4033-11/12, dated September 28, 2011, the Civil Service Commission has approved contracting for these services;

Now, THEREFORE, the parties agree as follows:

2. SUMMARY OF TERMS

The following is a summary of the basic terms of this Agreement. Each item below shall be deemed to incorporate all the terms set forth in this Agreement pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Agreement, the more specific provision shall control.

Reference Date:	December 12, 2011
Manager:	IMCO Parking, LLC
Facility Names and Locations:	The names and locations of the facilities covered by this Agreement are attached as Exhibit A .
Term: (Section 5.1)	For a period of six (6) years, commencing: February 1, 2012 and expiring January 31, 2018 unless extended.

Extension of Term: (Section 5.1)	The Director of Transportation shall have the right to extend this Agreement by providing Manager thirty (30) days' advance written notice prior to expiration of the initial term. Such extension shall be on the same terms and conditions of this Agreement. No single extension can exceed 18 months. Total extensions cannot exceed three years from the expiration of the original term.
Management Fee: (Section 6.1)	Eight Thousand Dollars (\$8,000) per month, with a five percent increase in year four and a five percent increase in year seven, if term is extended.
Security Deposit: (Section 8.1)	One Hundred Fifty Thousand Dollars (\$150,000)
Subcontracting Goals: (Section 18)	The LBE subcontracting participation goal is twenty percent (20%).
Notices to be sent to: (Section 17)	San Francisco Municipal Transportation Agency One South Van Ness Avenue, 3 rd Floor San Francisco, California 94103 Attention: Director of Off-Street Parking
Key Contact for SFMTA:	Amit M. Kothari, P.E. Director of Off-Street Parking San Francisco Municipal Transportation Agency One South Van Ness Avenue, 3 rd Floor San Francisco, CA 94102 415.701.4462
Notice Address of Manager: (Section 17)	IMCO Parking, LLC 401 Terry Francois – Suite 110 San Francisco, CA 94158
Key Contact for Manager:	Jeff Ogle, General Manager IMCO Parking, LLC 401 Terry Francois – Suite 110 San Francisco, CA 94158

3. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall have the meaning ascribed to them in the Parking Facility Operation and Management Regulations ("Facility Regulations") issued by the SFMTA, the current form of which is appended as **Appendix A**, except that for the purposes of this Agreement, the terms listed below shall have the following meanings:

3.1 "Commencement Date" means February 1, 2012, the first day this Agreement is in effect.

3.2 "Contract Year" means the 365-day year or 366-day leap year, commencing on the Commencement Date, and on each anniversary of the Commencement Date thereafter.

3.3 “**Expiration Date**” means January 31, 2018, the last date this Agreement is in effect, unless sooner terminated or extended.

3.4 “**Manager**” means IMCO Parking, LLC.

4. **MANAGEMENT SERVICES**

4.1 **Independent Contractor.**

(1) **Independent Contractor.** Manager is an independent contractor providing the services described in this Agreement for hire. Manager shall provide the management, operations, and supervisory services described herein, subject to the terms and conditions of this Agreement. The services to be rendered by Manager pursuant to this Agreement are as an independent contractor only. Manager or any agent or employee of Manager shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the SFMTA under this Agreement. Manager or any agent or employee of Manager shall not have employee status with the SFMTA or the City, nor be entitled to participate in any plans, arrangements, or distributions by the SFMTA or the City pertaining to or in connection with any retirement, health or other benefits that the SFMTA or the City may offer their employees. Manager or any agent or employee of Manager is liable for the acts and omissions of itself, its employees and its agents. Manager shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Manager's performing services and work, or any agent or employee of Manager providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the SFMTA or the City and Manager or any agent or employee of Manager.

Any terms in this Agreement referring to direction from the SFMTA or the City shall be construed as providing for direction as to policy and the result of Manager's work only, and not as to the means by which such a result is obtained. Neither the SFMTA nor the City retains the right to control the means or the method by which Manager performs work under this Agreement.

(2) **Payment of Taxes and Other Expenses.** If a local, state or federal taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Manager which can be applied against this liability). The SFMTA or the City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Manager for the SFMTA or the City, upon notification of such fact by the SFMTA or the City, Manager shall promptly remit such amount due or arrange with the SFMTA or the City to have the amount due withheld from future payments to Manager under this Agreement (again, offsetting any amounts already paid by Manager which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Manager shall not be considered an employee of the SFMTA or the City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Manager is an employee for any other purpose, then Manager agrees to a reduction in the SFMTA's financial liability so that the SFMTA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Manager was not an employee.

4.2 General Authority to Manage. Subject to **Subsections 4.3 through 4.6** of this Section, Manager is hereby given general authority to manage and supervise the day-to-day operation of the Facilities and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of this Agreement.

4.3 Control Retained by the City. The City shall at all times retain the authority to exercise control over the Facilities, and Manager shall perform the duties required to be performed by it under this Agreement in accordance with policies and directives of the SFMTA. Any terms in this Agreement referring to direction from the SFMTA shall be construed as providing for direction as to policy and the result of Manager's work only, and not as to the means by which such a result is obtained. The SFMTA does not retain the right to control the means or the method by which Manager performs work under this Agreement.

4.4 Access to Facilities. The SFMTA and its duly authorized agents shall have access to the Facilities at all times for the purpose of (i) inspection, (ii) to make any repairs, additions or renovations as the SFMTA shall deem advisable, and (iii) for use by the SFMTA in case of emergency, as determined by the SFMTA in its sole discretion.

4.5 Addition or Deletion of Facilities.

(1) The SFMTA shall have the right, during the term of this Agreement to request that the Manager add up to three additional parking facilities to those Facilities under management by the Manager. Any such additional parking facility shall be managed in the manner described in this Agreement and the Facility Regulations. In the event that the SFMTA desires to add a new parking facility, it shall send a written notice of intent to the Manager. A Management Fee of \$3 for each additional space will be added to the monthly management fee for the Group. For example, if a 500-space facility is added to Group B in March 2012, the monthly management fee of \$8,000 will be increased by \$1,500 (\$3 x 500) to \$9,500. In the event that the Manager elects not to manage the additional facility, the SFMTA shall have the right to select another Operator to manage the facility.

(2) The SFMTA shall have the right during the term of the Agreements resulting from this RFP to either temporarily or permanently remove a maximum of two Facilities from an Operator's inventory in the event that those facilities are removed from service and are not being used for public parking (for example a Facility is closed for renovation), or due to a major operational change, such as installation of automated pay stations. In the event the SFMTA decides to remove a facility from the Operator's inventory, the monthly management fee will be reduced by \$3 per space deleted from the Group. For example, if a 500-space facility is deleted from Group B in March 2012, the monthly management fee of \$8,000 will be reduced by \$1,500 (\$3 x 500) to \$6,500. In the event that the facility is returned to service during

the term of the Agreement, the Management Fee shall be reinstated in the same manner.

4.6 Manager's Responsibilities; Priority of Documents. Manager agrees to perform the duties and carry out the responsibilities set forth in this Agreement. Manager's proposal, dated June 2010 and received on May 13, 2011 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices; 2) the Request for Proposals dated April 23, 2010 and all addenda; 3) Manager's Proposal, dated June 2010.

5. TERM OF MANAGEMENT AGREEMENT

5.1 The term of this Agreement shall be for a period of six (6) years, commencing at 12:00 a.m. on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date, unless sooner terminated or extended as provided herein. The Director of Transportation shall have the right, in his or her sole discretion, to extend this Agreement by providing Manager thirty (30) days' advance written notice prior to the expiration of the Term set forth above. Such extension shall be on the same terms and conditions of this Agreement, and the Management Fee paid to Manager shall be at the rate specified in this Agreement. No single extension shall be for more than 18 months, and total extensions cannot exceed three years. During any such extension, the SFMTA shall have the right to terminate this Agreement upon thirty (30) days' notice to Manager.

6. COMPENSATION

6.1 Management Fee and Reimbursement of Operating Expenses.

(1) Manager shall be paid a monthly Management Fee of Eight Thousand Dollars (\$8,000) for services performed by it under this Agreement. Beginning the first month of contract years four (4), and seven (7) if the term is extended, the monthly Management Fee will be increased by five percent (5%). Provided Manager is not in default under this Agreement, or an event has not occurred that, with the giving of notice or the passage of time, would constitute a default, the Management Fee shall be due and payable under the requisition procedure required by **Section 6.8 of the Facility Regulations**, provided the SFMTA receives the Monthly Report required by **Section 6.7 of the Facility Regulations**. Should the Commencement Date or the Expiration Date occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

(2) Manager shall be entitled to reimbursement from the SFMTA for all Operating Expenses properly incurred and paid by Manager in the performance of Manager's duties hereunder and as specified in the approved Budget in accordance with the Facility Regulations. Such reimbursement shall be subject to Manager's compliance with the submittal procedures set forth in the Facility Regulations and shall be subject to all City approvals required under this Agreement. The SFMTA's obligation to reimburse Manager for wages, salaries or benefits is limited to reimbursement for time that employees of Manager are actually working at the Facilities for the benefit of the SFMTA, subject to the terms and conditions of the local collective bargaining agreement, currently Teamsters Automotive and Allied Workers, Local Union No. 665. Manager shall not be reimbursed for overhead expenses that have not been

specifically set out as reimbursable expenses. All costs not identified as reimbursable expenses shall be borne by Manager.

(3) The City shall make all payments to Manager at the address specified in **Section 17** (Notice Requirements).

6.2 Labor Costs. The SFMTA shall not be required to reimburse Manager for wages beyond the amounts required under the collective bargaining agreement. Employees not covered by such agreements shall only receive a salary increase upon submission of a written request by Manager and written approval by the SFMTA.

6.3 Payment Does Not Imply Acceptance of Work. The granting of any payment by the SFMTA, or the receipt thereof by Manager, shall not imply acceptance by the SFMTA or the City of any report required by this Agreement, nor shall such payment lessen the liability of Manager to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the SFMTA and in such case must be replaced by Manager without delay. For purposes of this Agreement, payment includes reimbursement of Operating Expenses and the Management Fee.

6.4 Late Charges. Any revenues or monies, if not deposited or transferred as specified in the Facility Regulations, shall bear interest from the due date until deposited at the rate of the prime rate of the financial institution holding the accounts plus three percent (3%) per year or, if a higher rate is legally permissible, at the highest rate permitted under law. However, interest shall not be payable on late charges incurred by Manager nor on any amounts on which late charges are paid by Manager to the extent this interest would cause the total interest to be in excess of that which is permitted by law. Payment of interest shall not excuse or cure any default by Manager. The late payment charge has been agreed upon by the SFMTA and Manager, after negotiation, as a reasonable estimate of the additional administrative costs and detriment the SFMTA will incur as a result of any such failure by Manager, the actual costs thereof being extremely difficult, if not impossible, to determine. The late payment charge constitutes liquidated damages to compensate the SFMTA for its damages resulting from such failure to pay and shall be paid to the SFMTA together with such unpaid amount.

6.5 Fees During Suspended Operations. If for any reason whatsoever, any condition prevents the operation of one or more of the Facilities or any portion thereof at any time for more than thirty (30) consecutive days, the Management Fee shall be adjusted on a pro rata basis by determining the total number of parking spaces affected as a percentage of the total number of parking spaces under management under this Agreement, and reducing the Management Fee otherwise due by an equivalent percentage, commencing from the expiration of such 30-day period and continuing until the earlier of (i) date the condition affecting the Facility or Facilities has been abated and normal operations of the Facilities has resumed or (ii) the termination of this Agreement. This paragraph shall not apply to the deletion of a Facility under **Section 4.5** of this Agreement.

6.6 Limitations on Payment of Fees. The City's obligation for payment of Management Fees and reimbursement of Operating Expenses claimed by Manager in the performance of this Agreement shall not exceed the amount listed in the line item in the Approved Budget for each such fee or expense identified by Manager as the source for reimbursement under the

Approved Budget. The City's obligation for payment of Management Fees and reimbursement for Operating Expenses in the aggregate shall not exceed the total Approved Budget for these items, unless pre-approved by the SFMTA in writing.

6.7 Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the SFMTA or the City and their employees and officers are not authorized to request Manager to perform services or to provide materials, equipment and supplies that would result in Manager performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement (unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies). The SFMTA is not required to reimburse Manager for services, materials, equipment or supplies that are provided by Manager that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement and which were not approved by a written amendment to this Agreement lawfully executed by the SFMTA.

(1) Approval Required For Additional Funding. The SFMTA, the City and their employees and officers are not authorized to offer or promise to Manager additional funding for this Agreement that would exceed the maximum amount of funding provided for herein for Manager's performance hereunder. Additional funding for this Agreement in excess of the maximum provided in this Agreement shall require lawful approval by the SFMTA and certification by the Controller. The City is not required to honor any offered or promised additional funding that exceeds the maximum that has been certified by the Controller and approved by the SFMTA.

(2) Payments Must Be Authorized. The Controller and Director are not authorized to make payments on any contract for which funds have not been certified as available in the budget or by a supplemental appropriation.

7. STAFFING, EMPLOYEES AND CONTRACTING

7.1 Parking Personnel.

(1) Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Manager. Manager will comply with the SFMTA's reasonable requests regarding assignment of personnel, but Manager must supervise all personnel, including any assigned at SFMTA's request. Manager shall select, furnish, and employ on its own behalf such competent and qualified operating personnel necessary to operate the Facilities in an efficient and workmanlike manner.

(2) All personnel engaged in operation of the Facilities shall be employees of Manager or employees of vendors hired by Manager, subject to Manager's sole supervision, direction and control, and under no circumstances shall Manager's employees or employees of vendors be considered employees of the SFMTA or the City. Manager shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to its employees

(3) Manager shall staff the Facilities with at least one employee during all hours of operation, unless otherwise directed by the Director. The duties of such personnel shall include but not be limited to the issuance of monthly permits, collection of parking fees from all daily users of the Facilities, and notification to monthly users of the status of their parking-fee payment and to prospective monthly users of their placement on the waiting list for monthly spaces in the Facilities.

(4) Except as otherwise provided herein, Manager shall have the exclusive right to hire, assign, supervise, manage, discipline, suspend, terminate, layoff and otherwise discharge its employees. Manager shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public. Notwithstanding the above, the Director shall have the right, in his or her reasonable discretion, to request that Manager relocate or transfer any employee from the Facility or Facilities whose presence on the site the SFMTA deems detrimental to the operation of the Facility or Facilities, and Manager shall comply with such request within the time specified by the SFMTA.

(5) Manager shall commit adequate resources and personnel to manage and operate the Facilities. Notwithstanding Manager's right to hire the necessary employees to operate the Facilities, the Director shall have the right to direct Manager to either hire additional employees or reduce the number of employees staffing the Facilities if the Director reasonably determines that Manager is failing to operate one or more of the Facilities in an efficient and appropriate manner. Manager shall pay particular attention to effective and efficient operation of the Facilities so as not to cause patrons unreasonable delays in entering and exiting the Facilities.

(6) All employees shall wear uniforms of a design and color approved by the Director to present a clean and efficient image and the Director reserves the right to require changes in such uniforms in its reasonable discretion.

(7) Upon the SFMTA's request, Manager shall provide evidence satisfactory to the SFMTA that Manager has adequately provided for all legally required employment benefits.

7.2 Operations Manager. Manager shall select and appoint an Operations Manager located either on-site or off-site, who must be a highly qualified and experienced manager of automobile parking facilities, with responsibility and authority to manage operations at all of the Facilities. At all times when the Facilities are open for public parking and the Operations Manager is not present, one on-duty and on-site employee at the Facility shall be designated the Acting Operations Manager and shall be authorized to direct any other employees to respond to emergencies, inquiries and complaints. In addition, the Operations Manager shall be competent in creating reports from the Revenue Control Equipment and other on-site parking equipment, including but not limited to, revenue reports and parking utilization reports. The Operations Manager shall have a working knowledge of the figures contained in each Monthly Report and must be able to prepare and produce specific reports requested by the SFMTA, including graphs and tables. The duties of the Operations Manager shall be exclusively and entirely dedicated to the operations of the Facilities. The Operations Manager shall be the employee and agent of Manager, but the City shall retain the right to direct Manager to reassign the Operations Manager to duties other than the Facilities should the

Director determine that the Operations Manager is not acting in the best interest of the Facilities.

7.3 Maintenance Personnel and Contracting. Manager shall employ, or contract for, sufficient personnel to perform the routine maintenance and repair work at the Facilities in a prompt and efficient manner so as to keep the premises at all times in a first-class operating condition that is clean, safe and attractive, as specified in **Exhibit E**, Maintenance Standards and Form of Maintenance Schedule. Manager shall provide evidence acceptable to the Director that any contractor engaged by Manager to perform work on the property maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the SFMTA, including but not limited to Worker's Compensation Insurance (including Employers' Liability Insurance), general liability insurance covering personal injury and property damage, and insurance covering the use of owned, non-owned or hired vehicles and equipment.

7.4 Security Personnel and Contracting. Manager shall enter into a security agreement in a form and from a contractor or contractors acceptable to the Director to provide security guards to be stationed at the Facilities to protect the Facilities, Facility users, and property in the Facilities against damage, injury, theft or other loss. Manager shall provide security guards at the Facilities as directed by the Director. Guards hired to provide security at the Facilities shall not carry firearms, unless specifically approved in writing by the Director. Should the Director determine at any time that Manager has not employed sufficient security guards at one or more of the Facilities, the Director shall notify Manager in writing of such deficiency. Should Manager fail to remedy the situation within forty-eight (48) hours of such notice, the Director shall have the right to contract for temporary security guards and direct such guards to work at the Facilities until such time Manager has provided the Director with satisfactory evidence that the Facilities will be adequately staffed with security personnel. The Director shall have the right to deduct administrative costs associated in providing security from the Management Fee, Security Deposit or any other available source of funds or security.

7.5 Payroll and Taxation. Manager shall make or cause to be made all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes, and prepare, maintain and file or cause to be filed all necessary reports with respect to such taxes or deductions, and all other necessary statements and reports pertaining to labor employed in or about the Facilities. Notwithstanding Manager's direct employment of Facility employees, all approved compensation (including fringe benefits) paid to such personnel by Manager shall be considered Operating Expenses of the Facilities during the Term of this Management Agreement and any extensions of the Term.

7.6 Subcontracting and Other Parking Business Operations.

(1) Subcontracting Must be Authorized. Except as otherwise authorized under this Agreement, to ensure the quality of work performed on the Facilities, Manager is prohibited from subcontracting any of its duties under this Agreement or any part of it unless such subcontracting is first approved by the Director in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made by Manager and a subcontractor that is in violation of this provision shall confer no rights on any party and shall be null and void.

(2) Notification of Other Parking Business Operations. Manager shall promptly notify the Director in writing of any parking-related business located or operating in the City in which Manager has an interest, or in which Manager proposes to have an interest. Manager shall list in an appendix to this Agreement any parking-related business located or operating in the City in which Manager has an interest, as well as the nature and extent of that interest, as of the date of this Management Agreement. The City reserves the right to terminate this Management Agreement at no additional cost to the City or the SFMTA if the SFMTA determines that Manager's interests in other parking business operations are not in the best interests of the City. For purposes of this paragraph, a reportable interest shall be any ownership interest of five percent (5%) or greater.

7.7 Employee Retention and Prevailing Wages. Manager hereby acknowledges that it has read and understands San Francisco Administrative Code, Chapter 21, Section 21C.3 and agrees that the Management Agreement shall be subject to, and Manager shall comply with, all obligations and requirements imposed by that ordinance.

7.8 Minimum Compensation for Employees.

(1) Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P ("Chapter 12P"), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(2) The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against Contractor.

(3) Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within ninety (90) days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(4) Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that Contractor paid no more than the minimum wage required under State law.

(5) The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

(6) Contractor's failure to comply with the MCO shall be a material breach of this Agreement. The City, in its sole discretion, shall determine whether a breach has

occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(7) Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(8) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(9) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the SFMTA for the fiscal year is less than Twenty-Five Thousand Dollars (\$25,000), but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the SFMTA to exceed Twenty-Five Thousand Dollars (\$25,000) in the fiscal year.

7.9 Requiring Health Benefits for Covered Employees. Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(1) For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(2) Notwithstanding the above, if Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(3) Contractor's failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify Contractor if such a breach has occurred. If, within thirty (30) days after receiving the City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such

breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(4) Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify the SFMTA when it enters into such a Subcontract and shall certify to the SFMTA that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that the City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(5) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(6) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(7) Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City contract.

(8) Contractor shall keep itself informed of the current requirements of the HCAO.

(9) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(10) Contractor shall provide the City with access to records pertaining to compliance with the HCAO after receiving a written request from the City to do so and being provided at least ten (10) business days to respond.

(11) Contractor shall allow the City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with the HCAO.

(12) The City may conduct random audits of Contractor to ascertain its compliance with the HCAO. Contractor agrees to cooperate with the City when it conducts such audits.

(13) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (\$50,000 for

nonprofits) but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with the City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

7.10 First Source Hiring Program.

(1) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(2) First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractor shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(i) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good-faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(ii) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified, economically disadvantaged individuals for consideration for employment for entry-level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the employer may publicize the entry-level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(iii) Set appropriate requirements for providing notification of available entry-level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified, economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry-level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(iv) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration ("FSHA") shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, and facilitate a coordinated flow of information and referrals.

(v) Establish guidelines for employer good-faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with the City departments to develop employer good-faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(vi) Set the term of the requirements.

(vii) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(viii) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(ix) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

(3) Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(4) Exceptions. Upon application by Employer, the FSHA may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(5) Liquidated Damages. Contractor agrees:

(i) To be liable to the City for liquidated damages as provided in this Section;

(ii) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

(iii) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry-level position improperly withheld by contractor from the first source hiring process, as determined by the FSHA during its first investigation of contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of contractor's failure to comply with its first source referral contractual obligations.

(iv) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public; and that a second assessment of liquidated damages of up to \$10,000 for each entry-level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(v) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source Program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual, whom the First Source Program refers to an employer and who is hired in an entry-level position, is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations, as determined by FSHA, constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of Contractor to comply with its first source referral contractual obligations.

(vi) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in

Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry-Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(6) Subcontracts. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

7.11 EIC Forms. Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(1) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(2) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(3) Any Subcontract entered into by Contractor shall require the Subcontractor to comply, as to the Subcontractor's Eligible Employees, with each of the terms of this Section.

(4) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12O.

8. FISCAL DUTIES AND MATTERS

8.1 Security Deposit. At the time of Manager's acceptance of the contract award and before the SFMTA certifies the agreement, a security deposit in the amount of One Hundred Fifty Thousand (\$150,000) will be required from the successful proposer in the form of a certified or cashier's check payable to the SFMTA, or a bond naming the SFMTA as beneficiary in the amount of One Hundred Forty Thousand Dollars (\$140,000). In addition, the Ten Thousand Dollar (\$10,000) bid security from the successful proposer shall be

retained by the SFMTA during this contract term, for a total security deposit of One Hundred Fifty Thousand Dollars (\$150,000).

8.2 Taxes, Assessments, Licenses, Permit Fees and Liens.

(1) Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of the Agreement, or the services delivered pursuant to the Agreement, shall be the obligation of Manager. Manager shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges, and impositions of every description levied on or assessed against the Land or the Facilities or Manager's personal property. Manager shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency.

(2) Manager recognizes and understands that the Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Manager to possession, occupancy or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(i) Manager, on behalf of itself and any permitted successors and assigns, recognizes and understands that Manager, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(ii) Manager, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Manager accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code, Section 480.5, as amended from time to time, and any successor provision.

(iii) Manager, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Revenue and Taxation Code, Section 64, as amended from time to time). Manager accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by Law.

(iv) Manager further agrees to provide such other information as may be requested by the City to enable the City or the SFMTA to comply with any reporting requirements for possessory interests that are imposed by applicable law.

8.3 Audit and Inspection of Books and Records.

(1) Manager agrees to maintain and make available to the SFMTA, during regular business hours, accurate books and accounting records relating to its work under the

Agreement. Manager will permit the SFMTA to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. Manager shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon the SFMTA by this Section.

(2) Manager shall cooperate in audits of its books and records relating to the Facilities and Manager's compliance with the Agreement. The audits shall be conducted at the direction of the SFMTA or the City Controller by an auditor selected by the SFMTA or the Controller. The SFMTA or the Controller shall determine the scope of said audits, which may include but are not limited to Manager's compliance with the terms of the Agreement and the Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by Manager from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of Manager's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and the Facility Regulations or any other item related to administration of this Agreement or the financial stability of Manager at the discretion of the SFMTA.

(3) Manager shall establish and maintain at the Facilities books, records and systems of account, including all records relating to Revenue Control Equipment at the facilities in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Manager transacted under the Agreement. To the extent Manager has not complied with generally accepted accounting principles, the Director may require Manager to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by Manager during the term of the Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City, the SFMTA or their agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the Director. All used and unused parking tickets, tapes and other records used in the operation of the Facilities are owned by the SFMTA, but shall be retained by Manager at the Facilities unless the Director requests otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the Director or his/her agents, and shall not be destroyed without prior written consent from the Director.

(4) To the extent that any provisions of this Section are in conflict with the Facility Regulations, those Regulations shall control.

9. HAZARDOUS MATERIAL COVENANTS

9.1 No Hazardous Materials. Manager hereby covenants and agrees that neither Manager nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be

brought upon, kept, used, stored, generated or disposed of in, on or about the Facilities or the Land or transported to or from the Land or the Facilities, provided that Manager, its Agents and Invitees may store and use such substances in the Facilities and on the Land in such limited amounts as are customarily used in a parking Facility so long as such storage and use is at all times in full compliance with all applicable Environmental Laws. Manager shall immediately notify the City if and when Manager learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Land or the Facilities. The City may request Manager to provide information required for the City to determine whether any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Manager shall promptly provide all such information.

9.2 Manager's Environmental Indemnity. If Manager breaches any of its obligations contained in **Section 9.1** above, or, if any act or omission or negligence of Manager or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Land or the Facilities (including any improvements thereon) or any other City property, without limiting Manager's general Indemnity contained in **Section 14** below, Manager, on behalf of itself and its successors and assigns, shall indemnify the City and its respective officers, agents and employees, and each of them, from and against all Hazardous Materials claims arising during or after the termination or expiration of this Agreement and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the facilities and the Land or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the Land or other City property. Without limiting the foregoing, if Manager or any of Manager's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Land, Facilities or any other City property, Manager shall, immediately, at no expense to the City, take any and all appropriate actions to return the Land, Facilities or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Manager shall provide the City with written notice of and afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Manager specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this Indemnity provision even if such allegation is groundless, fraudulent or false, and at all times before the determination of the validity of any such claim. The foregoing Indemnity is not limited by the amount of insurance required to be maintained by Manager.

10. INSURANCE AND SURETY BONDS

10.1 Required Insurance. Manager will secure and maintain the Required Insurance for the Facilities as set forth in this Agreement. All costs under this Section shall be Operating Expenses. If directed by the City, and subject to approval by the City of the insurers and policy forms, Manager shall arrange and maintain throughout the term of this Agreement the following insurance policies and any additional insurance as may be required:

- (1) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require, including coverage for contractual liability, personal injury, broad form

property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such insurance shall not exceed Ten Thousand Dollars (\$10,000) for each Occurrence.

(2) Business automobile liability insurance with limits not less than Two Million Dollars (\$2,000,000) for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. The City's liability to reimburse Manager for payment of any deductible under such policy shall not exceed Ten Thousand Dollars (\$10,000) for each Occurrence.

(3) Garage-keeper's legal liability insurance with limits not less than One Million Dollars (\$1,000,000), per facility, for each occurrence combined single limit for loss and damage to vehicles in Manager's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision. Any deductible under any such policy shall not exceed One Thousand Dollars (\$1,000) for each Occurrence.

(4) Workers' Compensation Insurance, including Employers' Liability, with limits not less than One Million Dollars (\$1,000,000) for each accident, covering all employees employed in or about the Facilities to provide statutory benefits as required by the laws of the State of California. If Manager carries a policy for employees at the Facilities separate from its other employees, the City's liability to reimburse manager for its workers' compensation insurance premium is limited to average cost of workers compensation insurance per employee for all of Manager's employees. If Manager maintains a single workers' compensation insurance policy for all of its employees, irrespective of work-site assignment, then the City's liability to reimburse Manager shall be limited to the actual cost to Manager for the employees assigned to the Facilities. Said amount shall be calculated by dividing the cost of the annual premium by the number of Manager's employees and then multiplying that result by the number of Manager's employees assigned to work at the Facilities.

10.2 Additional Requirements.

(1) Should any of the required insurance be provided under a claims-made form, Manager shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Management Agreement expiration, to the effect that, should occurrences during the Management Agreement term give rise to claims made after expiration of the Management Agreement, such claims shall be covered by such claims-made policies.

(2) Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(3) All liability insurance policies required pursuant to **Section 10.1(a) through (f)** hereof, shall be endorsed to provide the following:

These policies shall list Manager as the named insured and shall be further endorsed to name as additional insureds the City and County of San Francisco, and its officers, agents and employees.

That such policies are primary insurance to any other insurance available to the additional insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act of omission of one of the named insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(4) All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for the City set forth in **Section 17** of this Agreement.

(5) Manager shall deliver to the City certificates of insurance in form and from insurers satisfactory to the City, evidencing the coverage required hereunder, on or before the expiration date of current policies, together with copies of the policies promptly upon the City's request, and Manager shall provide the City with certificates or policies within 30 days of the policy renewal effective date. In the event Manager fails to procure such insurance, or to deliver such policies or certificates, the City may (without limiting any other rights or remedies hereunder) procure, at its option, such insurance for the account of Manager, and the cost thereof shall be paid to the City within five (5) days after delivery to Manager of invoices as Manager's Cost.

(6) Upon the City's or the Director's request, Manager and the City may periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Manager for risks comparable to those associated with the premises, then Manager shall, at the City's or the Director's request, increase the amounts of coverage carried by Manager to conform to such general commercial practice.

(7) Manager's compliance with the provisions of this Section shall in no way relieve or decrease Manager's liability under **Section 9.2 or Section 11** hereof, or any of Manager's other obligations or liabilities under this Agreement.

(8) Notwithstanding anything to the contrary in this Agreement, if any of the required insurance coverage lapses, this Agreement shall terminate upon three (3) days' notice to Manager, unless Manager renews the insurance coverage within notice period.

(9) All insurance and surety companies are subject to approval as to coverage forms and financial security by the City. Insurers and sureties rated by A. M. Best Co. shall have a current rating not less than A-VIII.

10.3 Compliance with Insurance Requirements. Manager shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase the rates under a standard form fire insurance policy or subject the City to potential premises liability. Manager shall faithfully observe, at its expense, any and all requirements of the City's Risk Manager with respect to Manager's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Manager's use of said premises or are otherwise consistent with standard prudent commercial practices of other landlords.

10.4 Required Bonds. Upon mutual execution of this Agreement, subject to approval by the City of the surety companies and bond forms, Manager shall deposit with the City and shall maintain throughout the term of this Agreement, and pay the cost thereof as an Operating Expense, the following bonds made payable to the City and naming the City as obligee:

- (1) Parking Tax Collection Bond in the form that is attached as **Exhibit F** and meeting the requirements of Section 6.6-1 of Article 6 of the San Francisco Business and Tax Regulations Code.
- (2) Blanket fidelity bond covering all officers and employees of Manager employed at the Facilities or who have access to the Facility revenues or funds, no less than One Hundred Fifty Thousand Dollars (\$150,000). Alternatively, Manager may fulfill the fidelity bond obligation by providing a crime policy with coverage no less than One Hundred Fifty Thousand Dollars (\$150,000) and any deductible not to exceed Five Thousand Dollars (\$5,000) for each loss.
- (3) The City reserves the right to require Manager to increase the bond or coverage amount set forth in paragraph (2) above. The cost of any such increase shall be an Operating Expense.

10.5 Miscellaneous Insurance and Bond Matters.

- (1) Upon mutual execution of this Agreement, Manager shall provide the City with two copies of the following: Fidelity Bond and Parking Tax Collection Bond, and two copies of the policy endorsement for all insurance required pursuant to this Agreement. Complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the City if requested at any time.
- (2) The City reserves the right to cancel any or all of the insurance required under this Agreement and to replace such canceled insurance with one or more master insurance policies providing similar insurance coverage and covering any or all of the parking facilities owned, leased or administered by the City. In such event, Manager shall no longer be required to place and maintain the canceled insurance but may, at its expense, obtain any other insurance it may wish to have. In the event such a master insurance policy replaces a policy of insurance or a portion of a policy of insurance required to be carried by Manager pursuant to this Agreement, Manager will make premium payments to the City's insurance carrier as an Operating Expense.
- (3) Upon the City's or the Director's request, Manager shall provide evidence satisfactory to the City that Manager has adequately provided for Social Security and Unemployment Compensation benefits for Manager's employees employed at the Facilities.
- (4) Manager shall comply with the provisions of any insurance covering Manager or the City, with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.
- (5) In the event that the City receives notice that any insurance or bond is to be or has been cancelled or non-renewed, the City shall notify Manager, in writing, of this failure to meet the requirements of this Agreement. If Manager does not provide to the City satisfactory written certification of renewed or replacement insurance or bond within

five (5) business days of the receipt (if delivered) or mailing date of the aforementioned written notice to Manager, the City shall have the right to:

- (i) obtain the required insurance or bond on behalf of Manager and to deduct the premiums therefore from payment of the next Management Fee or Security Deposit, together with an administrative fee of One Thousand Dollars (\$1,000); or
- (ii) solely at the City's option, terminate this Agreement for default.

11. INDEMNIFICATION AND HOLD HARMLESS

11.1 Manager shall indemnify and save harmless the City, and its officers, agents and employees from, and, if requested, shall defend them against any and all Losses, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Manager or loss of or damage to property, arising directly or indirectly from Manager's performance of this Agreement, including but not limited to Manager's use, occupancy, or condition of the Facilities or of other facilities or equipment provided by the City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Manager, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the City's costs of investigating any claims against the City. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Manager. The provisions of this Section shall survive the termination of this Agreement with respect to any Loss occurring prior to or upon termination.

11.2 In addition to Manager's obligation to indemnify the City, Manager specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within these indemnification provisions, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Manager by the City and continues at all times thereafter.

11.3 Manager shall indemnify and hold the City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the City, or any of their officers or agents, of articles or services to be supplied in the performance of this Agreement.

11.4 In the event that any action or proceeding is brought against the City by reason of a claim arising out of any loss suffered on or about the Facilities, and upon written notice from the City, Manager shall, at its sole expense, answer and otherwise defend such action or proceeding using counsel approved in writing by the City. The City shall have the right, exercised in its sole discretion but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the City in connection with the Facilities.

12. DAMAGE OR DESTRUCTION

12.1 Partial Destruction or Damage. If one or more of the Facilities are partially destroyed or damaged, the City may, at its option, terminate this Agreement by giving written notice to Manager. Alternatively, the City may determine, in its sole and absolute discretion, whether it wishes to continue to operate the Facility(ies) under the terms of this Agreement. Should the City elect to continue the operation of the Facility(ies) under this Agreement, the City shall proceed with the reconstruction of the damaged portion of the Facility(ies). So long as the damage to the Facility(ies) was not due to negligence or willful misconduct of Manager, the City shall pay the cost of repairing the Facility(ies). To the extent insurance proceeds are received from the policies required to be maintained by Manager under **Section 10.1** of this Agreement, Manager shall transfer such amounts to the City. If the City does not elect to continue the operation of the Facility(ies), this Agreement shall terminate with respect to those Facility(ies) upon written notice thereof from the Director.

12.2 Management Agreement During Reconstruction. In the event that the City elects to reconstruct the damaged portions of the Facility(ies), the City will make a determination as to whether the Facility(ies) will continue to operate during the reconstruction period. If the City determines that the Facility(ies) will operate during such time, this Agreement shall remain in full force and effect; provided, however, the Management Fee may be adjusted in accordance with **Section 12.5** of this Agreement. If the City determines that the Facility(ies) cannot continue to operate during all or part of the reconstruction period, the City shall suspend this Agreement with respect to the damaged Facility(ies) during such period of inoperability without altering the Expiration Date.

12.3 Total Destruction. If one or more the Facilities are totally destroyed from any cause, whether or not covered by the insurance required hereunder, this Agreement shall automatically terminate as of the date of such total destruction with respect to those facilities:

12.4 Damage Near End of Term. If one or more of the Facilities are partially destroyed during the last 12 months of the term of this Agreement from any cause, whether or not covered by the insurance required hereunder, the City may, at its option, terminate this Agreement in its entirety or with respect to the damaged Facility(ies) by giving written notice thereof to Manager.

12.5 Adjustment of Management Fee. Where operation of one or more of the Facilities is terminated or suspended in accordance with **Sections 12.1 through 12.4** of this Agreement, the Management Fee due to Manager may be adjusted by determining the total number of parking spaces affected by the termination or suspension as a percentage of the total number of parking spaces under management under this Agreement, and reducing the Management Fee otherwise due by an equivalent percentage. Such fee shall be reinstated to the extent that spaces are returned to service.

13. MANAGER'S REPRESENTATIONS AND WARRANTIES

Manager hereby represents and warrants as follows:

13.1 Experience. Manager is experienced in the operation and management of public parking facilities and hereby agrees to apply its best efforts and most efficient methods in the operations and management of the Facilities.

13.2 Formation. Manager is duly formed or incorporated, is validly existing and in good standing under the laws of the State of California, and qualified to do business in the State of California.

13.3 Authority. Manager has full power and authority (corporate or otherwise) to enter into this Agreement and to consummate the transactions contemplated by it, this Agreement has been duly authorized by all necessary action on the part of Manager, and no other corporate or other action on the part of Manager is necessary to authorize the execution and delivery of this Agreement.

13.4 Conflicts and Consents. The execution and delivery by Manager of this Agreement and the performance by Manager of the transactions contemplated by it will not violate any federal, state or local law, rule or regulation, or conflict with or result in any breach or violation of, or constitute a default under the Articles of Incorporation, Bylaws or partnership agreement of Manager (as applicable) or any indenture, mortgage, lease, agreement or other instrument or obligation to which Manager is a party or by which it may be bound which would materially adversely affect the ability of Manager to perform its obligations under this Agreement. No approval, authorization, consent or other order or action of, or filing or registration with, any person, entity or governmental authority is required for the execution and delivery by Manager of this Agreement.

13.5 No Conflict with Orders, Judgments or Decree. The execution and delivery by Manager of this Agreement will not conflict with any order, judgment or decree of any court, government, government agency or instrumentality, whether entered pursuant to consent or otherwise, by which Manager may be bound or affected.

13.6 Litigation. Manager warrants that it is not involved in any actual litigation, action, arbitration, grievance, administrative proceeding, suit or claim or investigation by a governmental agency and it is not aware of any imminent or pending litigation, action, arbitration, grievance, administrative proceeding or investigation by a governmental agency against Manager or its affiliates that, if adversely decided, could have a material adverse impact on Manager's ability to perform its obligations under this Agreement.

13.7 No False Statements. No document furnished or to be furnished by Manager to the City in connection with this Agreement, any funding request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

13.8 No Other Agreements. Except as may be permitted hereunder and approved by the City, Manager has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the work and services Manager is to provide the City under this Agreement.

13.9 No Suspension or Debarment. Neither Manager nor any of its members or officers have been suspended, debarred or prohibited from contracting with any federal, state or local governmental agency. In the event of any such suspension, debarment or prohibition, Manager shall immediately notify the City and the Director of same and the reasons therefore together with any relevant facts or information requested by the City and the Director. Any such suspension, debarment, or prohibition may result in the termination of this Agreement.

14. EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. Each of the following events shall constitute an "Event of Default" by Manager upon which the City may terminate the Agreement:

(1) **Material Provisions.** In the sole discretion of the SFMTA, if Manager fails or refuses to perform or observe any term, covenant or condition contained in the Facility Regulations, or Manager fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 4.4 (Access to Facilities), 7.6 (Subcontracting), 7.7 (Prevailing Wages), 7.8 (Minimum Compensation), 7.9 (Health Care Accountability), 8.2 (Taxes), 8.3 (Audit and Inspection of Books and Records), 9.1 (No Hazardous Materials), 10 (Insurance) (in its entirety), 11 (Indemnification) (in its entirety), 13 (Representations and Warranties) (in its entirety), 18.1 (Assignment), 18.5 (Drug Free Workplace), 18.6 (False Claims), 18.20 (Compliance with Laws), 18.29 (Confidential Information), 18.33 (Protection of Private Information), and 18.34 (Graffiti).

(2) **Deposit of Revenues and Taxes.** Manager fails to deposit any and all revenues or taxes into the appropriate account, as required under this Agreement and the Facility Regulations within the times prescribed; and such failure continues for a period of one (1) Banking Day after oral or written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so deposit revenues or taxes shall be an immediate event of default without the need for notice.

(3) **Monthly Statement.** Manager fails to provide to the City and the San Francisco Tax Collector a full and accurate monthly statement containing all Parking Taxes due and payable; and such failure continues for a period of five (5) days after written notice thereof from the Director; provided, Manager shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so provide the monthly statement shall be an immediate event of default without the need for notice.

(4) **Operating Expenses and Capital Improvement Expenses.** Manager fails to pay any and all Operating Expenses or any Capital Improvement Expenses, on a timely basis; and such failure continues for ten (10) days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so pay any Operating Expense or Capital Improvement Expense in such Contract Year shall be an immediate event of default without the need for notice.

(5) **Monthly Reports.** Manager fails to submit a full, accurate and certified monthly report as required by the Facility Regulations when due; and such failure continues for five (5) days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so submit a Monthly Report shall be an immediate event of default without the need for notice.

(6) **Failure to Open Facilities.** Manager fails to open and keep the Facilities open during the hours prescribed in **Exhibit C**.

(7) **Failure to Cure Breach.** Manager fails to comply with any other term, covenant or condition of this Agreement or the Facility Regulations; and such failure continues for a period of ten (10) days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract

Year with respect to a particular failure, and thereafter any additional occurrence of the particular failure in such Contract Year shall be an immediate event of default without the need for further notice.

(8) Representations and Warranties. Any representation or warranty made by Manager in this Agreement is found to have been untrue, incorrect or materially misleading as of the effective date hereof.

(9) Other Agreement and Obligations. Manager fails to pay when due any amount owing from Manager to the City or any of its agencies, commissions or departments, including, without limitation, rents, taxes, fees or other charges, whether or not such amounts are related to the operation of the Facilities, and such failure continues for a period of ten (10) days after written or oral notice from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to do so in such Contract Year shall be an immediate event of default without the need for notice. The failure of the City to insist upon the strict performance of any of the terms, conditions, covenants, or provisions herein contained shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, covenants and provisions in this Agreement.

14.2 Remedies.

(1) On and after any Event of Default by Manager, the City shall have the right to exercise all legal and equitable remedies including, without limitation, the right to terminate this Agreement or seek specific performance of all or parts of this Agreement. If Manager fails after reasonable notice from the City to perform any of its obligations under this Agreement, as determined by the City in its sole discretion, the City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Manager any Event of Default; Manager shall pay to the City on demand all costs and expenses incurred by the City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The City shall have the right to offset from any amounts due to Manager under this Agreement or any other agreement between the City and Manager all damages, losses, costs or expenses incurred by the City as a result of such Event of Default and any liquidated damages due from Manager pursuant to the terms of this Agreement or any other agreement.

(2) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

14.3 Incidental and Consequential Damages. Manager shall be responsible for incidental and consequential damages resulting in whole or in part from Manager's acts or omissions. ~~Nothing in this Agreement shall constitute a waiver or limitation of any rights~~ that the City may have under applicable Law.

14.4 Liability of the City. The City's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision in this Agreement, in no event shall the City be liable, regardless of

whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, without limitation, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

14.5 Litigation Expenses. If either Party hereto or their respective officers or agents, brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a default under this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For purposes of this Agreement, reasonable fees of the attorneys of the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the services were rendered if the City uses its own attorneys. Manager shall not be reimbursed for its litigation expenses as an Operating Expense where such expenses are incurred in a dispute in which the City is a party.

14.6 Responsibility for Equipment. The City and the SFMTA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Manager, or by any of its employees, even though such equipment be furnished, rented or loaned to Manager by the City.

14.7 Liquidated Damages. By entering into this Agreement, Manager agrees that in any instance where this Agreement or the Facility Regulations impose a charge upon Manager for failure to perform any of duties or responsibilities set forth in either this Agreement or the Facility Regulations, the SFMTA will suffer actual damages that will be impractical or extremely difficult to determine; further, Manager agrees that the sums set forth as the damages in either this Agreement or the Facility Regulations are not a penalty, but are a reasonable estimate of the loss the SFMTA will incur due to Manager's failure to perform its duties in accordance with this Agreement and the Facility Regulations based on the circumstances existing at the time this contract was awarded. The SFMTA may deduct a sum representing the liquidated damages from any payments due to Manager.

15. RIGHT OF TERMINATION

15.1 Termination for Convenience.

(1) The Director, with the authorization of the SFMTA Board of Directors shall have the right to terminate this Agreement, without cause, by providing at least sixty (60) days prior written notice to Manager of its election to terminate. Such termination may be full, terminating this Agreement with respect to all Facilities, or partial, terminating this Agreement as it applies to one or more Facilities. Termination shall

be effective upon the expiration of the 60-day notice period or at such later date as is specified in the notice.

(2) Upon receipt of the notice, Manager shall commence and perform, with diligence, all actions necessary on the part of Manager to effect the full or partial termination of this Agreement on the date specified by the SFMTA and to minimize the liability of Manager and the SFMTA to third parties as a result of termination. All such actions shall be subject to the prior approval of the SFMTA. For the affected Facilities, such actions shall include, without limitation:

(i) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the City.

(ii) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(iii) Terminating all existing orders and subcontracts.

(iv) At the City's direction, assigning to the City any or all of Manager's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(v) Subject to the City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(vi) Completing performance of any services or work that the City designates to be completed prior to the date of termination specified by the City.

(vii) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Manager and in which the City has or may acquire an interest.

(3) Within thirty (30) days after the specified termination date, Manager shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

(i) The reasonable cost to Manager, without profit, for all services and other work the SFMTA directed Manager to perform prior to the specified termination date, for which services or work the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Manager's direct costs for services or other work. Any overhead allowance shall be separately itemized.

(ii) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding **Subsection (i)**, provided that Manager can establish, to the satisfaction of the SFMTA that Manager would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed five percent (5%) of such cost.

(iii) The reasonable cost to Manager of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(iv) A deduction for the cost of materials to be retained by Manager, amounts realized from the sale of materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the services or other work.

(4) In no event shall the City be liable for costs incurred by Manager or any of its subcontractors after the termination date specified by the City, except for those costs specifically enumerated and described in the immediately preceding **Subsection (3)**. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such **Subsection (3)**.

(5) In arriving at the amount due to Manager under this Section, the City may deduct: (1) all payments previously made by the City for work or other services covered by Manager's final invoice; (2) any claim which the City may have against Manager in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding **Subsection (4)**; and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

(6) The City's payment obligation under this Section shall survive termination of this Agreement.

15.2 Termination for Cause. The City or the Director, with the authorization of the SFMTA Board of Directors shall, by written notice to Manager, have the right to terminate this Agreement upon the occurrence of any event of default; provided, Manager shall have the notice and cure rights set forth in **Section 14.1(7)** of this Agreement or as otherwise stated in this Agreement or as otherwise entitled under applicable Law. Termination under this Section shall be effective immediately upon notice being given by the City to Manager and after the expiration of any applicable cure periods. Upon such termination, all rights, powers, privileges and authority granted to Manager under this Agreement shall cease, and Manager shall immediately thereupon vacate the Facility premises. The City's right to terminate this Agreement under this Section is not its exclusive remedy but is an addition to all other remedies provided to it by Law or the provisions of this Agreement.

16. DUTIES UPON TERMINATION AND EXPIRATION

16.1 Duties Upon Termination and Expiration. On or before the last day prior to the termination or expiration of this Agreement, the City and Manager shall cause an inspection of the Facilities to occur as required by the Facility Regulations. Upon satisfactory completion of such inspection, the amounts remaining in the Security Deposit, if any, shall be disbursed to Manager as such procedure is prescribed in the Facility Regulations and the

Parties shall pay all other amounts due to each other hereunder. Finally, Manager shall deliver to the City the originals of all books, permits, plans, records, licenses, contracts, unused tickets and other documents pertaining to the Facilities and their operation, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other records or documents pertaining to the Facilities, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership and operation of the Facilities, which are in Manager's possession. Manager further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the Facilities without detriment to the rights of the City or to the continued management of the Facilities.

16.2 Provisions Surviving Termination and Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: **2** (Summary of Terms) (in its entirety), **3** (Definitions) (in its entirety), **4.1** (Independent Contractor), **6** (Compensation) (in its entirety), **7.1(b) and (c)** (Control of Employees), **8.2** (Taxes), **8.3** (Audit and Inspection of Books and Records), **9** (Hazardous Materials) (in its entirety), **10** (Insurance) (in its entirety) **11** (Indemnification) (in its entirety) **13** (Warranties) (in its entirety), **14.2** (Remedies), **14.3** (Damages), **14.4** (City's Liability), **14.6** (Equipment), **16** (Duties Upon Termination and Expiration) (in its entirety), **17** (Notices) (in its entirety), **18.3** (Authority), **18.4** (Consent to Notice), **18.6** (False Claims), **18.9** (Conflict of Interest), **18.12** (Limitations on Contributions), **18.15** (Political Activity), **18.17** (Modification), **18.18** (Administrative Remedy), **18.19** (Law/Venue), **18.23** (Integrated Agreement), **18.24** (Construction of Agreement), **18.25** (Severability), **18.26** (Successor/Assigns), **18.29** (Confidential Information), **18.30** (Ownership of Results), **18.31** (Works for Hire).

16.3 Delivery of Work. Subject to the immediately preceding **Section 16.2**, upon termination or expiration of this Agreement prior to expiration of the term specified in **Section 5**, Manager shall transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the City. This Subsection shall survive termination of this Agreement.

17. NOTICE REQUIREMENTS

All notices required to be given hereunder shall be in writing and either served personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this Section. Any notice of default must be sent by registered mail.

MANAGER:

IMCO Parking, LLC
401 Terry Francois – Suite 110
San Francisco, CA 94158
Attn: Jeff Ogle, General Manager

With a copy to:

Imperial Parking
Attn: General Counsel
601 W. Cordova Street – Suite 300
Vancouver, BC Canada V6B 1G1

CITY:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
Attention: Director of Off-Street Parking

18. GENERAL PROVISIONS

18.1 Assignment. The City has selected Manager to manage the Facilities in reliance upon Manager's stated unique expertise, skill and experience in managing parking facilities. Manager shall not assign, transfer or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, without obtaining the prior written consent of the Director and the SFMTA Board of Directors, which the SFMTA may give or withhold in its sole and absolute discretion. Any assignment or encumbrance without the SFMTA's consent shall be voidable and, at the SFMTA's election, shall constitute a material default under this Agreement. A sale or transfer of the stock, assets or other equitable interests of Manager that has the effect of a material change in Manager's ownership, as determined by the SFMTA in its sole discretion, shall constitute a transfer of this Agreement requiring prior written approval and authorization by the SFMTA Board of Directors. The SFMTA shall have the right to withhold its consent to any assignment, transfer or encumbrance in its sole and absolute discretion.

18.2 Americans with Disabilities Act. Manager acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Manager shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Manager agrees not to discriminate against disabled persons in the provision of employment, services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Manager, its employees, agents or assigns will constitute a material breach of this Agreement.

18.3 Authority. Unless otherwise limited by law or policy of the SFMTA Board of Directors, and except as set out in this Agreement, all rights, powers and privileges of the City under this Agreement may be exercised, on behalf of the City, by the Director, or such other person designated by the Director.

18.4 Consent to Notice of Nonpayment of Parking Tax.

(1) Manager hereby agrees that the City's Tax Collector and Controller may notify Manager of any nonpayment by Manager of any Parking Taxes owing from Manager

to the City, regardless of whether such unpaid Parking Taxes are related to the Facility.

(2) To the extent Section 615(f) of Article 9 of the San Francisco Business and Tax Regulations Code (Tax on Occupancy of Parking Space in Parking Stations), or any other applicable provision of federal, state or local law, is interpreted as prohibiting such notification of the nonpayment by Manager of any such Parking Taxes, Manager hereby expressly waives the benefits of any such section and consents to the giving of such notice to the City.

(3) Manager hereby agrees to provide the City with copies of each of Manager's Parking Tax returns (for all parking facilities owned or operated by Manager) within thirty (30) days of their submission to the City's Tax Collector.

18.5 Drug-Free Workplace Policy. Manager acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on premises of the City. Manager agrees that any violation of this prohibition by Manager, its employees, agents or assigns shall be deemed a material breach of this Agreement.

18.6 False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of then false claim.

18.7 MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code, Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this Section.

18.8 Local Business Enterprise Utilization; Liquidated Damages.

(1) **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Contractor's willful failure to comply with any

applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle the City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(2) Compliance and Enforcement.

(i) Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or One Thousand Dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring Contractor to be irresponsible and ineligible to contract with the City for a period of up to five (5) years or revocation of Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code, Section 14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to the City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with the City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three (3) years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(ii) Subcontracting Goals. The LBE subcontracting participation goal for this contract is twenty percent (20%). Manager shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to the City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Manager shall entitle the City to withhold twenty percent (20%) of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Manager.

Contractor shall not participate in any back contracting to Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(iii) Subcontract Language Requirements. Contractor shall incorporate the LBE Ordinance into each subcontract made in fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Manager shall include in all subcontracts with LBEs made in fulfillment of Manager's obligations under this Agreement, a provision requiring Manager to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to five percent (5%) of the subcontract amount, whichever is greater, if Manager does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Manager received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three (3) years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(iv) Payment of Subcontractors. Contractor shall pay its subcontractors within three (3) working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten (10) working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten (10) working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to the enforcement procedure under Administrative Code, Section 14B.17.

18.9 Conflict of Interest. Through its execution of this Agreement, Manager acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Manager further certifies that it has made a complete disclosure to the SFMTA of all facts bearing on any possible interests, direct or indirect, which Manager believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Manager to make such disclosure, if any, shall constitute grounds for the City's termination of this Agreement.

18.10 No Tobacco Advertising. Manager acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the SFMTA, including the Facilities. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to

communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

18.11 Nondiscrimination; Penalties.

(1) Manager Shall Not Discriminate. In the performance of this Agreement, Manager agrees not to discriminate against any employee, City and County employee working with Manager or any subcontractor, applicant for employment with such Manager or any subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(2) Subcontracts. Manager shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code (copies of which are available from the SFMTA) and shall require all subcontractors contract to comply with such provisions. Manager's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.

(3) Nondiscrimination in Benefits. Manager does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, in accordance with the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(4) Condition to Agreement. As a condition to this Agreement, Manager shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(5) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Manager shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Manager understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the

provisions of this Agreement may be assessed against Manager and/or deducted from any payments due Manager.

18.12 Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six (6) months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of Fifty Thousand Dollars (\$50,000) or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

18.13 Pesticide Prohibition. Manager shall comply with the provisions of Chapter 3 of the San Francisco Environment Code ("Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Manager to submit an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Manager may need to apply to the Facilities, (b) describes the steps Manager will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as Manager's primary IPM contact person with the City.

18.14 Preservative Treated Wood Containing Arsenic. Manager may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Manager may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Manager from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

18.15 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Manager may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Manager agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Manager violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Manager from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Manager's use of profit as a violation of this Section.

18.16 Sunshine Ordinance and Public Disclosure. In accordance with San Francisco Administrative Code, Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

18.17 Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument lawfully executed and approved as required by law.

18.18 Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SFMTA, which shall decide the true meaning and intent of the Agreement.

18.19 Agreement made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

18.20 Compliance with Laws. Manager shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

18.21 Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney, except in cases in which said attorney is representing Manager in litigation or negotiation with the City, which services shall not be an Operating Expense. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Manager, will be paid unless the provider received advance written approval from the City Attorney.

18.22 Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Manager to

comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

18.23 Integrated Agreement. This Agreement contains all the understandings and agreements of the parties hereto relating to the subject matter addressed herein, and this Agreement supersedes and renders null and void all previous agreements and understandings, whether written or oral. This Agreement may only be modified as provided for in **Section 18.17** of this Agreement.

18.24 Construction of Agreement.

(1) The Section headings contained herein are for convenience in reference and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

(2) This Agreement is the result of negotiations between the parties, both of which are represented by counsel. The parties agree to waive any and all rights to apply, in the interpretations of any and all terms, provisions or conditions of this Agreement, the rule of construction that ambiguities are to be resolved against the drafter of the agreement. The parties agree that ambiguities in this Agreement, if any, are to be resolved in the same manner as would have been the case if this instrument had been jointly conceived and drafted.

18.25 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

18.26 Successors and Assigns. Subject to the restrictions on assignment set forth in **Section 18.1** of this Agreement, each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of the City and Manager, and the legal representatives, successors and assigns of either or both of them.

18.27 Time of Essence. Time is of the essence in the performance of each provision of this Agreement.

18.28 Tropical Hardwood Virgin Redwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges companies with which it does business not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

18.29 Proprietary or Confidential Information of the City. Manager understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Manager may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Manager agrees that all information disclosed by the City to Manager shall be held in confidence and used only in performance of the Agreement. Manager shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

18.30 Ownership of Results. Any interest of Manager or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer

files and media or other documents prepared by Manager or its Subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the City. However, Manager may retain and use copies for reference and as documentation of its experience and capabilities.

18.31 Works for Hire. If, in connection with services performed under this Agreement, Manager or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Manager or its subcontractors under this Agreement are not works for hire under U.S. law, Manager hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Manager may retain and use copies of such works for reference and as documentation of its experience and capabilities.

18.32 Public Access to Meetings. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

18.33 Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Administrative Code Section 12M shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code.

18.34 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Manager shall remove all graffiti from the Facilities and any real property owned or leased by Manager in the City and County of San Francisco within forty-eight (48) hours of the earlier of Manager's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require Manager to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code, Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C., Sections 101 et seq). Any failure of Manager to comply with this Section shall constitute an Event of Default of this Agreement.

18.35 Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

18.36 Approval by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. Signed counterparts may be delivered by telephone facsimile or in PDF delivered by email.

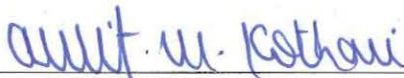
18.37 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

18.38 Manager's Company Signage. At each facility operated by Manager under this agreement, Manager shall be entitled to display no more than two (2) signs displaying Manager's company logo. The size and locations of the signs must be pre-approved in writing by SFMTA. Manager's company logo may not be displayed at the facilities in any other location other than on the two SFMTA-approved signs.

IN WITNESS WHEREOF, the parties hereto have executed, in triplicate, this Agreement as of the date first written above.

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY**


Recommended:

By: 
Amit M. Kothari, Director
Off-Street Parking Division

APPROVED:

By: 
Edward Reiskin
Director of Transportation
San Francisco Municipal
Transportation Agency

Approved as to Form:
Dennis H. Herrera, City Attorney

By: 
David A. Greenburg
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. 11-144

Adopted: 12-6-11

Attest: 
Secretary, SFMTA Board

MANAGER

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 18.7, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

APPROVED:

By: SEE attached
Allan Copping, President & CEO
IMCO Parking, LLC

City Vendor No.: 85688

IN WITNESS WHEREOF, the parties hereto have executed, in triplicate, this Agreement as of the date first written above.

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY**

Recommended:

By: _____
Amit M. Kothari, Director
Off-Street Parking Division

APPROVED:

By: _____
Edward Reiskin
Director of Transportation
San Francisco Municipal
Transportation Agency

Approved as to Form:
Dennis H. Herrera, City Attorney

By: _____
David A. Greenburg
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____

Adopted: _____

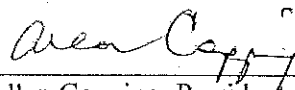
Attest: _____
Secretary, SFMTA Board

MANAGER

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I have read and understood paragraph 18.7, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

APPROVED:

By:  _____
Allan Copping, President & CEO
IMCO Parking, LLC

City Vendor No.: 85688

EXHIBIT A

DESCRIPTION OF FACILITIES

All that certain real property situated in the City and County of San Francisco, State of California described as follows:

Golden Gateway Garage:

Parcel 1: West Wing of Garage

Beginning at a point perpendicularly distance 17.50 feet southerly from the southerly line of Washington Street and perpendicularly distant 7.25 feet easterly from the easterly line of Battery Street; running thence easterly and parallel to said southerly line of Washington Street 243.25 feet to a point perpendicularly distant 368.25 feet westerly from the westerly line of Davis Street; thence at a right angle southerly 34.67 feet to a point perpendicularly distant 17.50 feet northerly from the northerly line of Clay Street and perpendicularly distant 368.25 feet westerly from the westerly line of Davis Street; thence at a right angle westerly parallel to said northerly line of Clay Street 243.25 feet to a point perpendicularly distant 17.50 feet northerly from the northerly line of Clay Street and perpendicularly distant 7.25 feet easterly from the easterly line of Battery Street; thence at a right angle northerly 240 feet to the Point of Beginning, lying below a horizontal plane at elevation 19.0 feet. Containing an area of 59,574.69 square feet, more or less.

Being a portion of 50 Vara Block 21 (Assessor's Block 205), as shown and delineated on that certain map entitled, "Record of Survey Map of the Golden Gateway," recorded September 29, 1961 in Book "T" of Maps, at pages 22, 23, and 24, in the office of the County recorder of said City and County, and a portion of Merchant Street vacated pursuant to Resolution 29-63 approved by the Board of Supervisors of the City and County of San Francisco on January 14, 1963, and recorded October 29, 1963, in Volume A-668 of Official Records at page 933.

Also commonly known as Lot 20 in Assessor's Block 205.

Parcel 2: East Wing of Garage

Beginning at a point on the westerly line of Davis Street, distant thereon 17.50 feet southerly from the southerly line of Washington Street; running thence southerly along said westerly line of Davis Street 240 feet to a point distant thereon 17.50 feet northerly from the northerly line of Clay Street; thence at a right angle westerly, parallel to said northerly line of Clay Street 243.25 feet; thence at a right angle northerly 34.67 feet; thence at a right angle westerly 7.00 feet; thence at a right angle northerly 170.66 feet; thence at a right angle easterly 7.00 feet; thence at a right angle northerly 34.67 feet to a point perpendicularly distant 17.50 feet southerly from the southerly line of Washington Street and perpendicularly distant 243.25 feet westerly from the westerly line of Davis Street; thence at a right angle easterly parallel to said south line of

Washington Street 243.25 feet to the Point of Beginning, lying below a horizontal plane at elevation 19.0 feet. Containing an area of 59,574.69 square feet, more or less.

Being a portion of 50 Vara Block 8 (Assessor's Block 204), as shown and delineated on that certain map entitled, "Record of Survey Map of the Golden Gateway," recorded September 29, 1961 in Book "T" of Maps, at pages 22, 23, and 24, in the office of the County recorder of said City and County, and a portion of Merchant Street vacated pursuant to Resolution 29-63 approved by the Board of Supervisors of the City and County of San Francisco on January 14, 1963, and recorded October 29, 1963, in Volume A-668 of Official Records at page 933.

Also commonly known as Lot 20 in Assessor's Block 204.

St. Mary's Square Garage:

Parcel 1: St. Mary's Square

The subsurface within that certain public park commonly known and designated as "St. Mary's Square" more particularly described as follows, to wit:

Commencing at a point on the northerly line of Pine Street, distant along said northerly line or its projection 185 feet 5 inches westerly from the westerly line of Kearny Street; running thence northerly at right angles to the said northerly line of Pine Street 80 feet 6 inches; thence at a right angle westerly 3 feet; thence at a right angle northerly 57 feet; thence at a right angle easterly 2 feet 6 inches; thence at a right angle northerly 137 feet 6 inches to the southerly line of California Street; running thence westerly along said southerly line of California Street 125 feet to the easterly line Quincy Street; thence southerly along said easterly line of Quincy Street 275 feet to the northerly line of Pine Street; and running thence easterly along said northerly line of Pine Street 125 feet 6 inches to the point of commencement.

Being portion of 50 Vara Block No. 93.

and the subsurface, surface and above-surface of the following described parcel:

Parcel 2: St. Anne St. – Formerly St. Mary's Place

Commencing at a point on the northerly line of Pine Street, distant thereon 167 feet 11 inches westerly from the westerly line of Kearny Street, said point of beginning also being the intersection of the northerly line of Pine Street with the former easterly line of St. Anne Street as said line of said street existed prior to its vacation by Resolution No. 11778 adopted December 5, 1951 by the Board of Supervisors; running thence westerly along said northerly line of Pine Street, or along the westerly prolongation thereof, 17 feet 6 inches to the former westerly line of St. Anne Street; thence at a right angle northerly 80 feet 6 inches; thence a right angle westerly 3 feet; thence at a right angle northerly 137 feet 6 inches to the southerly line of California St.; thence easterly along

the last mentioned line, or along the easterly prolongation thereof, 18 feet to the former easterly line of St. Anne Street; and running thence at a right angle southerly along said last mentioned line 275 feet to the point of commencement.

and the subsurface, surface and above-surface of the following described parcel:

Parcel 3:

Commencing at a point on the northerly line of Pine Street, distant thereon 107 feet 11 inches westerly from the westerly line of Kearny Street; running thence westerly along said northerly line of Pine Street 60 feet to the former easterly line of St. Anne Street, as referred to above; thence at a right angle northerly along said former easterly line of St. Anne Street 275 feet to the southerly line of California Street; thence easterly along said southerly line of California Street 60 feet; thence at a right angle southerly 93 feet 6 inches; thence at a right angle 107 feet 11 inches to the westerly line of Kearny Street; thence southerly along said westerly line of Kearny Street 69 feet; thence at a right angle 39 feet 2 inches; thence at a right angle northerly 25 feet; thence at a right angle westerly 68 feet 9 inches; and thence at a right angle southerly 137 feet 6 inches to the point of commencement.

Being a portion of 50 Vara Block No. 93.

Note: Parcels 1, 2 and 3 are commonly known as Lot 3 in Assessor's Block 258.

EXHIBIT B**FACILITY PARKING RATES****Golden Gateway Garage**

CATEGORY	RATE EFFECTIVE MARCH 5, 2010
PRICE PER 30 MINUTES	
Transient	\$3.50
FLAT RATES	
Early Bird (Mon-Fri) (enter before 10 a.m. and exit by 7 p.m.)	\$20
Motorcycle	\$7
Evening (Mon-Fri) (enter after 5 p.m. and exit by 8 a.m. next day)	\$7
Saturday (enter after 7 a.m. and exit by Sun 4 a.m.)	\$7
Sunday (enter after 4 a.m. and exit by Mon 4 a.m.)	\$7
Park & Ride Validation (weekend only until 10 p.m.)	\$3
Daily Maximum / Lost Ticket	\$36
MONTHLY	
Reserved	\$500
Regular	\$390
Restricted (Mon-Fri evening) (enter after 2 p.m. and exit by 8 a.m. next day)	\$210
Carpool/Carshare	\$210
Motorcycle	\$90
OTHER	
New Account Activation Fee	\$10
Access Card Replacement	\$25
Late Monthly Payment	\$25
Exit After Closing	\$50
No-key Valet Parking	\$25
Special Event Rate (SFMTA staff review/approval required)	\$5 - \$40

St. Mary's Garage

CATEGORY	RATE EFFECTIVE MARCH 5, 2010
PRICE PER 30 MINUTES	
Transient	\$3.50
PRICE PER HOUR	
Weekend (enter after 4 a.m. Sat and exit by 4 a.m. on Mon)	\$2 \$7 maximum per day
FLAT RATES	
Early Bird (Mon-Fri) (enter before 10 a.m. and exit by 7 p.m.)	\$22
Evening (Mon-Fri) (enter after 5 p.m. and exit by 8 a.m. next day)	\$7
Daily Maximum / Lost Ticket	\$32
MONTHLY	
Reserved	\$500
Regular	\$390
Carpool/Carshare	\$190
Motorcycle	\$78
OTHER	
New Account Activation Fee	\$10
Access Card Replacement	\$25
Late Monthly Payment	\$25
Exit After Closing	\$50
No-key Valet Parking	\$25
Special Event Rate (SFMTA staff review/approval required)	\$5 - \$40

*Note: Rates subject to change based on market conditions

EXHIBIT C

FACILITY HOURS OF OPERATION

Golden Gateway Garage

Monday – Friday: 4:00 a.m. – 10:00 p.m.
Saturday: 7:00 a.m. – 10:00 p.m.
Sunday: 9:00 a.m. – 10:00 p.m.

St. Mary's Garage

Monday – Sunday: 24 x 7

*Note: Hours subject to change based on market conditions

EXHIBIT D

SEC. 21C.3. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION REQUIRED FOR WORKERS IN PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR STORAGE FACILITIES FOR AUTOMOBILES.

Every Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco must require that any Employee working in such public off street parking lot, garage, or storage facility for automobiles be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, as determined by the Civil Service Commission.

(a) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(2) "Contractor" shall mean any Person who submits a bid and/or enters into a Lease, Management Agreement, or Other Contractual Arrangement with the City and County of San Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco as set forth in this Section.

(3) "Employee" shall mean any individual performing work in one of the following classifications: Washing; Polishing; Lubrication; Rent-Car Service; Parking Vehicles; Cashiers; Attendants; Checking Coin Boxes; Non-Attendant Parking Lot Checking; Daily Ticket Audit; Traffic Directors; Shuttle Drivers; and all other incidental duties, whose primary place of employment is in public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco for the Contractor. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would be so defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational license.

(4) "Lease, Management Agreement, or Other Contractual Arrangement" shall mean an agreement with the City and County of San Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(5) "Person" shall mean an individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

EXHIBIT D (cont.)

(6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.

(7) "Public Off-Street Parking Lot, Garage, or Automobile Storage Facility" shall mean any off-street parking lot, garage, or automobile storage facility that is operated on property owned or leased by the City and County of San Francisco.

(8) "Subcontract" shall mean and include any agreement under or subordinate to a prime Lease, Management Agreement, or Other Contractual Arrangement.

(b) **Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for individuals working in off-street parking lots, garages, or automobile storage facility, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the effective date of this Section, and on or before the first Monday in November of each subsequent year, data as to the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid in private employment in the City and County of San Francisco, including wages or overtime and holiday work, and the Board Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(c) **Transition Employment Period.** All Leases, Management Agreements, or Other Contractual Arrangements covered by this Section shall impose the following obligations on the Contractor for Employees who work at least 15 hours per week

(1) Where the Contracting Officer has given notice that a Lease, Management Agreement, or Other Contractual Arrangement has been terminated or ended, or where a Contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the

EXHIBIT D (cont.)

terminated or ending Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date of hire, and employment occupation classification of each Employee who work at least 15 hours per week employed at the site or sites covered by the prospective Contractor at the time of the Lease, Management Agreement, or Other Contractual Arrangement termination. This provision shall also apply to the subcontractors of the terminated Contractor.

If the terminated Contractor has not learned the identity of the successor Contractor, if any, by the time that notice was given of the Lease, Management Agreement, or Other Contractual Arrangement termination, the terminated Contractor shall obtain such information from the Contracting Officer. If a successor Contractor has not been awarded by the end of the 10 day period, the employment information referred to earlier in this subsection shall be provided to the Contracting officer at such time. Where a subcontractor has been terminated prior to the termination of the Contract, the terminated Subcontractor shall for the purposes of this Section be deemed a terminated Contractor.

(2) A successor Contractor shall retain, for a 90 day transition employment period, Employees who have worked at least 15 hours per week and have been employed by the terminated Contractor or its subcontractors, if any, for the preceding twelve months or longer at the site or sites covered by the Lease, Management Agreement, or Other Contractual Arrangement, providing that just cause does not exist to terminate such Employee. The predecessor contractor's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor. This requirement shall be stated by the City in all initial bid packages involving Leases, Management Agreements, or Other Contractual Arrangements governed by this section.

(3) If at any time a successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and subcontractors, if any), the successor Contractor shall retain Employees by seniority within job classification.

(4) During such 90 day period the successor Contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the successor Contractor (or subcontractor) from which the successor Contractor (or subcontractor) shall hire additional Employees.

(5) Except as provided in Subsection (3) of above, during such 90 day period, the successor Contractor (or subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct while in the employ of the terminated Contractor or subcontractor that contributed to any decision to terminate the Contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

(6) At the end of such 90 day period, a successor Contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this Section. If the Employee's performance during such 90 day period is satisfactory, the successor Contractor (or subcontractor) shall offer the Employee continued employment under the terms and conditions established by the successor Contractor (or sub-contractor) or as required by law.

(7) All contracts subject to this Section include a provision in which the contractor agrees to require subcontractor to comply with the obligation imposed by this Section.

(d) Enforcement.

(1) An Employee who has not been hired or has been discharged in violation of this Section by a successor Contractor or its subcontractor may bring an action in the Superior Court of the State of California, as appropriate, against the successor Contractor and, where applicable, its subcontractor, and shall be awarded back pay, including the value of benefits for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(i) The average regular rate of pay received by the Employee during the last three years of the Employee's employment in the same occupation classification; or

(ii) The final regular rate received by the Employee.

(2) If the Employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(3) This Section is not intended to create a private right of action against the City and County of San Francisco.

(4) Successor's Prior Employees. Notwithstanding the provisions of Subsection (c) above, a successor Contractor or subcontractor may replace an Employee otherwise entitled to be retained pursuant to this Section with a person employed by the Contractor or subcontractor continuously for twelve months prior to the commencement of the successor Contract or subcontract in a capacity similar to that proposed under the successor Contract or subcontract. This Section shall apply only where the existing Employee of the successor Contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

(e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting Officer determines that a Contractor for the operation of a public off-street parking lot, garage, or automobile storage facility may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Lease, Management Agreement, or Other Contractual Arrangement, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to Employees working in public off-street parking lots or garages, the Contractor shall have "cured the violation" once the Contractor reimburses such Employees by paying each individual the balance of what he or she should have earned in

EXHIBIT D (cont.)

accordance with the requirements of this Section. In addition to, or instead of terminating the Lease, Management Agreement, or Other Contractual Arrangement, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages, such sums to be deposited in the fund out of which the Lease, Management Agreement, or Other Contractual Arrangement is awarded. The Contracting Officer shall impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(f) **Collective Bargaining Agreements.** Notwithstanding anything to the contrary in this Section, if a Lease, Management Agreement, or Other Contractual Arrangement conflicts with an existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to comply with the requirements of its Lease, Management Agreement, or Other Contractual Arrangement that do not conflict with the collective bargaining agreement.

(g) **Preemption.** Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(h) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted, is intended to have, prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Lease, Management Agreement, or Other Contractual Arrangement to which the City and County of San Francisco is a party, unless such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has been amended after the effective date of this Section.

(i) **Public Entities with Coterminous Boundaries with the City and County of San Francisco.** It is the policy of the City and County of San Francisco that all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, adopt this prevailing wage and employee transition period policy. The Board of Supervisors of the City and County of San Francisco urges all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, to adopt this prevailing wage and employee transition period policy.

(j) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable.

EXHIBIT E

MAINTENANCE STANDARDS AND FORM OF MAINTENANCE SCHEDULE

The goal of the SFMTA is to provide the public, at all times, safe, clean, sanitary, well-lighted, and efficient facilities. The following maintenance standards are designed to achieve this goal.

1. **Lighting.** All lights must be in working order and bright enough to convey a sense of safety, especially in and around stairways and restrooms. Burned-out bulbs or lamps must be replaced within twenty-four (24) hours. Non-working fixtures must be repaired or replaced with energy efficient fixtures within seventy-two (72) hours. Bulbs or lamps must be secured and must be the same color. Emergency lights must be inspected at least once each month and non-operating battery packs must be changed within one (1) week.
2. **Walls & Fences.** All walls must be kept clean and free of stains, dirt and graffiti. Special attention shall be given to restrooms and their surrounding areas. Graffiti must be removed or painted over within forty-eight (48) hours. Black marks from bumpers must be painted over as needed but, in no event, not less than once a month.
3. **Odors.** Foul odors must be removed within twenty-four (24) hours. Special attention shall be given to walkways, restrooms and their surrounding areas. Stairwells and sidewalks must be steam cleaned as needed but, in no event, not less than once a month.
4. **Cleaning.** The entire Facility must be cleaned daily, including interior and exterior walkways, restrooms, parking areas and sidewalks. Parking areas and Facility floors must be swept, grease and oil must be removed, foul odors must be deodorized, pigeon droppings must be removed, and all litter must be removed.
5. **Steam Cleaning.** Steam cleaning of each facility in its entirety shall be performed on a semi-annual basis. At the discretion of the Director, steam cleaning may be required to be performed less frequently if the facilities, including interior walkways, are maintained in a clean and orderly state.
6. **Ventilation Equipment (if applicable).** Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis.
7. **Windows (where applicable).** All windows, mirrors and glass cases must be cleaned as needed but, in no event, not less than once a month. All windows visible to the public must be inspected daily and cleaned as needed.
8. **Signs.** Signs must be easily understood and professionally made; not hand printed or copy machine reproduced. Manager will be allowed to post nonprofessional signs only in case of an emergency, but the emergency signs must be replaced within one week. Signs must also be repaired or replaced promptly when damaged.
9. **Plants.** Landscaping at each garage, and the Manager's requirements for care, should be outlined for every garage and facility. Selection of plants, etc. requires approval of the SFMTA
10. **Safety Equipment.** Equipment including fire alarm call boxes, fire extinguishers, and fire hose units must be maintained in good working order and inspected at least once a month. Closed circuit cameras and the intercom system must be inspected at least once a week.

11. Structural Inspections. Structural inspections, including water leaks, exposed rebar, concrete cracks and metal rust must be performed not less than once a year.

12. Sidewalk Inspections. Inspections of the sidewalks abutting the Facility for the presence of any sidewalk tripping hazards, including tree planting areas not at sidewalk grade, must be performed once a month. In the event any hazards are observed, such hazards shall be reported immediately to the Director.

13. Other Work. All other ordinary maintenance and repair work of the premises and equipment shall be done as needed.

14. Instructions. The SFMTA reserves the right to instruct Manager to clean or repair any item which falls under the category of routine maintenance and repair.

If the maintenance standards are not followed, the SFMTA may give written notice and the work must be completed within seventy-two (72) hours thereafter. Nonperformance may result in the SFMTA causing such work to be done at the expense of Manager. Repeated instances of nonperformance will result in Manager being deemed ineligible to bid on future SFMTA Management Agreements.

FORM OF MAINTENANCE SCHEDULE

[Parking Facility Name]

Lights	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Inspect lights	X					
Replace burned-out bulbs	X					
Inspect broken fixtures	X					
Replace discolored covers	X					
Cleaning						
Elevator areas	X					
Stairwell areas	X					
Bathroom & lobbies	X					
Parking areas	X					
Pick up litter	X					
Cashier booths/stations	X					
Windows	X					
Steam clean stairwells			X			
Ventilation vents				X		
Steam-clean garage					X	
Painting						
Paint over graffiti	X					
Paint over foreign marks		X				
Touch-up				X		
Inspect striping				X		
Elevators (if applicable)						
Inspect elevator operations	X					
Professional periodic maintenance					X	
Professional inspection						X
Landscaping						
Inspect irrigation system				X		
Remove weeds		X				
Prune trees and plants					X	
Signs						
Inspect signs	X					
Repair/replace damaged signs		X				
Mechanical						
Doors open and lock properly	X					
Inspect parking equipment	X					
Inspect HVAC operations				X		
Safety						
Inspect emergency lights	X					
Inspect exit lights	X					
Inspect sidewalks	X					
Inspect fire alarm/equipment	X					
Inspect/Service closed-circuit camera system				X		
Structural						
Inspect for water leaks		X				
Inspect floors for exposed rebar				X		
Inspect concrete for cracks				X		
Inspect metal for rust				X		

EXHIBIT F

FOR USE BY A SURETY COMPANY

Rev10-3-06

Parking Tax Collection Bond

BOND NO.: _____

PREMIUM: _____

KNOW ALL MEN BY THESE PRESENTS:

_____, parking station located at _____,
as principal, and _____, a corporation organized
and existing under the laws of the State of _____, with its principal office located
at _____, and licensed to transact a surety
business in the State of California, as surety, are indebted to the City and County of San
Francisco (the City), in the penal sum of _____ Dollars (\$ _____), for which
payment principal and surety bind ourselves and our legal representatives and successors, jointly
and severally.

The condition of this obligation is that principal operates a parking facility, for which it collects
parking fees and charges, a portion of which are to be paid to the City as required by Article 9 of
the San Francisco Business and Tax Regulations Code. Such payments must also conform to the
requirements of Article 6 of the San Francisco Business and Tax Regulations Code.

Article 9 of the San Francisco Business and Tax Regulations Code (Tax on Occupancy of
Parking Space in Parking Stations) imposes an effective tax of 25 percent on the rent of every
occupancy of parking space in a parking station in the City and County of San Francisco.

Article 6 of the San Francisco Business and Tax Regulations Code requires that all amounts of
taxes and fees imposed by the parking space occupancy tax are due and payable to the Tax
Collector on or before the last day of the month following each respective calendar quarter.

If principal and all of principal's agents and employees faithfully conform to and abide by the
provisions of such ordinances, together with all amendatory and supplementary acts, now and
hereafter enacted, and if principal honestly and faithfully applies all funds received, and
faithfully and honestly performs all obligations and undertakings made pursuant to the provisions
of such ordinances in the conduct of operating a parking facility by principal and by principal's
agents and employees, then this obligation shall be null and void; otherwise it shall be in full
force and effect. This bond shall be deemed continuous in form and shall remain in full force
and effect while principal operates parking facilities, beginning on _____ and
ending _____.

The surety may cancel this bond at any time by filing with the Obligee thirty (30) days written
notice of its desire to be relieved of liability. The Surety shall not be discharged from any
liability already accrued under this bond, or which shall accrue hereunder before the expiration
of the thirty (30) day period.

In witness whereof, each party to this bond has caused it to be executed in the City and County
of San Francisco on this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Signature (as to the Principal)

Print Principal's Name and Title

By: _____
(Required) Surety

By: _____
Signature Attorney-In-Fact

APPROVED AS TO FORM:
DENNIS J. HERRERA
CITY ATTORNEY

APPROVED AS TO SURETY:
OFFICE OF THE CONTROLLER

By: _____
Deputy City Attorney

By: _____
Controller or Assistant Controller

APPROVED THIS _____ DAY OF _____, 20 _____.

By: _____
Tax Administrator or Deputy Tax Administrator
Office of the Treasurer & Tax Collector
City and County of San Francisco

Parking Tax Collection Bond No. _____

Date Executed _____ Ending On _____

Oct3-06

INSTRUCTIONS

All items must be completed in order for the Parking Tax Bond to be processed

***General Checklist FOR PARKING TAX COLLECTION BONDS**

1. Type of Bond: Parking Tax Collection Bond
2. Bond Number
3. Premium Amount
4. Name of Parking Operator
5. Parking Station Address
6. Surety's permission to operate in (name of State) _____
7. Physical address of Surety Company (No P.O. Box)
8. Dollar amount of Bond (in the whole number of \$5,000 or \$25,000)
9. Condition of the obligation as per Articles 6 & 9 of the S.F. B/T Code.
10. Term of Bond
11. Cancellation clause
12. Date of execution
13. Place of execution (City, County, & State)
14. Power of Attorney (as authorized by Surety)
15. Signature page for Principal, Surety, and C.C.S.F. Officers
16. Signature of Principal
17. Print name of principal and title
18. Name of Surety
19. Signature of Attorney-in-Fact
20. Acknowledgement of Attorney's-in-Fact signature by a Notary Public

*Additional information may be requested by an approving department of the City and County of San Francisco.

NOTE TO SURETY COMPANIES ONLY: *Please direct any questions regarding "SAMPLE BOND LANGUAGE" to the City and County of San Francisco RISK MANAGEMENT OFFICE at (415)-554-2305 or (415)554-2303*

Effective Date:

July 1, 2011

Amit M. Kothari

Approved: Amit M. Kothari, Director of Off-Street Parking

**Off-Street Parking
Sustainable Streets Division**

Parking Facility Operation and Management Regulations

SFMTA

Municipal Transportation Agency

One South Van Ness Avenue, Third Fl. San Francisco, CA 94103 | www.sfmta.com

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1. DEFINITIONS

For purposes of these Regulations and any Facility Management Agreement between a Manager and (1) the San Francisco Municipal Transportation Agency ("SFMTA") and/or the Parking Authority of the City and County of San Francisco, or (2) a nonprofit Corporation that has leased one or more parking garages from the City and County of San Francisco that is subject to these Regulations, initially capitalized terms shall have the meaning ascribed to them in this Section unless otherwise specified.

1.1 "Access Card" means the access card (electronic key card used to access a Facility) issued to users, as set forth in these Regulations.

1.2 "Advertising Revenue" means any revenue generated under the Agreement between the City and County of San Francisco and Titan Outdoor LLC, for Advertising on SFMTA Vehicles and Other Property.

1.3 "After Hours Exit Fee" means the fee charged by a Manager to a customer to retrieve a vehicle from a Facility after the Facility has closed.

1.4 "Agency/Corporation" means either the SFMTA when used in reference to a Management Agreement between a Manager and SFMTA, or a Corporation when used in reference to a Management Agreement between a Manager and a Corporation.

1.5 "Agents" means the officers, directors, employees, agents, contractors, licensees and subtenants of a referenced Party, and their respective heirs, legal representatives, successors and assigns.

1.6 "Agreement" or "Management Agreement" means an agreement under which a contractor agrees to operate and manage any Facility under the jurisdiction of the San Francisco Municipal Transportation Agency or the Parking Authority of the City and County of San Francisco, including any such Facility leased to a Corporation.

1.7 "Banking Day" means any day which is not a Saturday or Sunday or a day on which banking institutions are authorized or required by law or by the Federal Reserve System to be closed in San Francisco, California for commercial banking purposes.

1.8 "Budget" (also "Approved Budget") means the itemized annual projection of individual Facility gross revenues, authorized capital expenditures and authorized operating expenses prepared by Manager and requiring approval by the SFMTA Board of Directors and the Controller as set forth in these Parking Facility Regulations.

1.9 "Carpool" means a vehicle containing three or more people upon first entry into a Facility.

1.10 “City” means the City and County of San Francisco, and its departments and agencies, and officers and employees. For purposes of these regulations, "City" shall also include the Parking Authority of the City and County of San Francisco.

1.11 “Controller” means the Controller of the City.

1.12 “Corporate Manager” means the Manager of a Corporation or his or her designee.

1.13 “Corporation” means a non-profit public benefit corporation, formed to assist the City and SFMTA or its predecessors in the operation and management of one or more Facilities, which are leased from the City.

1.14 “Director” means the Director of Transportation, the Executive Director/CEO of the SFMTA or his or her designee.

1.15 “Director/Corporate Manager” means either the Director when used in reference to a Management Agreement between a Manager and SFMTA, or the Corporate Manager when used in reference to a Management Agreement between a Manager and a Corporation.

1.16 “Environmental Laws” means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Facilities, the Land or any other property, including, without limitation, soil, air and groundwater conditions.

1.17 “Facility” means the land and all improvements of the City-owned or administered off-street parking garages and lots, including any such garage leased to a Corporation, as well as the land and all improvements of any off-street parking garages owned or otherwise controlled by the Parking Authority of the City and County of San Francisco, described in a Management Agreement.

1.18 “Facility Regulations” means the Parking Facility Operation and Management Regulations promulgated by the SFMTA, as amended from time to time.

1.19 “Fiscal Year” means the period beginning July 1 and ending June 30, except in the case of a Management Agreement with certain non-profit parking corporations, in which case, “Fiscal Year” shall mean May 1 and ending April 30.

1.20 “Gross Revenues” means all revenues, from whatever source, but excluding any Advertising Revenues generated by the SFMTA Advertising Contract, received by a Manager or any subcontractor or vendor, from the operation of any Facility and from any income-generating activity carried on therein, including, but not limited to, the following: (1) revenues received from the operation of the Facility for daily and monthly parking of

vehicles therein; (2) revenue paid to a Manager in connection with any ancillary services provided at or in connection with any Facility as may be approved by the Agency/Corporation under *Section 3.1* of these Facility Regulations; (3) the selling price of all merchandise or services sold or otherwise provided for exchange in, on, or about the Facility in the ordinary course of business by Manager except any returned merchandise; (4) all charges or claims of credit of any character made by Manager or a vendor under contract to Manager or otherwise under Manager's control for the rendering of any service or work of any kind conducted in, on, about or from the Facility; (5) the gross amount of all deposits forfeited by Facility customers and retained or received by Manager in connection with the operation of the Facility, all After Hours Exit Fee charges, all valet no-key charges, and all refundable deposits subsequently returned to the depositor; (6) all interest or investment earnings received from the Gross Revenues deposited in the Revenue Account; (7) commercial rents and fees collected for display and storage rental, and/or other commercial uses approved in accordance with *Section 3.1* of these Facility Regulations; (8) the value of any in-kind services received by the Manager in exchange for a benefit derived from the use of the Facility; and (9) the amount of all Parking Taxes payable from the operation of the Facility.

1.21 “Grace Period” means the limited periods and specific conditions during which the otherwise applicable Parking Rates shall not be charged. These conditions are: (1) a turnaround (immediate in/out) upon entry into a Facility, (2) the time between when payment is made at a pay station or central cashier location and when the vehicle exits the Facility, and (3) when a customer is paying a Parking Rate calculated by a defined increment of time and the time on the Parking Ticket shows that the customer has exceeded the last full increment of parking. Specific time increments for each category of Grace Period are set forth in *Section 3.2(c)* of these Facility Regulations.

1.22 “Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, as amended, (Cal. Health & Safety Code Section 25300 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any improvements to be constructed on the Land by or on behalf of Manager or the City, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

1.23 “Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all

Losses made or threatened by any third party against the City, its Agents, or the Land, a Facility or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Land, a Facility or any Improvements, the loss or restriction of the use or any amenity of the Land, a Facility or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

1.24 "Holiday" means those days on which the following holidays are celebrated in California: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

1.25 "Invitees" means the clients, customers, and invitees to the Facility.

1.26 Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Land, a Facility and any other improvements or any portion thereof or which have been, are being, or threaten to be released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Land, a Facility or any other improvements.

1.27 "Land" means the land on which a Facility is located.

1.28 "Law" means any law, statute, ordinance, resolution, regulation (including these Facility Regulations), proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over a Facility, the Land, Manager's operations or employees or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

1.29 "Losses" means any and all claims, demands, damages, liens, liabilities, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses including but not limited to reasonable attorneys' fees and costs arising from any injury to or death of any person (including employees of Manager) or damage to or destruction of any property (including the Facility) occurring in, on, or about the Facility premises, or any part thereof, from any cause whatsoever.

1.30 "Management Fee" means the amount set forth in a Management Agreement as compensation for operation and management of one or more Facilities.

1.31 "Manager" for purposes of these Regulations means any entity that is party to an Agreement with the SFMTA or a Corporation for the management of one or more Facilities.

When used in an Agreement, "Manager" shall mean the entity that is a party to that particular Agreement.

1.32 "Monthly Report" shall have the meaning given such term in *Section 6.7* of these Regulations.

1.33 "New Account Activation Fee" means the non-refundable amount charged to activate a new monthly customer's Access Card based on the Parking Rates set in accordance with *Section 3.2(a)* of these Regulations.

1.34 "Occurrence" means an accident, theft, damage or other event of loss giving rise to a claim against the insurance policies described in an Agreement.

1.35 "Operating Expenses" means actual costs to Manager without mark-up that are directly associated with performance of Manager's obligations under an Agreement for: (1) salaries, payroll taxes and other payroll expenses; (2) utility services; (3) repair and maintenance of equipment, furnishings and painted surfaces; (4) routine maintenance and repair, and for cleaning of the Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Premises; (5) parking tickets, supplies and equipment; (6) license and permit fees not related to an alteration of the physical plant of a Facility; (7) all insurance required by a Management Agreement; (8) the cost of any bonds required by a Management Agreement, but only to the extent that such bonds protect only the City's or the Corporation's interests; (9) deductible amounts paid in accordance with any insurance policy required by an Agreement except as excluded in (b) below; (10) sales taxes and all other taxes resulting from operation of the Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes; (12) courier deposit services, (13) settlements for claims against a Manager that are not paid by insurance carriers and do not result from Manager's negligence or willful misconduct, and (14) all other costs and expenses of Manager that are approved by the SFMTA and, if required, by the Corporation. Operating Expenses shall not include: (a) penalties or fees resulting from Manager's late payment of taxes, bills, or other charges; (b) insurance deductibles or other payments or costs resulting from theft, employee negligence, dishonesty, or other acts of malfeasance; (c) Manager's overhead costs that are not directly attributable to its operation of a Facility; (d) attorneys fees or costs incurred in connection with any dispute with the City or a Corporation; or (e) costs to repair damage to a Facility resulting from Manager's and/or Manager's employees' willful, intentional or grossly negligent acts.

1.36 "Parking Authority Commission" means the Commission of the Parking Authority of the City and County of San Francisco.

1.37 "Parking Rates" means the fees, including any variable rates imposed to regulate occupancy levels, set by the SFMTA to be charged by a Manager and collected from customers parking vehicles in a Facility. The Parking Rates are set in accordance with *Section 3.2* of these Regulations.

1.38 “Parking Taxes” means the Tax on Occupancy of Parking Space in Parking Stations, as imposed by Article 9 of the San Francisco Business and Tax Regulations Code, beginning with Section 601 thereof, and any successor ordinances or amendments thereto, or any other federal, state or local tax or fee imposed on the occupancy of parking spaces.

1.39 “Parking Ticket” means the record provided by the Manager to the customer setting forth the time and date that the customer's vehicle entered the Facility that is used by the Manager to determine the Parking Rate due from the customer.

1.40 “Party” means the Agency/Corporation or a Manager; “Parties” means both the Agency/Corporation and the Manager.

1.41 “Premises” means the Land on which a Facility is located and improvements upon those lands.

1.42 “Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside a Facility or any other improvements constructed hereunder by or on behalf of Manager, a Corporation or the City, or in, on, under or about the Land or a Facility or any portion thereof.

1.43 “Remediation” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about a Facility, the Land or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

1.44 “Revenue Account” means the account into which a Manager is required to deposit Gross Revenues in accordance with *Section 6.5* of these Regulations.

1.45 “San Francisco Municipal Transportation Agency” or “SFMTA” means the Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A, or any successor agency.

1.46 “Security Deposit” shall mean the special account established and maintained by the City/Corporation, and designated as the Security Deposit Account.

1.47 “SFMTA Property” means supplies, equipment and furnishings required for performance of the management and supervision services in the operation of a Facility, including but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings.

1.48 “Stored Vehicle” means a vehicle parked continuously for more than seven (7) days in a Facility.

1.49 “Tax Collector” means the Tax Collector of the City.

1.50 “Term” means the period in which a Management Agreement is in effect, commencing on the Commencement Date and terminating on the Termination date, unless extended or earlier terminated.

1.51 “Treasurer” means the Treasurer of the City.

1.52 “Unaccounted Parking Ticket” or “UPT” means any Parking Ticket described in *Section 3.1(a)(i) through (iv)* of these Regulations.

1.53 “Valet Parking” means parking of customer vehicles by a Manager.

1.54 “Valet Assisted Parking” means parking of customer vehicles by customers as directed by a Manager.

1.55 “Validator Deposit” means the deposit charged by a Manager to a merchant when a Manager issues a parking ticket validator or other equipment to the merchant, as set forth in *Section 3.1(c)* of these Regulations. For other equipment, the Agency/Corporation may, in writing at the time of issuance, increase the dollar value of the Validator Deposit.

2. SCOPE AND APPLICATION

2.1 These Facility Regulations shall apply to the management and operation of any off-street parking garages or lots (collectively, "Facilities") owned by the City and County of San Francisco, the SFMTA or owned or otherwise controlled by the Parking Authority of the City and County of San Francisco, that are subject to a Management Agreement between the SFMTA or a Corporation and a Manager entered into on or after April 1, 2010, except to the extent that application of these Facility Regulations would impair a contractual right or obligation in an existing agreement for management of one or more Facilities.

2.2 In the event of a conflict between the terms of these Facility Regulations and the terms of any Management Agreement subject to these Regulations, the terms of these Regulations shall control.

2.3 Any deviation by the Manager of a Facility from the procedures outlined in these Facility Regulations must be pre-approved, in writing, by the Agency (and Corporation, if applicable).

2.4 These Facility Regulations may be amended by the Director following notice and an opportunity to comment.

2.5 Waiver. The omission by either party to a Management Agreement subject to these Facility Regulations at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of the Agreement or these Facility Regulations by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter. No waiver of any of the provisions of such Management Agreement or these Facility Regulations shall be effective unless in writing and signed by an authorized representative of the City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of the Agreement or these Facility Regulations.

3. DUTIES OF MANAGER

3.1 General Operational Duties. A Manager shall (i) supervise the proper and efficient parking of all vehicles utilizing each Facility, (ii) maximize the accessibility and safe use of the space available in each Facility, (iii) use best efforts to maximize the revenues generated by each Facility and (iv) manage the parking of vehicles in each Facility using best practices and in a professional manner. In addition to the foregoing general duties, a Manager shall be responsible for the following specific duties:

(a) Daily Parking. A Manager shall charge, collect and deposit (in accordance with *Section 6.5* below) the daily Parking Rate from all daily users of each Facility and shall collect and account for all issued tickets. A Manager shall provide each customer with a machine-generated receipt as mandated by Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall establish and maintain a Parking Ticket system for daily users of each Facility in a form prescribed and approved by the City and in accordance with all Laws. A Manager shall order and purchase all Parking Tickets to be issued at the Facilities. A Manager shall issue a Parking Ticket from the ticket dispenser to the operator of each vehicle entering each Facility unless the vehicle operator enters using a valid monthly access card, prepaid debit card, or other authorized means of prepayment. This requirement shall include the Manager, employees of the Manager and all vendors performing work at the Facilities. Each parking ticket that is issued shall be date and time stamped to indicate arrival and departure of the vehicle and shall also be stamped upon payment with the charged amount as mandated by Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall maintain a ticket inventory system identifying sequential numbering and reconciling tickets issued with revenues or use. The operator of each vehicle for which a Parking Ticket is issued shall pay the current posted Parking Rate, as amended from time to time by the SFMTA Board of Directors. In accordance with Section 2218 of Article 22 of the San Francisco Business and Tax Regulations Code, a Manager shall maintain, in San Francisco, all paid Parking Tickets, and all log files and journal tapes generated by the revenue control equipment for a period of not less than five (5) years.

(i) Altered Parking Tickets. Any alteration to the dates or times of occupancy or charge different from the applicable posted rate must be approved by a Facility Manager who must state in writing on the Parking Ticket the reason for the change. Any changes made without such approval and written explanation shall be disregarded, and the Parking Ticket shall be deemed to have been collected in accordance with the date and time of entry and exit stamped on the Parking Ticket and the current Parking Rate approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the Agency/Corporation in accordance with the requirements of *Section 6.7(a)* of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(ii) Mutilated or Destroyed Parking Tickets. If a Parking Ticket is mutilated or destroyed, a Manager shall provide customer with a replacement ticket and document in writing the justification for the amount charged to the customer for parking, which must be calculated base on the Parking Rates approved by the SFMTA Board of Directors. Manager shall maintain the remnants of all Mutilated or Destroyed Parking Tickets as well an explanation for how the Parking Ticket was destroyed or mutilated, the identification number or serial number of the Parking Ticket and an explanation as to how the Parking Rates were applied. An appropriate amount for each mutilated or destroyed Parking Ticket based on the current Parking Rate approved by the SFMTA Board of Directors shall be included in the Gross Revenues due to the Agency/Corporation in accordance with the requirements of *Section 6.7(a)* of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(iii) Lost Parking Tickets. If a Parking Ticket is lost by the operator of a vehicle parked in the Facility, a Manager shall prepare a charge slip showing (A) the amount charged for parking, (B) the license plate or vehicle identification number, and (C) the name, telephone number and driver's license number of the operator of the vehicle. The completed charge slip must be signed by the vehicle operator. For each lost Parking Ticket, the Manager shall include the amount for lost Parking Tickets specified in the current Parking Rate approved by the SFMTA Board of Directors in the Gross Revenues due to the Agency/Corporation in accordance with the requirements of *Section 6.7(a)* of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(iv) Other Irregular Parking Tickets. Any other Parking Tickets for which payment is not received and remitted in accordance with the applicable posted rate and the date and time of entry and exit (including a Parking Ticket that is issued, but for which there is no record of payment) shall be treated as a lost Parking Ticket and the Manager shall be deemed to have collected the amount for a Lost Parking Ticket specified in the current Parking Rates approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the Agency/Corporation in accordance with the requirements of

Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(v) Exception for Certain Service Vehicles. A Manager shall provide free parking for law enforcement, fire, and emergency medical services vehicles, as well as for vehicles engaged in providing services to a Facility, for up to 30 minutes as set forth below. A Manager shall maintain a log detailing all vehicles allowed to enter and exit a Facility under this paragraph. The log shall include: entry time, exit time, the name of the agency or company operating the vehicle,, the driver's name, a case number if applicable, and, except for unmarked law enforcement vehicles, a vehicle license number.

a. Law Enforcement, Fire, and other Emergency Response

Personnel. Parking for a maximum of 30 minutes, while on duty and actually conducting an inspection of the Facility, or responding to an incident at the Facility, or a call for assistance from the Facility staff or a customer.

b. Service Providers. For delivery and pick-up vehicles of vendors servicing a Facility, tow trucks and other vehicles providing services to stranded motorists inside the Facility, parking for a maximum of 30 minutes while actually providing services to or at the Facility.

(b) Monthly Parking (applicable only to Facilities providing monthly parking).

(i) A Manager shall require all monthly users to execute an agreement and release of the SFMTA, the form of which must be pre-approved by the Director. A Manager shall collect all monthly parking fees no later than the final day of each month for parking privileges during the following month. A Manager shall assess a late charge (as set forth in the Schedule of Parking Rates approved by the SFMTA Board of Directors) to monthly users who fail to pay their monthly parking fee for the forthcoming month by the final day of the prior month. If a monthly user has not paid his or her monthly parking fee by the close of business on the final calendar day of each month for parking privileges during the forthcoming month, a Manager shall deactivate the Access Cards of such delinquent monthly user so that the Access Card is invalid in the parking system before the first day of the month for which the monthly parking fee is unpaid. Delinquent monthly users may reactivate Access Cards by paying a late charge (or such other amount as may be set by the SFMTA Board of Directors in the Parking Rates), in addition to the delinquent monthly fee, to the Manager. A Manager may waive such late charges only for public entities and only in instances of written mutual consent between Manager and the SFMTA. A Manager shall maintain a written record of all late charges it waives. A Manager shall require a monthly user whose Access Card is deactivated to take a Parking Ticket to enter the Facility. In such a case, the Manager shall void the monthly user's Parking Ticket, and reactivate the Access Card immediately upon payment of the monthly fee and late charge. On the 15th of each month, a Manager shall cancel the accounts of all

monthly users whose monthly parking fee remains unpaid for the current month. A Manager shall supervise and control the billing and collection of the approved monthly Parking Rate and shall establish a security access system for monthly users. A Manager shall collect the one-time New Account Activation Fee for each new customer. For any lost or destroyed cards, a Manager shall reissue a new card and shall collect a charge for the lost or destroyed card in accordance with the current approved rate structure.

(ii) From time to time, the Director may determine the maximum number of monthly parking agreements that shall be permitted in a Facility. A Manager shall deposit any amounts collected from monthly customers, including amounts for New Account Activation Fees, late charges or charges for reissuance of a new access card into the Revenue Account no later than the next Banking Day after such amounts are collected. A Manager shall keep a written record containing the names of all monthly users along with their access card number, parking commencement date, amount of access card deposit and date each payment is received and transferred to the Revenue Account, parking termination date and amount of deposit refund.

(c) Validation Parking. When and as directed by the Agency (and Corporation, if applicable), and in accordance with an SFMTA-Board approved validation program, a Manager shall enter into agreements with local merchants for validation parking. The Director shall establish guidelines for validation parking. All validation agreements must be pre-approved by the Director/Corporate Manager. The Manager shall inform merchants and its authorized employees as to the correct procedures for validating a parking ticket. A Manager shall collect a Validator Deposit established by the Director/Corporate Manager for each hand or electronic validator issued. Upon request of the Director/Corporate Manager, a Manager shall request the return of any validator, and upon its return, in full working order, shall immediately return to the merchant the deposit in full, without interest. For lost or destroyed validators, the Manager shall issue a new validator and shall collect an additional Validator Deposit.

(d) Valet and Valet Assist Parking. When and as directed by the Director/Corporate Manager, a Manager shall provide for Valet Parking and/or Valet Assisted Parking in a Facility.

(e) Other Services. A Manager shall perform such other acts and duties as are required under the terms of the Agreement, and shall perform such other management and supervisory functions related to the operation of the Facilities as the Agency (and Corporation, if applicable) may require. A Manager shall not enter into any special agreements (written or oral) with a third party to provide Parking Rates other than the approved Parking Rates without pre-approval in writing from the SFMTA. All current special agreements without written approval from the SFMTA shall be deemed null and void effective April 1, 2010.

(f) Facility Names. Each Facility shall be operated under the name specified in the Management Agreement as the name of the Facility. The SFMTA may in its sole and absolute discretion rename a Facility.

(g) Signs and Advertising. Except for signs stating the Parking Rates and other pertinent information, and any signs required by applicable law, a Manager shall not erect any signs, billboard, advertising, displays or political endorsements at the Facilities or permit the circulation of any commercial announcements, pamphlets or circulars without the prior consent of the Agency (and Corporation, if applicable). The Agency/Corporation shall have the right to lease or use, any or all portions of the Facilities for advertising. Such arrangements may be under separate agreements between the Agency/Corporation and any third party. Although a Manager may not be obligated to manage these arrangements, Managers shall cooperate in good faith with the Agency/Corporation and such parties.

(h) Storage Rental. A Manager shall not allow any property storage rental unless pre-approved in writing by the Agency (and Corporation, if applicable). If such storage rental is approved, the Manager shall require all renters to execute a rental agreement and release form, which form must be pre-approved by the Agency (and Corporation, if applicable). All collected fees shall be deposited into the Revenue Account on the day such amount is collected or the next Banking Day.

(i) Commercial Use. Except for parking, a Manager shall not permit the use of any portion of a Facility for commercial purposes without the prior consent of the Agency (and Corporation, if applicable). The Agency/Corporation shall have the right to lease any or all parts of the Facility for other commercial uses, including, without limitation, vending machines, wired and wireless telephone services and storage rentals. Such arrangements may be under separate agreements between the Agency/Corporation and any third party. Although a Manager may not be obligated to manage these leasing arrangements, Managers shall cooperate in good faith with the Agency/Corporation and such parties.

(j) Vending Machines, ATMs and Telephones. The installation of any vending machines, ATMs or telephones in a Facility must be pre-approved in writing by the Agency (and Corporation, if applicable). Once approved, a Manager may be charged with the responsibility of entering into any necessary agreements with such parties and administering such contractual relationships. Such agreements shall not exceed the term of the Management Agreement unless pre-approved by the Agency (and Corporation, if applicable), and may in any event be subject and subordinate to the Agreement. Such agreements shall also be assignable to the succeeding Manager or the Agency/Corporation without additional payment or cost.

(k) Public Use of Facilities. Managers acknowledge that the public is entitled to use the Facilities, subject to the rates, charges, hours, space availability and rules of operation as set forth herein and adopted pursuant to the terms of the Agreement.

(l) Stored Vehicles. A Manager shall not permit Stored Vehicles to remain in a Facility except as authorized by this Section. Whenever a vehicle has been parked continuously in a Facility for longer than seven (7) days without the advance written approval of the Agency/Corporation, a Manager shall promptly determine whether, based on the vehicle license plate information, the vehicle belongs to a monthly customer of the Facility, and if so, whether all parking fees due for the vehicle are paid for the current month.

(i) In the case of a monthly customer whose parking fees are paid for the current month and whose parking agreement with the Manager prohibits parking of Stored Vehicles without the advance written approval of the Agency/Corporation, the Manager shall:

a. Attempt to contact the customer by phone and email (if provided) to determine when the vehicle will be moved. If the customer requests to leave the vehicle in place for a longer term, the Manager shall contact Agency/Corporation staff to discuss whether to approve the request.

b. If the customer does not respond, or if the Agency/Corporation denies the request, the Manager shall attempt to contact the customer by phone and email (if provided), and place a notice on the vehicle (in a form approved by the Agency) informing the customer that, consistent with the terms of the parking agreement, the vehicle must be moved within 72 hours or it will be subject to being towed.

c. If the vehicle is not moved within 72 hours, a Manager shall initiate removal of the vehicle by a licensed towing company that has been approved by the Agency.

(ii) In the case of a transient customer, or a monthly customer whose parking fees are unpaid for the current month, a Manager shall:

a. Place a notice on the vehicle (in a form approved by the Agency) informing the customer that the vehicle must be removed from the Facility within 72 hours or it will be subject to being towed. In addition, in the case of a monthly customer with unpaid parking fees, the Manager shall attempt to contact the customer by phone and email (if provided), and provide such notice.

b. If the vehicle is not removed within 72 hours, initiate removal of the vehicle by a licensed towing company that has been approved by the Agency.

(iii) A Manager shall ensure that signage notifying customers of the seven-day parking limit is posted adjacent to all vehicle and pedestrian entrance and exit

points of the Facilities. The design and language of such signage must be pre-approved by the Agency/Corporation.

(iv) A Manager shall ensure that Parking Tickets issued to transient customers include language informing customers of the seven-day parking limitation. The language to be printed on the Parking Ticket for this purpose must be pre-approved by the Agency/Corporation.

(m) Compliance with Laws. A Manager and any subcontractors of the Manager shall comply and conform with all applicable Laws, including these Facility Regulations and all other governmental regulations, rules and orders, existing and as may be enacted during the Term of the Management Agreement relating to, controlling, or limiting the use and operation of the Facilities. A Manager shall secure all permits and licenses specifically required for the operation of the Facilities (copies of which shall be promptly provided to the Director/Corporate Manager), and shall not use or occupy any Facility in an unlawful, noisy, improper or offensive manner. A Manager shall use its best efforts to prevent any occupancy of the Facilities or use made thereof which is unlawful, noisy, improper or offensive or contrary to any law or ordinance applicable to the Facilities. A Manager shall not cause or maintain any nuisance in or about the Facilities, and shall use its best efforts to prevent any person from doing so. Nor shall a Manager cause or allow any rubbish, dirt or refuse to be placed in the streets, sidewalks or alleys adjoining the Facilities or to accumulate in the Facilities. Further, a Manager shall use its best efforts to ensure that all customers of the Facilities comply with these Facility Regulations and any other rules, regulations, or restrictions that the Agency/Corporation or the Director/Corporate Manager may adopt during the Term of the Management Agreement.

(n) Revenue Control and Parking Receipts.

(i) A Manager shall comply with applicable provisions of the San Francisco Business and Tax Regulations Code Section 6.6-1 and Article 22 or any successor provisions to those laws, which require parking stations to have revenue control equipment, to provide receipts to all occupants with the exception of occupants in possession of a monthly access card, and to have certain signage, all as more fully set forth therein. Any violation of these requirements shall be deemed a breach of these Facility Regulations and the Management Agreement, and the SFMTA, the City and the Corporation shall have all rights and remedies set forth in the above Codes as well as the rights and remedies set forth in the Management Agreement, including but not limited to, the right to terminate the Management Agreement. With the exception of the provisions of these Facility Regulations as to Unaccounted Ticket Ratio, to the extent that any provision of these Facility Regulations or the Agreement conflicts with any provision of the San Francisco Business and Tax Regulations Code or other City ordinance, that Code or the ordinance shall govern.

(ii) A Manager shall no less than weekly duplicate or back-up the electronic data created or maintained by the RCE, including but not limited to the Log File, as that term is defined in Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall safeguard with the highest degree of care the duplicate or back-up RCE electronic data, including the Log File, in a location that is separate from the Facility under management and which is accessible during regular business hours.

(o) Revenue Protection.

(i) A Manager shall take all necessary measures, applying the highest standard of care, to ensure that all parking charges, rents, fees, and other Gross Revenues are properly collected accounted and remitted to the Agency/Corporation. The SFMTA strongly recommends that Managers use armored vehicles and armed security guards when transporting Gross Revenues in the form of cash.

(ii) A Manager shall take all necessary measures, applying the highest standard of care, to ensure that Parking Tickets, including but not limited to replacement, motorcycle, early bird, flat fee, carpool, and merchant or commercial tenant validation parking tickets, are not used to defraud the SFMTA or the Corporation of Gross Revenues or otherwise convert, conceal, misappropriate, or misaccount Gross Revenues.

(p) Bicycle Parking. In accordance with San Francisco Planning Code Section 155.1, a Manager will maintain required amounts of bicycle parking in the Facility in order to satisfy the Planning Code and shall make all reasonable efforts to ensure that bicycle parking within the Facility is highly visible, secure and readily available in order to enhance bicycle usage as a component of the City's Transit First Policy.

3.2 Facility Parking Rates.

(a) For all vehicles parked in each Facility, a Manager is authorized and directed to charge and collect parking fees according to the Parking Rates Schedules approved by the SFMTA Board of Directors for that Facility. Upon a change in the Parking Rates Schedules, the Director/Corporate Manager will give written notice to the Manager as to the new Parking Rates and their effective date(s). Upon receiving such notice, the Manager shall take such measures necessary to implement the new Parking Rates on the effective date. A Manager shall not adjust the authorized Parking Rates or collect any other rates or charges at the Facility or provide free (no charge) parking to any person except as specifically authorized by the SFMTA or as set forth in paragraphs (b) or (c) below. A Manager shall not be entitled to any further compensation or consideration because of a change in the Parking Rates.

(b) After Hours Exit Fee. A customer wishing to retrieve his or her vehicle at any time when a Facility is closed to the public shall pay an After Hours Exit Fee in addition to the parking fee due for any transient parking. At all times when a Facility is closed to the public, a Manager shall clearly post a phone number for customers to call in order to retrieve their vehicle. The After Hours Exit Fee shall be charged for each vehicle that is retrieved when a Facility is closed.

(c) A Manager shall apply the following Grace Periods in charging and collecting parking fees according to the Parking Rates; 1) for a turnaround or immediate in/out upon entry into a garage, the Grace Period shall be between 5 and 10 minutes, as determined by the Agency, based on the design for egress of each Facility; 2) after payment is made at a pay station or central cashier location, the Grace Period shall be 15 minutes; and 3) where a customer is paying a Parking Rate calculated by the hour and the time on the Parking Ticket shows that the customer has exceeded the last full increment of time, the Grace Period shall be two minutes. SFMTA may, at its discretion, change the time allotment for any of the three grace period categories, following written notice to the Manager of the Facility.

(d) Unless otherwise authorized by these Facility Regulations, where a Manager provides any free or reduced rate parking to a Facility customer, the Manager shall be deemed to have collected the full amount due under the current Parking Rates approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the Agency/Corporation in accordance with the requirements of *Section 6.7(a)* of these Facility Regulations, whether or not such amount is actually received by the Manager from the Facility customer.

3.3 Emergency and Disaster Response Plan. A Manager shall maintain a current Emergency and Disaster Response Plan at each Facility in a format acceptable to the Director with a current copy to the Agency/Corporation. This plan shall consist of Emergency Procedures, Company, SFMTA, and Corporation (if applicable) contact information. This plan must outline procedures for employees to follow in the event of an emergency and describe a plan of action for each Alert Level defined for a specific threat or disaster.

3.4 Operating Manual. A Manager shall maintain at each Facility a current Company Operating Manual for the Facility containing Standard Operating Procedures (SOPs) that include, but are not limited to, safety standards and procedures, cash handling procedures, customer service standards, employee training, and Facility maintenance standards. The Manager shall provide the Agency (and Corporation, if applicable) with this manual on the execution date of the Agreement, and shall promptly provide the Agency (and Corporation, if applicable) with any updates. The Manager will make necessary changes to the SOP manual at the Agency/Corporation's request in order to ensure that best practices are followed.

4. EQUIPMENT AND CAPITAL IMPROVEMENTS

4.1 Ordering and Purchasing of Supplies, Equipment and Furnishings. A Manager shall provide such supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Facilities, including, but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings. The cost of purchasing all such supplies, equipment and furnishings shall be considered Operating Expenses. All equipment, supplies and other tangible personal property paid for as Operating Expenses shall be and remain the property of the Facilities. A Manager shall be responsible for the care and safekeeping of all SFMTA and Corporation Property and shall use such property only in connection with the operation of the Facilities. Except for supplies and other property that are routinely used and consumed in the operation of a parking Facility, a Manager shall not dispose of any SFMTA or Corporation Property without the prior written consent of the Director/Corporate Manager.

4.2 Improvements. A Manager shall not make any alterations or improvements to or upon a Facility without the prior written approval of the SFMTA. The Director or the Corporation may require a Manager to implement specific capital improvements during the term of the Management Agreement. With the exception of emergency repairs, which shall require the written approval of the Director or the Corporation, any such capital improvements shall require the approval of the SFMTA Board of Directors or the Parking Authority Commission and shall be performed (i) in strict accordance with any plans and/or specifications approved in advance by the Director or the Corporation in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the Director or the Corporation after the Manager obtains at least three quotes for the capital improvement work, (iii) in a good and workmanlike manner, (iv) in strict compliance with all laws and subject to all other conditions that the Director or the Corporation may impose. Prior to the commencement of any work, a Manager shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the Director/Corporate Manager upon request. No material change from the plans and specifications approved by Director may be made without the prior consent of the Director or the Corporation. The Director/Corporate Manager shall have the right to inspect the progress of the capital improvement work at all times. If required by the Director/Corporate Manager, upon completion of the capital improvements, a Manager shall furnish Director/Corporate Manager with a complete set of final as-built plans and specifications. Notwithstanding anything in the Management Agreement or these Facility Regulations to the contrary, the actual costs and expenses incurred by a Manager in the performance by it of the obligations set forth in this Section shall be an Operating Expense. Upon completion of the improvement, the City shall own all capital improvements completed pursuant to this Section.

5. MAINTENANCE AND REPAIRS

5.1 Routine Maintenance and Repairs. A Manager shall maintain the Facilities in a clean, safe, sanitary and attractive condition commensurate with the standards of

maintenance, repair and operation set forth in the Agreement. For purposes of the Management Agreement, "routine maintenance and repair work" means all ordinary maintenance and repair of the premises and equipment and replacement of supplies that are normally performed on a daily or routine basis in order to keep the Facilities in an efficient, clean and safe condition. Such routine maintenance and repair work shall include without limitation:

- (a)** Repairing lamps and lighting fixtures and replacing bulbs, fluorescent tubes and ballasts; replacing Parking Tickets in Parking Ticket issuing machines; maintaining and replacing, if required, arms on traffic entry and exit gates; maintaining, repairing and replacing sliding or overhead doors and gates, and roll up doors; maintaining revenue control equipment; repairing, replacing and cleaning signs; maintaining heating, ventilating and other mechanical equipment; maintaining fire alarm call boxes, extinguishers and hose boxes in good working order; maintaining plumbing in good and sanitary working order; and performing emergency maintenance and repairs as required to maintain the premises in good and safe condition.
- (b)** Regular cleaning of all parking areas, Facility offices, drainage systems and other portions of the Facility premises; regular washing of all windows; prompt removal of dirt, debris, oil, grease and other liquids from the parking areas, floors and stairways; regular cleaning of floors, walls and ceilings of the pedestrian areas; regular removal of accumulated trash and other rubbish; regular cleaning of the sidewalks on all sides of the Facility; regular cleaning and maintenance of the common areas and bathrooms (including trash removal); and such other cleaning as shall be required to keep the premises in a clean, safe and attractive condition.
- (c)** Touch-up striping of the floors and surfaces of the Facility as needed.
- (d)** Otherwise cleaning, repairing and painting all surfaces of the Facility (e.g. floors, walls, fences, railings, gates, etc.) as well as adjacent sidewalks, curbs and driveways thereof as needed (particularly when such surfaces have been marred by graffiti or other forms of vandalism).
- (e)** Contracting for full-service elevator maintenance, if applicable, with a subcontractor acceptable to the Agency (and Corporation, if applicable).
- (f)** Contracting for electricity, telephone, vermin extermination, trash collection, water, sewer and any other similar utilities or services necessary to the operation of the Facility. Manager shall pay all billings for the above services when due.
- (g)** Steam cleaning of all sidewalks and any interior stairwells shall be performed on a quarterly basis and of each entire Facility on a semi-annual basis. At the discretion of the Director, steam cleaning may be required to be performed less frequently if the Facility, including sidewalks and stairwells, are maintained in a clean and orderly state.

- (h) Prompt removal of pigeon, rodent and other animal droppings from floors and all accessible surfaces.
- (i) Thorough cleaning of all ventilation supply and exhaust vents shall be performed on a semi-annual basis, as applicable.
- (j) Any other maintenance or repair required by the Director/Corporate Manager.
- (k) Removal of graffiti in accordance with the requirements of the Agreement.

A Manager shall perform all the foregoing maintenance duties in accordance with a maintenance schedule provided by Director/Corporate Manager. The Director/Corporate Manager shall have the right to require the Manager to perform certain duties specified in such schedule more frequently than provided therein. A Manager shall be responsible for completing the Parking Operator's Facility Inspection Checklist provided by Director/Corporate Manager on a monthly basis and maintaining a binder of completed checklists for each Facility at the Facility at all times. Upon demand of the Director/Corporate Manager, or his or her designee, a Manager shall present such checklist binder for review.

5.2 Failure to Perform. The Director/Corporate Manager may direct a Manager to perform routine maintenance and repair work that is necessary to keep the Facility in good and clean condition and in a proper state of repair. If the Manager does not commence performance of such routine maintenance and repair work within seventy-two (72) hours after the notice is given and thereafter diligently prosecute it to completion, the Director/Corporate Manager may cause such routine maintenance and repair work to be performed and the cost thereof to be either (i) disbursed from the Security Deposit, or (ii) deducted from the Management Fee(s). In the event the Agency/Corporation contracts to have such routine maintenance and repair work performed, the Manager shall reimburse the Agency/Corporation for work and administrative time expended in having the routine maintenance and repair work performed. If the Security Deposit is used to pay these costs, the Agency/Corporation will deduct the amounts paid from the Management Fee costs, and deposit the cost of services back into the Security Deposit Account until replenished. Any work performed as described herein shall not be considered an Operating Expense, and the costs of such work shall not be reimbursed by the Agency/Corporation.

5.3 Security Deposit Account upon Termination. Upon termination or expiration of the Agreement, the Agency/Corporation will inspect the Facilities and report in writing to the Manager all routine maintenance and repair work necessary to put the premises in good and clean condition and in a proper state of repair. Upon issuance of such report, the Agency/Corporation may cause such routine maintenance and repair work to be performed with the cost thereof to be disbursed from the Security Deposit. If the balance of the Security Deposit is insufficient to cover the cost of such work, the Manager shall pay upon demand any deficiency to the Agency/Corporation. The Agency/Corporation shall also have the right to use any funds in the Security Deposit to satisfy any unpaid financial obligation or liability that a Manager may have under the Management Agreement. After satisfaction

of such unpaid amounts, the remaining balance shall be returned to the Manager, with any interest having accrued thereon.

5.4 Long-Term Maintenance and Repairs. As used in these Facility Regulations, the term “long-term maintenance and repairs” means all such maintenance and repair work that the Agency (and Corporation, if applicable) reasonably determines is extraordinary and beyond the normal routine maintenance and repair work to be performed by a Manager. The Agency/Corporation may request a Manager to seek bids for the specific project. If the Agency (and Corporation, if applicable) elects to proceed with the proposed project, the Manager shall cause the work to be done, pay for the work when it has been completed and include such reimbursement requests in the next Monthly Report. A Manager shall inform the Director/Corporate Manager of long-term maintenance or repair projects that are necessary to maintain a Facility in its current or better condition.

6. FISCAL DUTIES AND MATTERS

6.1 Annual Budget. A Manager shall, at Director/Corporate Manager’s request, prepare an annual operating and capital budget (“Budget”) for each Facility under management for any given period for review by Director or the Corporation. The Budget shall be in the form provided by the Director/Corporate Manager. After review, the Director/Corporate Manager may return the Budget to the Manager if budget contains proprietary information regarding the Manager.

6.2 Marketing Plan. A Manager shall, at the Director/Corporate Manager’s request, prepare a marketing plan for each Facility under management, outlining the Manager’s plans to market the Facility and expand business at the Facility. The Director/Corporate Manager may review the marketing plan and recommend changes.

6.3 Revenue Account. A Manager, with consent from the Office of the Treasurer/Tax Collector, shall establish and maintain a special account designated as the Revenue Account for each Facility. A Manager shall be authorized and required to make daily deposits into the Revenue Account for each Facility, unless an alternate deposit schedule is approved in writing by the Agency.

6.4 Security Deposit. The City or Corporation will establish and maintain a special account designated as the Security Deposit Account in the amount established in the Agreement. This account will be established from the Manager’s Bid Security received during the Bid process, with the balance due and payable not later than the date of execution of the Management Agreement. Any Bid Bond submitted as a Bid Security during the Bid process may not be used as a Security Deposit and Manager must submit a check in the amount equivalent to the Bid Security upon commencement of the Management Agreement. Alternatively, for City-owned facilities, including non-profit garages, the Manager may fulfill this security deposit obligation by providing a security bond in the amount set forth in the Agreement not later than the date of execution of the Agreement. A Manager shall deposit this bond with the City and shall maintain the bond throughout the

term of this Agreement, and pay the cost thereof as an Operating Expense. The bond shall be made payable to the City and County of San Francisco and name the City as obligee. This Security Deposit shall be returned to the Manager, with interest, or the bond released, in accordance with *Section 5.3* of these Facility Regulations.

6.5 Gross Revenues and Other Monies; Deposits and Transfers of Monies. All Gross Revenues generated by the Facilities shall be the sole and exclusive property of the Agency/Corporation and shall be held in trust for the Agency/Corporation. Notwithstanding a Manager's receipt of Gross Revenues on behalf of the Agency/Corporation, a Manager shall have no right, title, interest, lien or set-off rights on or against any portion of the Gross Revenues generated by the Facilities. A Manager shall safeguard all Gross Revenues with the highest degree of care. All revenues, monies and deposits collected or received by a Manager arising out of operations of the Facilities shall be deposited in the Revenue Account no later than the next Banking Day after such amounts are collected, unless an alternate deposit schedule is approved in writing by the Agency. A Manager shall not commingle any of the above accounts or sources of revenue. If a Manager fails to deposit Gross Revenues including Parking Taxes as specified in this Section, the Manager shall pay the Agency/Corporation interest on the amount that was not timely deposited in accordance with the late payment provisions in the Agreement until such time the amount is deposited in the manner prescribed in these Facility Regulations, and such payment shall be an Operating Expense. A Manager's failure to deposit Gross Revenues including Parking Taxes on a timely basis shall constitute a material breach of the Agreement, and a Manager's obligation to pay interest on funds not deposited shall not limit any other rights or remedies the Agency/Corporation may have under the Agreement with respect to such default. A Manager shall be responsible for, and liable for any damages arising from, the secure transport and delivery of Gross Revenues in accordance with these Facility Regulations and the Management Agreement. Until monies charged and collected by the Manager on behalf of the Agency/Corporation are deposited in accordance with these Facility Regulations, the Manager shall assume all risk of loss of such monies, including, but not limited to, loss by damage, destruction, disappearance, theft, fraud, counterfeit bills/coins, or dishonesty.

6.6 Daily Accounting. Every day of operation, a Manager shall prepare a daily report ("Daily Report") for each Facility in a form approved by the Director/Corporate Manager. If requested by the Director/Corporate Manager, the Manager shall submit the Daily Reports to the Agency/Corporation on a daily basis in electronic form. All Daily Reports must be certified true and correct by the Manager. A Manager may modify the format of the Daily Report with the Director/Corporate Manager's prior written approval.

6.7 Monthly Report. By the 10th of each month, a Manager shall deliver to the Director/Corporate Manager a monthly report ("Monthly Report") for each Facility in a form approved by the Director. The Monthly Report shall be provided in both electronic and hard copy format and include an accounting of all Gross Revenues and a description of Operating Expenses as set forth in *Section 6.8*.

(a) The Monthly Report shall provide an accounting for all Unaccounted Parking Tickets as set forth in *Section 3.1(a)(i)-(iv)* of these Facility Regulations. The Monthly Report shall include a report detailing any UPT that has been altered, mutilated or destroyed, as well as the information set forth in *Section 3.1(a)(iii)* for any Parking Ticket claimed as lost, and the information required by *Section 3.1(a)(iv)* for any other irregular Parking Ticket. The Director/Corporate Manager may review the UPT information submitted by a Manager, and may reject any such claim that he or she determines is not adequately supported by evidence. Where the total number of insufficiently documented UPTs at each Facility is equal to or less than one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month, as indicated by the revenue control equipment for the Facility, notwithstanding the provisions of *Section 3.1(a)(i)-(iv)*, the Manager shall not be charged for the difference between the amount due for each UPT under *Section 3.1(a)* and the amount actually received by the Manager from the customer. Where the number of such Parking Tickets exceeds one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month, the Manager shall be liable for the full amount due in accordance with *Section 3.1(a)(i)-(iv)* of these Facility Regulations for all insufficiently documented UPTs issued in the Facility, which amount shall be deducted by the Agency/Corporation from the next payment of Operating Expenses due to the Manager under the Agreement.

(b) Each Monthly Report shall include a purchase order or other similar documentation that shows and certifies as correct the date of purchase, beginning and ending serial numbers of ticket batches, and the vendor from which parking tickets were purchased, for all Parking Tickets received by a Manager during the month for use at the Facility.

(c) For each day submittal of the Monthly Report is late, a Manager shall incur a late charge of One Hundred Dollars (\$100) per Facility as liquidated damages payable to the Agency/Corporation to cover administrative costs for revenue report and projection revisions, and such late charges shall not be an Operating Expense. All submitted Monthly Reports must be certified as true, correct, and complete by the Manager. Should the Agency/Corporation detect any inaccuracies in the Monthly Reports which were not previously communicated by the Manager, the Agency/Corporation may, in its discretion and without limiting the Agency/Corporation's other rights and remedies hereunder, impose a charge of Two Hundred Dollars (\$200) for each Monthly Report misreported to cover administrative costs to correct revenue reports and projections. Such charges shall be deducted by the Agency/Corporation from the next payment of the Management Fee under the Agreement or from the Security Deposit. The aforementioned charges shall not be considered a penalty, but are the reasonable cost to the Agency/Corporation incurred by the Manager's delay. The Controller, the Director or the Corporation may modify the form of the Monthly Report and change the due date of the Monthly Report

(d) The Monthly Report shall include all usage data by customer type, marketing initiatives conducted during the month, any capital expenditures incurred during the month and any extraordinary operational or management efforts.

6.8 Operating Expenses.

(a) For all Operating Expenses for which a Manager seeks reimbursement, the Manager shall, for each Facility, submit monthly or as needed complete documentation, an invoice and statement listing all operating expenses for the month together with all original invoices, receipts or other evidence, including all operating expenses incurred since the previous invoice and statement, including all salaries, wages, payroll taxes, and benefits described in the Management Agreement, and the Manager's management fee. Each invoice, in a form approved by the Director or Corporation and the Controller, shall be accompanied by such supporting documentation evidencing such operating costs, salaries, wages, payroll taxes and benefits as the Agency/Corporation shall require. The monthly invoice shall include as a credit to the Agency/Corporation any amounts due for UPTs in accordance with *Sections 3.1(a)* and *6.7*.

All invoices for which a Manager is seeking payment shall:

- (1) be prepared by the Manager and signed by the authorized representative of the Manager;
- (2) identify the line item of the Approved Budget under which reimbursement is requested;
- (3) include documentation of the quotes or bids obtained when required pursuant to paragraph (b) below;
- (4) for unbudgeted expenses, include written approval of the Director, and
- (5) be submitted to the Director/Corporate Manager for approval.

To qualify as an Operating Expense, the following conditions must also be satisfied:

- (1) the Manager must have submitted the required documentation requested above,
- (2) the expenditure must have been authorized in the Approved Budget,
- (3) for both vendor expenses and professional services, the expenditure must have been made pursuant to a written agreement or purchase order executed by both Manager and the vendor/service provider; and
- (4) the expenditure must have the prior approval of the Director/Corporate Manager and the Controller.

A Manager may be reimbursed for any otherwise reimbursable expense incurred during a month that exceeds the Approved Budget by no more than 5 percent without seeking prior approval from the Director/Corporate Manager as long as such an over-budget expenditure does not occur in consecutive months. The Agency/Corporation will reimburse the Manager by wire or by disbursing a check at the address specified for notice in the Agreement. The Agency/Corporation shall not reimburse a Manager for any interest charges or late penalties imposed on the Manager due to late payment of its bills, taxes or fees. Notwithstanding the foregoing, those Operating Costs related to a Manager's labor expenses described in the Agreement shall be reimbursed, subject to the documentation and approval requirements described above, on a

monthly basis. The Director/Corporate Manager shall have ultimate approval of all Operating Expenses.

(b) In no event shall a Manager contract for or purchase any one item, other than payroll, which exceeds One Thousand Dollars (\$1,000.00) in cost or any item which costs in excess of the amount set out on the approved Budget without the prior written approval of the Director (and Corporate Manager, as applicable). Any rebate or discount obtained by a Manager in connection with the Management Agreement shall be the property of the Agency/Corporation. All expenses in excess of One Thousand Dollars (\$1,000.00), including recurring expenses such as Parking Tickets, unless service is from a sole source supplier, shall be documented with three written quotes submitted for the Director's review. A Manager must receive written approval from Director (and Corporate Manager, as applicable) identifying the preferred quote before the purchase is made. For expenses anticipated to exceed Five Thousand Dollars (\$5,000.00), a Manager (and Corporation, if applicable) shall consult with the Director prior to requesting any quotes, so that all procurement options may be fully considered. If a Manager determines that an emergency situation exists that requires an immediate vendor service visit, making it unreasonable and impractical to follow the above steps, the Manager shall immediately notify Agency staff through the 24/7 contact information provided to the Manager, and Agency staff shall direct the Manager on how to proceed.

6.9 Parking Taxes. A Manager shall comply with the requirements imposed by Sections 6.6-1 and 6.7-1 of Article 6, and Section 604 of Article 9 of the San Francisco Business and Tax Regulations Code to collect all Parking Taxes, sales taxes and other taxes due, which shall be deposited into the Revenue Account and accounted for separately. A Manager shall submit to the Agency/Corporation with each Monthly Report a full accounting of all taxes due and payable to any third party, including any taxes due to the City. A Manager shall file with the San Francisco Tax Collector, and copy to the Agency (and Corporation, if applicable) required all Quarterly Parking Tax Returns. A Manager is liable for any interest or penalties incurred due to late filing of required tax returns or payment of taxes, which shall not be considered an Operating Expense or otherwise reimbursed by the SFMTA or the Corporation. A Certificate of Authority to collect Parking Tax shall be posted in each Facility in a prominent location at all times during the Term of the Management Agreement.

6.10 Parking Tax Collection Bond. A Manager shall comply with the requirements imposed by Section 6.6-1 of Article 6 of the San Francisco Business and Tax Regulations Code, requiring Manager to post a Parking Tax Collection Bond on behalf of the City in the appropriate amount required.

6.11 Right to Audit and Inspect Records. A Manager agrees to maintain and make available to the Agency/Corporation, during regular business hours, accurate books and accounting records relating to its work under the Agreement. A Manager will permit the Agency/Corporation to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in

whole or in part under the Agreement. A Manager shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The City, the State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon the SFMTA or a Corporation by this Section.

6.12 Audit. A Manager shall cooperate in audits of its books and records relating to the Facilities and the Manager's compliance with the Management Agreement. The audits shall be conducted at the direction of the Agency/Corporation or the City Controller by an auditor selected by the Agency/Corporation or the Controller. The Agency/Corporation or the Controller shall determine the scope of said audit(s), which may include but are not limited to the Manager's compliance with the terms of the Agreement and these Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by the Manager from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of the Manager's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and these Facility Regulations or any other item related to administration of the Agreement or the financial stability of the Manager, at the discretion of the Agency/Corporation.

6.13 Books and Records. A Manager shall establish and maintain at each Facility books, records and systems of account, including all records relating to Revenue Control Equipment at the Facilities in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Manager transacted under the Agreement. To the extent a Manager has not complied with generally accepted accounting principles, the Director/Corporate Manager may require Manager to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by a Manager during the term of the Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City, the Agency/Corporation, or their agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the Director/Corporate Manager. All used and unused parking tickets, tapes and other records used in the operation of each Facility are owned by the Agency/Corporation, but shall be retained by a Manager at the Facility unless the Director or Corporate Manager requests otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the Director or Corporate Manager or their agents, and shall not be destroyed without prior written consent from the Director or Corporate Manager.