



CITY COUNCIL STAFF REPORT

DATE: February 3, 2016 CONSENT CALENDAR

SUBJECT: AWARD OF CONTRACT FOR PARKING LOT MANAGEMENT SERVICES AT PALM SPRINGS INTERNATIONAL AIRPORT

FROM: David H. Ready, City Manager

BY: Airport

SUMMARY

This action considers the award of a parking management agreement with ACE Parking Management, Inc., at the Palm Springs International Airport.

RECOMMENDATION:

1. Approve a five-year agreement with ACE Parking Management, Inc., for the period of February 1, 2016, through January 31, 2021.
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Palm Springs International Airport is equipped with a 936-space paid public parking lot that serves approximately 225,000 parking transactions annually. Since approximately 1996, the Airport has utilized contracted services to manage its parking operation. In addition to managing the parking lot, over the last ten years the current contracted firm, Ace Parking, has also been required to provide the Taxi Starter Booth Attendant and front terminal curb Traffic Enforcement staff sufficient to meet the demands at the Airport.

The Procurement and Contracting Department solicited a Request for Proposal (RFP 16-02) which was posted and distributed on October 7, 2015. Five proposals were received from prospective Airport Parking Management firms by the November 19th due date. Each proposal was reviewed, evaluated, and scored/ranked by the Evaluation Committee consisting of the Airport Director, Finance Director, and a member of the Airport Commission. The results of that process yielded the following ranking, with #1 being the highest rating:

ITEM NO. 50

1. ACE Parking
2. Parking Concepts
3. Standard Parking/SP+
4. ABM Parking
5. LAZ Parking

In addition to the evaluation criteria, the Evaluation Committee selected ACE Parking based on their qualifications, experience, proposed operating plan, new equipment capital investment, and lowest management fee over the five-year term. The investment by ACE during a new contract period would be over \$300,000 for acquisition of new parking revenue control equipment. As has been the arrangement under the existing agreement, ACE will be expected to provide the traffic enforcement and taxi starter services under the new contract.

ACE Parking is a privately owned parking management firm originating in 1950. They currently have contracts for airport parking management services in this region at San Diego, Phoenix and Tucson, and operate a total of approximately 450 parking operations around the country, including a separate contract for the City of Palm Springs downtown parking enforcement.

On January 20, 2016, the Palm Springs Airport Commission voted unanimously to recommend City Council's ratification of this new agreement.

FISCAL IMPACT:

For the last five-year term of the existing agreement, the parking management fee was an annual lump sum, which gradually escalated to its current amount of \$692,273. As depicted below, the new annual management fee submitted in the RFP by ACE Parking will result in a lower management fee in the first three years. The final two years reflect a 1.85% increase, resulting in an escalation of approximately \$22,000 in the final year of the contract.

ACE PARKING MANAGEMENT AGREEMENT	
	Annual Lump Sum Fee
Current Mgmt. Fee	\$692,273
NEW Mgmt. Fee	Year 1 \$660,080 Year 2 \$662,482 Year 3 \$665,411 Year 4 \$694,369 Year 5 <u>\$715,857</u> Contract total: \$3,398,199

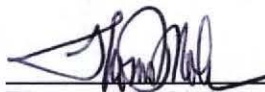
Also, ACE Parking will provide a fully new Skidata Brand revenue control system with the following equipment:

- 7 New entry gates with power gates \$73,249
 - 5 Exit gates \$35,394
 - Manual pay-station capability \$15,081
 - Computer terminals & system software \$27,216
 - EMV credit readers and server network \$25,000
 - License plate inventory & training \$27,097
 - Pay on foot equipment in terminal \$33,963
 - Wi-Fi system \$16,000
 - Overflow lot equipment \$55,000
- Total: \$308,000

The total management fee over the five-year term was a major factor in assessing all of the proposals, and the following list enumerates the differential between the five submittals, all of which included parking ticket dispensers and revenue equipment upgrades:

FIVE-YEAR MANAGEMENT COMPARISON OF ALL FIVE RFP SUBMITTALS			
	Overhead & Labor	Proposed Equipment	Total Cost
ACE Parking	\$3,090,199	\$308,000	\$3,398,199
Parking Concepts	\$3,208,400	\$355,000	\$3,563,400
Standard Parking	\$3,971,176	\$360,081	\$4,331,257
ABM Parking	\$4,229,282	\$289,529	\$4,518,811
LAZ Parking	\$4,458,248	\$254,752	\$4,713,000

Total proposed Management Fees for the five-year term is \$3,398,199, which includes the ACE equipment replacement. Funds are available in the current fiscal year in Airport Account 415-6100-43200, and will be budgeted accordingly in subsequent fiscal years for the term of the agreement. The gross revenue generated by the parking lot in calendar year 2015 was approximately \$2.9 million; after the cost of the parking management agreement, the net to the airport fund is over \$2.2 million dollars. With the Airport operating as an enterprise fund, the total parking revenue represents nearly fifteen percent of the operating budget and will continue to grow as passenger counts increase.



Thomas P. Nolan, A.A.E.
 Executive Director, Airport



David H. Ready, Esq., Ph.D.
 City Manager

Attachment:

Airport Parking Management Services Contract

CONTRACT SERVICES AGREEMENT

PARKING MANAGEMENT SERVICES AT PALM SPRINGS INTERNATIONAL AIRPORT

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is entered into, and effective on February 1, 2016, between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, ("City") and Ace Parking Management, Inc., a California corporation, authorized to do business in the State of California, ("Contractor"). City and Contractor are individually referred to as "Party" and are collectively referred to as the "Parties".

RECITALS

A. City owns and operates the Palm Springs International Airport, a public airport hereinafter referred to as "Airport", located in the City of Palm Springs, California.

B. City has determined that there is a need for Parking Management Services in the vicinity of the Airlines Passenger Terminal Building at the Airport ("Terminal") for use by the public.

C. City requires special professional services concerning the management of said automobile parking facilities, including but not limited to: management; operation; recordkeeping, accounting, auditing, revenue control, cash and credit card deposits; traffic enforcement officers (TEO); the provision of services to users of such automobile parking facilities and the public; equipment maintenance, repair and replacement; and the provision of shuttle bus operations for the holiday season ("Services").

D. Contractor and City desire to enter into this Agreement to operate and manage said automobile parking facilities upon the terms and conditions herein.

In consideration of these promises and mutual obligations, covenants, and conditions, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor agrees to perform the services set forth in the Scope of Services described in Exhibit "A" (the "Services" or "Work"), which is attached and incorporated by reference. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and that Contractor is experienced in performing the Work and Services contemplated and, in light of such status and experience, Contractor covenants that it shall follow the highest standards in performing the Work and Services required in this Agreement. For purposes of this Agreement, the phrase "highest standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced contractors performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Contractor's signed, original proposal submitted to the City ("Contractor's Proposal"), (collectively referred to as the "Contract Documents"). The City's Request for Proposals and the Contractor's Proposal, which are both attached as Exhibits "B" and "C," respectively, are incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Contractor's

Proposal. All provisions of the Scope of Services, the City's Request for Proposals and the Contractor's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal (Exhibit "B"); (3rd) the terms of this Agreement; and, (4th) the provisions of the Contractor's Proposal (Exhibit "C").

1.3 Compliance with Law. Contractor warrants that all Services rendered shall be performed in accordance with all applicable federal, state, and local laws, statutes, ordinances, lawful orders, rules, and regulations.

1.4 Licenses, Permits, Fees, and Assessments. Contractor represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Contractor to perform the Work and Services under this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the Work and Services required by this Agreement. Contractor shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City to the fullest extent permitted by law.

1.5 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services. Should the Contractor discover any latent or unknown conditions that will materially affect the performance of the Services, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City.

1.6 Care of Work. Contractor shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components to prevent losses or damages. Contractor shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be solely caused by City's own negligence.

1.7 Further Responsibilities of Parties. Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Contractor, incorporating any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement and shall be paid at the rates specified as "Compensation" on Exhibit

"D" to this Contract. Any adjustments must also be approved in writing by the Contractor. Any increase in compensation of up to ten percent (10%) of the Maximum Contract Amount or twenty-five thousand dollars (\$25,000), whichever is less, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Contractor that the provisions of this section shall not apply to the services specifically set forth or reasonably contemplated within the Scope of Services.

1.9 FAA Required Provisions. Those certain provisions set forth within Exhibit "E," "Federal Aviation Administration Required Provisions," attached and made part hereof, are those Specific provisions required by the FAA to be appropriately included within all agreements between City and all entities who use or perform work or conduct activities on City owned Airport premises for aeronautical or non-aeronautical purposes. Contractor, by its signature hereunto affixed, acknowledges that it has reviewed the aforesaid Exhibit in its entirety, and fully understands the meaning, purpose, and intent thereof. Contractor expressly agrees that, throughout the life of this Agreement hereof, it shall fully and faithfully comply with, abide by and adhere to, as applicable and appropriate, the provisions as contained within Exhibit "E."

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered under this Agreement over the full five (5) year term of the Agreement, Contractor shall be compensated by City in accordance with the Schedule of Compensation, which is attached as Exhibit "D" and incorporated in this Agreement by reference. Compensation shall not exceed the maximum contract amount of Three Million Three Hundred and Ninety Eight Thousand One Hundred and Ninety Nine Dollars, (\$3,398,199.00) ("Maximum Contract Amount"), except as may be allowed under Section 1.8. The annual compensation shall be as set forth under the heading "Total Proposed Annual Management Fee" in Exhibit "D." Compensation for additional services as provided in Section 1.8 must be approved in advance by the Contract Officer and will only be approved at the rates identified under the heading "Compensation" in Exhibit "D". The Maximum Contract Amount shall include the attendance of Contractor at all Project meetings reasonably deemed necessary by the Contract Officer. Contractor shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Contractor accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of City's payment obligation under this section is the amount specified in this Agreement. If the City's maximum payment obligation is reached before the Contractor's Services under this Agreement are completed, Contractor shall complete the Work and City shall not be liable for payment beyond the Maximum Contract Amount.

2.2 Method of Payment. The City shall pay contractor the annual Management Fee in amounts specified in Exhibit D to this Agreement. The annual Management Fee shall be divided into twelve equal installments and paid monthly to the Contractor. Contractor shall invoice the City for Management Fees by the 15th of each month for the prior month's services. Invoices will be supported with appropriate details of hours worked by category. There shall be a maximum of one (1) payment per month.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services are requested by the City, Parties shall execute a written amendment to this Agreement, specifying

all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents, work product, or work, when required by the enactment or revision of any subsequent law; or

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

2.4 Security Instrument. Concurrent with the execution of this Agreement, Contractor shall furnish City with an irrevocable letter of credit, or equivalent security instrument, towards Contractor's faithful performance of this Agreement in the principal sum of two hundred thousand and 00/100 dollars (\$200,000.00) ("Security") issued by a surety company licensed to do such business in the State of California and acceptable and satisfactory to the City and in a form approved by the City Attorney.

The security instrument shall be maintained and kept in full force and effect by Contractor from the date of the signing of this Agreement to the termination date of this Agreement; which shall be conditioned to insure the faithful and full performance by Contractor of all covenants, terms and conditions of this Agreement and to stand as security for all payment by Contractor of valid claims by City against Contractor, along with any other security identified by City.

If at any time this Agreement terminates or is terminated, and there is due and owing to City any sum payable under the terms hereof, or, if City has any claim against Contractor arising out of this Agreement, then the City may, in the City's discretion, demand satisfaction thereof from the Security and in the event such claim exceeds the amount of the Security, Contractor shall be liable for any such difference.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to the agreed upon Schedule of Performance.

3.2 Schedule of Performance. Contractor shall commence the Services under this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance. Contractor shall install all proposed facility equipment not later than one hundred and fifty (150) calendar days upon commencement of service. Any extensions to the time period(s) specified may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred and eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered under this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor (financial inability excepted) if Contractor, within ten (10) days of the commencement of such delay, notifies the Contract Officer in writing of the causes of the delay. Unforeseeable causes include, but are not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City. The City Manager shall ascertain the

facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if, in the judgment of the City Manager, such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement under this section.

3.4 Term. Unless earlier terminated under this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services. However, the term shall not exceed five (5) years, from the commencement date. Any extension as described in Section 3.2 must be through mutual written agreement of the Parties.

3.5 Termination Prior to Expiration of Term. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Contractor thirty (30) days written notice. Where termination is due to the fault of Contractor and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon such notice, City shall pay Contractor for Services performed through the date of termination. Upon receipt of such notice, Contractor shall immediately cease all work under this Agreement, unless stated otherwise in the notice or by written authorization of the Contract Officer. After such notice, Contractor shall have no further claims against the City under this Agreement. Upon termination of the Agreement under this section, Contractor shall submit to the City an invoice for work and services performed prior to the date of termination. Contractor may terminate this Agreement, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Contractor may determine.

4. COORDINATION OF WORK

4.1 Representative of Contractor. The following principal of Contractor is designated as being the principal and representative of Contractor authorized to act in its behalf and make all decisions with respect to the Services to be performed under this Agreement: Steve Burton, President of Ace Parking Management, Inc. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Contractor without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Contractor shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

4.3 Prohibition Against Assignments. The experience, knowledge, capability, expertise, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not assign full or partial performance of this Agreement, nor any monies due, voluntarily or by operation of law, without the prior written consent of City. Contractor shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Contractor is permitted to subcontract any part of this Agreement by City, Contractor shall be responsible to City

for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Contractor. City will deal directly with and will make all payments to Contractor. In addition, neither this Agreement nor any interest in this Agreement may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted in this Agreement shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor from any liability under this Agreement without the express written consent of City.

4.4 Independent Contractor. The legal relationship between the Parties is that of an independent contractor, and nothing shall be deemed to make Contractor a City employee.

A. During the performance of this Agreement, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act or represent themselves as City officers or employees. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including, but not limited to, social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venture or a member of any joint enterprise with Contractor.

B. Contractor shall not have any authority to bind City in any manner. This includes the power to incur any debt, obligation, or liability against City.

C. No City benefits shall be available to Contractor, its officers, employees, or agents in connection with any performance under this Agreement. Except for Contract fees paid to Contractor as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, or agents, for injury or sickness arising out of performing Services. If for any reason any court or governmental agency determines that the City has financial obligations, other than under Section 2 and Subsection 1.8 in this Agreement, of any nature relating to salary, taxes, or benefits of Contractor's officers, employees, servants, representatives, subcontractors, or agents, Contractor shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 Types of Insurance. Contractor shall procure and maintain, at its sole cost and expense, the insurance described below. The insurance shall be for the duration of this Agreement and includes any extensions, unless otherwise specified in this Agreement. The insurance shall be

procured in a form and content satisfactory to City. The insurance shall apply against claims which may arise from the Contractor's performance of Work under this Agreement, including Contractor's agents, representatives, or employees. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified in this Agreement. Except as otherwise authorized below for Contract liability (errors and omissions) insurance, all insurance provided under this Agreement shall be on an occurrence basis. The minimum amount of insurance required shall be as follows:

A. Errors and Omissions Insurance. Contractor shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form Contract liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Contractor shall either: (a) certify in writing to the City that Contractor is unaware of any Contract liability claims made against Contractor and is unaware of any facts which may lead to such a claim against Contractor; or (b) if Contractor does not provide the certification under (a), Contractor shall procure from the Contract liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services under this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Contractor shall obtain continuing insurance coverage for the prior acts or omissions of Contractor during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Manager.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Contractor has no employees, Contractor shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability

insurance written on a per-occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per-occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per-occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

5.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager or his/her designee prior to commencing any work or services under this Agreement. Contractor guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of ten thousand dollars (\$10,000), and the City Manager or his/her designee may require evidence of pending claims and claims history as well as evidence of Contractor's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of ten thousand dollars (\$10,000).

5.3 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Contractor under this Agreement:

- 5.3.1 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 No required insurance coverages may include any limiting endorsement which substantially impairs the coverages set forth in this Agreement (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in

writing.

- 5.3.5 Contractor agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided in this Agreement.
- 5.3.6 Contractor agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights in this or any other regard.
- 5.3.8 Contractor shall provide proof that policies of insurance required in this Agreement, expiring during the term of this Agreement, have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements, or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impair the provisions of this section.
- 5.3.11 Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

5.3.12 Contractor agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

5.4 Sufficiency of Insurers. Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

5.5 Verification of Coverage. Contractor shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Contractor's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. _____" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. _____" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days' written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Contractor's obligation to provide them.

6. INDEMNIFICATION AND REIMBURSEMENT

To the fullest extent permitted by law, Contractor shall defend (at Contractor's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Contractor's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Contractor, its officers, employees, representatives, and agents, that arise out of or relate to Contractor's performance under this Agreement. This indemnification clause excludes Claims arising from the sole negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability under this Agreement. Contractor's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7. REPORTS AND RECORDS

7.1 Accounting Records. Contractor shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Contractor shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement, or as the Contract Officer shall require. Contractor acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed under this Agreement. For this reason, Contractor agrees that Contractor shall promptly notify the Contract Officer the estimated increased or decreased cost if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the contemplated Work or Services.

7.3 Daily Reports. Contractor shall prepare a Daily Operating Report and Daily Revenue Report, including ticket reconciliation, for each twenty-four (24) hour period beginning with the time the daily inventory is completed or some other time as determined by the Contract Administrator. These reports shall be in a form provided by or approved by the Contract Administrator. The Contract Administrator may change or direct the Contractor to change the format of the reports at any time. A copy of each set of Daily Reports shall remain on-site or accessible within twenty-four (24) hours from a storage location within twenty (20) miles of the Airport, for a period of not less than three (3) years. The Daily Revenue Report shall reflect all financial transactions related to the parking operation for the specified period.

Contractor to provide Daily Revenue Report for the period shall include, at a minimum:

- A. Beginning inventory of vehicles in the public areas of Parking Facility, taken from the nightly license plate inventory, with separate counts for zones A, B, C, and D.
- B. Number of tickets issued by the ticket dispensers or any other source, based on the serial numbers of each sequence.
- C. Number of entries recorded by physical counters, if such counters are provided in the lanes.
- D. Number and extended value of tickets processed and collected, including an itemized record of all transactions that includes the date and time of entry, date and time of exit, duration of stay, amount of fee charged, parking location, and type of transaction.
- E. Number of retracted tickets, spoiled tickets, or tickets processed during equipment testing or voided for any other reason.
- F. Total number of entry and exit transactions reported by the computerized revenue control system.
- G. Number and discounted value of any discount or "no charge" validations.
- H. Number and value (if provided by the computerized revenue control system) of any non-revenue transactions.
- I. Number and unpaid amount of any Insufficient Funds transactions, under which customers did not have sufficient funds to pay the full parking fee due.
- J. Number and amount of credit card charges or any other approved form of payment other than cash and checks.
- K. Total amount of revenue reported by the computerized revenue control system.
- L. Reconciliation of total ticket values, revenue reported by the computerized revenue control system, credit card charges, and the amount of cash and check deposits.
- M. Attached copies of deposit slip(s) for parking revenues, including but not limited to permit sales and voided bank deposit slips.
- N. Attached copies of separate deposit slip(s) in the amount of any deposit made by Contractor in payment of shortages or deposit of overages.
- O. Amount and source of any other revenue received by Contractor or City, including payments against receivables, as substantiated by copies of deposit slips.
- P. Combined total Gross Revenue from all sources.
- Q. Combined reconciliation to actual deposits.
- R. Number of voided tickets including explanations.
- S. The total number of tickets accounted for.

T. Ending inventory of vehicles in the facility.

U. Reconciliation of beginning and ending car counts to the number of tickets issued and collected during the reporting day.

V. Summary totals to assist the City in auditing and posting information pertaining to daily revenue collections and other related information.

W. After the Daily Revenue Report has been prepared, verified and signed by the Parking Manager, a copy of the report, along with any tickets, receipts, journal tapes, copies of deposit forms, unused and spoiled tickets, shall be bundled, identified with the date of the report, and placed in a secure location, pending audit. The original copy of the Daily Revenue Report, including deposit slips, shall be placed in a separate envelope and prepared and delivered to Contract Administrator or his/her authorized representative(s) by 3 P.M. on the first business day following such report.

7.4 Monthly Reports. Contractor shall deliver to the Contract Administrator or his/her authorized representative(s), by the fifth (5th) calendar day of each month, a Monthly Report, in a format approved by the Contract Administrator, which shall summarize financial data by day for the month. The Monthly Report shall include reconciliation with the daily reports submitted previously and, at a minimum include:

- A. Daily car counts and license plate inventory totals by area.
- B. Tickets issued by day.
- C. Tickets collected by day.
- D. Tickets not accounted for by day.
- E. Tickets not accounted for during the full month.
- F. Revenue by day and by category.
- G. Total revenue for the month.
- H. Reconciliation of variances, if any, between total on monthly reports and totals of items on the daily reports submitted for that month.

7.5 Release of Documents. All reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Contractor in the performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization.

7.6 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Contractor shall provide City, or other agents of City, such access to Contractor's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Contractor's performance under this Agreement. Contractor shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

Within one hundred and twenty (120) days after the close of each Contract Year, Contractor shall provide City an audit report on all Gross Revenues from operations at the Airport. The audit report shall cover the preceding Contract Year. The audit report shall be prepared by an independent Certified Public Accountant, not a regular employee of Contractor, in accordance with Generally Accepted Accounting Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto as appropriate. The audit report shall include the following:

- A. Schedule of all revenues by category and month, and a corresponding schedule of all deposits made to City for these revenues.
- B. The audit report shall include an opinion on the schedule of all revenues by category and by month and the schedule of all deposits made to City for these revenues.
- C. The audit report shall include, but not necessarily be limited to, management fees, compensation paid by City, and payment received by Contractor under any insurance policies.

Delivery of an audit report containing a qualified opinion or an adverse opinion or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the amount of revenue deposits to City by Contractor during such Contract Year were less than the total due for the Contract Year, the Contractor shall pay the difference to City with the audit report.

7.7 Financial Liability. Contractor shall be responsible for any and all financial or other liability caused by Contractor's breach of Protected Information including, but not limited to, credit card and debit card information. For the purpose of this Section, "Protected Information" shall mean all data and information, in written or other tangible form, or in electronic or non-tangible form, whether or not designated as confidential, but treated as confidential by the City including, without limitation: PCI data, including all credit cards, debit card and account information protected under all related payment card industry standards. Such liability shall include all costs associated with the notification of affected parties, credit report analysis and monitoring, any associated attorney fees, and any applicable call center service and public relations expenses. Contractor shall comply with all applicable Federal or State privacy or data protection statutes, rules, or regulations governing Contractor's activities pursuant to this Agreement; provided that prior to giving notice under any applicable reporting requirement, Contractor shall first notify the City within twenty-four (24) hours of Contractor's discovery of data breach. In addition, Contractor shall also report to the City within twenty-four (24) hours of Contractor's discovery of any breaches of security or unauthorized access to the facility or equipment, whether or not the breach of security or unauthorized access rise to a reportable level under any applicable reporting requirement, and whether or not the breach resulted in the loss of protected information.

7.8 Collection and Handling. Contractor shall charge and collect from all users of the Parking Lot fees and charges established by the City, in accordance with the terms of this Agreement. All fees and charges collected by the Contractor, including over charges and cashier overages, are the property of the City. Contractor shall deposit all collected fees and charges into a bank account designated by the City at a frequency established in accordance with a schedule agreed to in advance. Contractor shall replace, at its own cost, any funds that are lost, stolen, or unaccounted for, including any undercharges, within two (2) business days that the funds are

discovered missing. Contractor shall reimburse the City for the full amount of any undercharges to parking customers for which the Contractor is responsible.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such County, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Default of Contractor. Contractor's failure to comply with any provision of this Agreement shall constitute a default.

A. If the City Manager, or his/her designee, determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Contractor in writing of such default. Contractor shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Contractor shall be liable for all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing shall limit City's right to terminate this Agreement without cause under Section 3.5.

B. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.3A, take over the work and prosecute the same to completion by contract or otherwise. The Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages). The City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Contractor shall not limit Contractor's liability for completion of the Services as provided in this Agreement.

8.4 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the

terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions.

8.5 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.6 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, remedy or recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.7 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses. These include but are not limited to reasonable attorney fees, expert Contractor fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. Contractor acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall Contractor enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. K Contractor warrants that Contractor has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenants Against Discrimination. In connection with its performance under this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. It is further agreed that with its performance under this Agreement, Contractor and their agents shall not discriminate against any customer, airport tenant, City employee, or those using the facilities, because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement. To the fullest extent permissible under law, and in lieu of any other warranty by City or Contractor against patent or copyright infringement, statutory or otherwise:

A. It is agreed that Contractor shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Contractor shall pay all costs and damages finally awarded in any such suit or claim, provided that Contractor is promptly notified in writing of the suit or claim and given authority, information and assistance at Contractor's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Contractor. However, Contractor will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Contractor when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Contractor shall have sole control of the defense of any such claim or suit and all negotiations for settlement in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Contractor's expense. Contractor shall not be obligated to indemnify City under any settlement that is made without Contractor's consent, which shall not be unreasonably withheld. If the use or sale of such item is enjoined as a result of the suit or claim, Contractor, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 Notice. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person shall be in writing. All notices shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission. All notices shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, and instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

City of Palm Springs
Attention: City Manager
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262
Telephone: (760) 323-8204

Airport: Airport Director
3400 E. Tahquitz Canyon Way
Palm Springs, California 92262

Telephone: (760) 318-3901

To Contractor:

Steve Burton, President
Ace Parking Management Inc.
645 Ash Street
San Diego, CA 92101
Telephone: (619) 233-6624
Facsimile: (619) 233-0741

10.3 Integrated Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter in this Agreement.

10.4 Amendment. No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

10.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.6 Third Party Beneficiary. Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

10.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.8. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

"CITY"
City of Palm Springs

Date: _____

By: _____
David H. Ready, Esq. Ph.D.
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Douglas C. Holland,
City Attorney

By: _____
James Thompson,
City Clerk

APPROVED BY CITY COUNCIL:

Date: _____ **Agreement No.** _____

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

CONTRACTOR NAME:

Check one Individual Partnership Corporation

Address

By _____
Signature (Notarized)

By _____
Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer
personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT "A"

SCOPE OF SERVICES

General Overview

Contractor must provide all personnel, personnel bonds, personnel uniforms, materials, equipment, radios, vehicles, supervision and other items necessary to:

1. Operate and manage Airport public parking lots.
2. Collect all parking lot fees and charges (including the secure processing of credit card and debit card charges) legally due, and provide bookkeeping, accounting, and audit services with respect thereto. Daily deposit of funds, with all necessary supporting documentation made directly to the City Finance Department.
3. Collect all baggage-cart machine fees and charges legally due. Operate equipment and accounting reports as requested, reporting any necessary equipment repairs to the Airport.
4. Contractor shall operate, service, maintain, and repair all parking lot equipment including parking lot revenue control and access equipment as part of the management fee.
5. Report and arrange for improperly parked or abandoned vehicles to be removed from the parking lots.
6. Perform nightly license plate inventory of all vehicles parked in parking lots. This information must be logged into a database that is accessible to Airport management.
7. Provide and/or arrange for basic vehicle emergency services (i.e. jump-starts, keys locked in vehicles, and towing).
8. Keep parking lots safe and secure, in a clean, litter-free condition.
9. Provide a designated number of traffic enforcement officers (see Exhibit "A-1") performing in an orderly, diplomatic, and courteous manner. Ensure the safe movement of vehicular and pedestrian traffic on the Airport roadways in front of the terminal and in the parking lots, and other areas as may be required.
10. Provide a designated number of taxi control officers to ensure the safe and efficient movement of commercial vehicles and taxi queuing (see Exhibit "A-1").
11. Assure adherence to airport parking and grounds transportation procedures/regulations. Observe and report any discrepancies.
12. Provide various daily and monthly reports, accounting records, and other statistical data requested by the City.
13. Perform Airport shuttle bus operations to and from the remote parking lot or designated location on the airport property during all periods that capacity in the parking lot exceeds ninety percent (90%), as part of the base management services.

14. Provide shuttle bus dispatching services when the overflow lot is operational.
15. Ensure that personnel utilized for each component of the Agreement receive the appropriate level of training prior to assignment so that they may exercise their duties in an exemplary manner. Maintain current personnel manual.
16. Implement a proposed Parking Facility Revenue Control System Investment consistent with each component of the Agreement as provided (Exhibit "A-2"). All equipment must be compliant with payment card industry (PCI) standards. All parking equipment will be a fully integrated system.

Facility Description, Reporting Requirements and Equipment

The automobile parking facilities to be managed and operated by Contractor consist of the following, including six (6) entry lanes, each with a ticket dispenser, and one (1) toll plaza with two (2) exit booths, one (1) express exit lane with one (1) additional express exit on booth #1, and one (1) pay-on-foot station located within the Terminal. It will be necessary to add revenue control equipment at the overflow parking entry prior to October 1, 2016. All equipment to be compliant with payment card industry (PCI) standards. These locations shall be referred to collectively as the "Airport Parking Facilities":

A. Public Parking Lot.

The public parking lot is located generally west of the Terminal, as shown on Exhibit "A-3," attached hereto and incorporated by reference herein. At the time of execution of this Agreement, said lot has parking capacity for approximately nine hundred and thirty six (936) vehicles in the parking area.

B. Public Overflow Parking Lot.

The overflow parking lot is located generally south of the Terminal, on Kirk Douglas Drive, as shown on Exhibit "A-3" of the RFP. At the time of execution of this Agreement, this lot has the capacity for approximately one thousand (1,000) vehicles.

C. ADA Parking.

There are currently thirty one (31) ADA parking spots located within the public parking lot. The spots are located nearest the passenger terminal.

D. Employee Parking Lot.

The Employee Parking Lot is managed and permitted by airport staff. The Contractor's employees will be issued permits to park their personal vehicles in this lot while on duty, currently there is no charge for the first permit to the employee. Lost permits are subject to replacement cost charges. No personal vehicles of the Contractor are to park in the public parking lots while on duty.

E. Future Parking Facilities.

City shall have the right, at any time during the term of this Agreement, including any extensions thereto, to improve, expand, replace, or modify any or all of the Airport Parking

Facilities, and/or any equipment or appurtenances thereto. City reserves the right to construct additional parking facilities to serve the Terminal. Upon thirty (30) days written notification by the City to the Contractor, any such modified, expanded, or additional parking facilities shall be included within the Airport Parking Facilities and shall be subject to this Agreement.

F. Baggage Cart Services.

Contractor will collect and deposit funds and operate all baggage-cart devices. There are currently two (2) devices. The Airport provides equipment maintenance of the current equipment.

G. Management.

Provide a highly qualified on-site manager. The contractor will provide an Assistant Manager during the absence or unavailability of the Parking Manager, to represent and act for Parking Manager with like authority. The Manager or Assistant Manager will be available seven (7) days a week. The Parking Manager shall not be concurrently assigned or employed in any capacity with the management or operation of any other automobile parking facility or enterprise whatsoever during the tenure of such Parking Manager at the Airport.

H. Traffic Enforcement Officer (TEO).

TEO's are responsible for compliance with Federal regulations, regarding vehicle and traffic standards. They provide customer service by answering passenger questions and summoning skycaps. They report unattended luggage and vehicles, issue citations and monitor for unauthorized commercial ground vehicle operators.

I. Taxi Starter.

Taxi Starters provide passenger assistance with forming an orderly queue line before being directed to the next available ride and insure adequate cabs are available for customer demand. Verify compliance with Public Utility Commission (PUC) and other local regulations. These include, but are not limited to, dress codes, waybills, Transportation Commercial Permit (TCP) numbers displayed properly, commercial vehicle license plate checks, and PSP issued transponders. The Taxi Starter is to check vehicle credentials and monitor for compliance.

J. Parking Attendants.

Contractor shall be responsible for hiring, training and supervising an adequate number of supervisory and operating personnel with appropriate skills to ensure full performance of Contractor's management and operation services.

K. Shuttle Service.

Shuttle service for holiday parking (Thanksgiving, Christmas, and New Year) should be considered as part of the base management fee, at such time as the public parking lot exceeds ninety percent (90%) capacity. Holiday shuttle service provides passenger pick-ups every ten (10) – fifteen (15) minutes. (For the 2014 holiday season, the Contractor provided service for a combined twenty-three (23) days, as part of the management fee.) Additional

shuttle services, as may be required from time to time, should be provided as a separate hourly charge and would be approved in addition to services provided in the base management fee. The management fee will consider a maximum of twenty-five (25) days of shuttle service annually, up to, but not to exceed twenty (20) hours per day. Additional shuttle hourly service charge to be approved separately (Exhibit "A-3").

L. Hours of Operation.

Contractor shall keep the Airport Parking Facilities open for use by the public and by authorized employees a minimum of ninety (90) minutes prior to the first commercial aircraft departure and a minimum of one (1) hour after the last commercial aircraft arrival, to include delayed flights. In the event of irregular operations, the airport control center will notify the parking attendant with the required schedule to operate the exit booth. This will include seven (7) days a week, including all weekends and holidays.

M. Supervision of Vehicular Movement and Parking.

Contractor shall maintain adequate supervision and control over vehicular entrances, exits and movement lanes so as to maintain at all times the safe, orderly, efficient and timely flow of traffic through the Airport Parking Facilities.

1. The scope of this section particularly refers to the requirement for Contractor to staff and operate an adequate number of additional exit lanes to accommodate varying volumes of exit traffic, without unreasonable delays. Unreasonable delays are considered to be any delay in excess of six (6) minutes.

2. Contractor shall maintain on file with Contract Administrator a current written schedule showing the daily hours of operation of each exit lane. Contract Administrator may require an expansion or reduction to the schedule as appropriate to accommodate exiting vehicle volumes and patterns.

N. Daily Inspection of Facilities.

Throughout the term of this Agreement, Contractor shall, on a daily basis, conduct a thorough and detailed inspection of Airport Parking Facilities, to determine if any unclean or potentially hazardous condition to the public exists. The results of each such inspection shall be recorded in writing upon a report form and submitted during the same business day.

O. Capital Investment.

Contractor shall be responsible for all capital investment to upgrade the existing revenue control equipment and add all equipment necessary to accommodate a fully functional system that will be ninety nine percent (99%) reliable, accurate and operational during all weather conditions (e.g., rain, wind, dust, heat, etc.) throughout the term of this Agreement. The revenue control equipment upgrades shall be completed no later than July 1, 2016. The Contractor's capital investment shall also include any vehicles and equipment that will be necessary to perform the day-to-day functions for the services required. All parking operations equipment, services and supplies will be provided by Contractor.

P. Equipment Maintenance.

Contractor shall have responsibility for maintaining and operating all parking equipment and vehicles necessary to meet the project scope requirements. Contractor shall be responsible for all revenue control equipment maintenance and repair upon the date of contract commencement. Contractor shall neither have nor allow access to parking lot transaction counting devices associated with exit gates, except in the presence of the City authorized representative. Additionally, Contractor's personnel shall witness all access to such parking lot transaction counting devices.

Contractor shall notify City when maintenance is needed on any City-owned equipment. Contractor shall provide City with access to such devices, upon request. Contractor shall give the Contract Administrator immediate oral notice of any malfunction or breakdown of any parking lot equipment supplying audit data or affecting parking lot ingress or egress, and shall give the Contract Administrator notice of the date and time such malfunction or breakdown is corrected and repaired. Contractor shall transmit written confirmation on all such information to the Contract Administrator, within twenty-four (24) hours.

Q. Tickets.

Contractor shall provide all tickets necessary for use in the Parking Lots that are subject to this Agreement and shall issue, collect and retain such tickets in accordance with terms of this Agreement. Such tickets shall be sequentially pre-numbered, accurately dated, and accurately time-stamped as to the time each vehicle enters and exits such parking lot. Tickets issued for use shall be collected at the time of vehicle exiting the public parking lots.

On-site Manager: Contractor shall provide an On-site Manager for day-to-day operations and who will also act as the local point of contact. Manager will provide reports as needed, respond to complaints, training needs, will track working hours, and supervise the contract personnel.

City's Rights: City reserves the right to establish, modify, add or delete hours of management. City further reserves the right to approve or deny Contractor's personnel. The City retains the right to review and direct modification of any Contract employee training program. The City's rights under this provision may be exercised by the City Manager or the City Manager's designee.

Contractor Employee Uniforms:

- All personnel shall wear uniforms while on duty.
- Contractor shall be responsible for providing personnel with proper, complete, and acceptable uniforms.
- Uniform shall include a name badge or tag. Uniforms and identifying badges shall be distinct enough from those used by Peace Officers or other sworn personnel so that the general public will not mistake traffic enforcement personnel (TEO) for Peace Officers.
- Contractor shall not issue any uniform or identifying badge without the prior written approval by the City.
- Contract employees will not be allowed to work unless attired in complete approved uniform.
- Contractor shall provide uniforms for each contract employee at no expense to the employee, except in cases of negligence or abuse of the uniform by the contract employee.

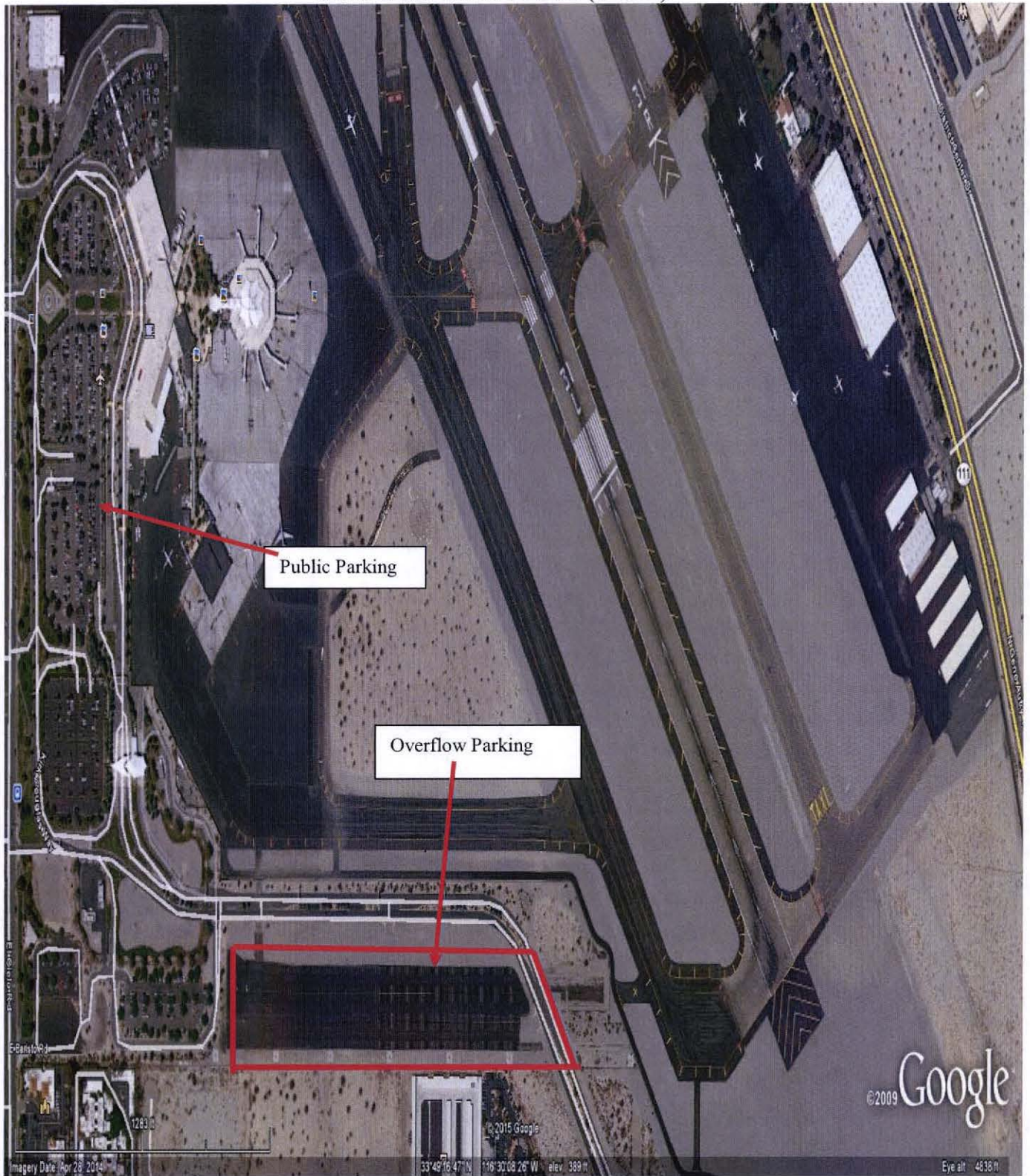
EXHIBIT "A-1"

TEO AND TAXI STARTER SCHEDULE
PARKING MANAGEMENT SCHEDULE

TEO & Taxi Starter																								
Off - Season																								
June 1 - Sept 30 (4 mo)																								
	5am	6am	7am	8am	9am	10am	11am	12am	1pm	2pm	3pm	4pm	5pm	6pm	7pm	8pm	9pm	10pm	11pm	12pm	1am			
Officer 1	5- 1:30																							
Officer 2											1:30 - (5.5 hours) combined hours with taxi starter													
Officer 3					8 - 3:00																			
Officer 4											3- 11:00													
Taxi Starter											Daily coverage (13.5 hours)										combined hours - 11:30		294 hours weekly	
Peak - Season																								
Oct 1 - May 31st (18 weeks)																								
	5am	6am	7am	8am	9am	10am	11am	12am	1pm	2pm	3pm	4pm	5pm	6pm	7pm	8pm	9pm	10pm	11pm	12pm	1am			
Officer 1	5- 1:30																							
Officer 2											2- 10:30													
Officer 3					9 - 5:30																			
Officer 4											3:30 - 12:00													
Officer 5				7 - 3:30																				
Taxi Starter					9:30 - 11:30										14 hours								420 hours 34 week	

Parking & Management			
Annual			
Parking	24 hours per day - no change		168 hr. per week
A	5- 1:30		
B	9 - 4:30		
C	3pm - 11:30		
Manager			40 hours week
Assist Mgr			40 hours week
Hours during Off-Season	542 x 18 weeks =	9,756	
Hours during Season	668 x 34 weeks =	22,712	
	Total annual	32,468 hours	

EXHIBIT "A-3"
AIRPORT SITE PLAN (1 of 2)



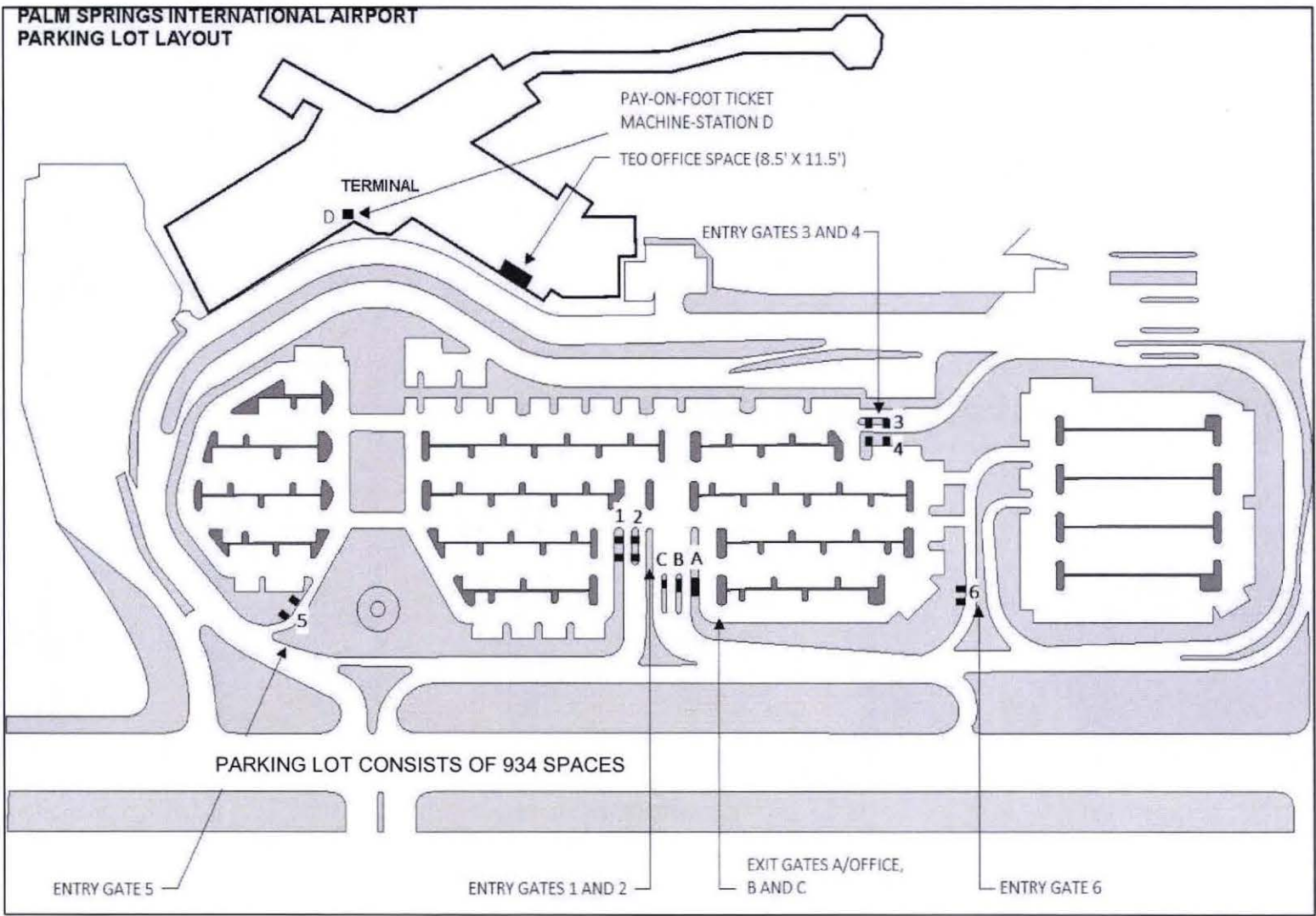


EXHIBIT "A-3"
 Airport Site Plan (2 of 2)

EXHIBIT "B"

(Copy of Contractor's Proposal in response to the RFP to be inserted here following award)

EXHIBIT "C"

**AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) PROGRAM**

In accordance with the Code of Federal Regulations, 49 CFR parts 23, the City will carry out applicable federal requirements in the award and administration of any contract awarded hereunder. The City's current 2015 through 2017 goal for non-car rental concessions contracts is 1.2%. Non-DBE proposers who are unable to achieve that goal must submit documentation of the Good Faith Effort that was used to include DBE participation in their proposal in efforts to achieve the goal. The Concession operator shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. DBEs will be afforded full opportunity to submit responses to this RFP.

The Contractor shall keep such records as are necessary to show compliance with the City's ACDBE Program and, on the request of the City, shall make such records available on a quarterly basis for review by the City.

EXHIBIT "D"
COMPENSATION
TOTAL MANAGEMENT FEE

COMPENSATION

HOURLY RATES:

Shuttle Operation, Hourly Charge\$ 35.54/hour.

Hourly Charge for TEO, for special events.....\$ 21.25/hour.

To be approved by the City when applicable in addition to the total management fee. (This would be for special events or service provided in addition to charges as listed in the Scope of Services, item L).

TOTAL PROPOSED ANNUAL MANAGEMENT FEE

Inclusive of ALL labor, payroll, materials, equipment, operating expenses and facility investment.

Year 1 (February 1, 2016 – January 31, 2017)	\$ 660,080.00
Year 2 (February 1, 2017 – January 31, 2018)	\$ 662,482.00
Year 3 (February 1, 2018 – January 31, 2019)	\$ 665,411.00
Year 4 (February 1, 2019 – January 31, 2020)	\$ 694,369.00
Year 5 (February 1, 2020 – January 31, 2021)	\$ 715,857.00

Grand Total Management Fee for five (5) Years \$ 3,398,199.00

Three million three hundred ninety eight thousand one hundred ninety nine dollars

(write the Grand Total amount in words on line above)

NAME OF FIRM: Acc Parking Management, Inc.

AUTHORIZED SIGNATURE: 

PRINTED NAME : Steve Burton

TITLE : President

EXHIBIT "E"

FEDERAL AVIATION ADMINISTRATION REQUIRED PROVISIONS

1. Licensee, as a part of the consideration for this License, covenants and agrees "as a covenant running with its interest in property" that in the event facilities are constructed, maintained, or otherwise operated on the Property of the License Areas for a purpose for which a Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations DOT, Part 23, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as such regulations may be amended from time to time.
2. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23.
3. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and causes those businesses to similarly include the statements in further agreements.
4. In the event of a breach of the covenants specified in Subsection 10.1 and 10.2 of this License, City shall have the right to terminate the License and to reenter and repossess the License Areas and the facilities thereon and hold the same as if said License had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 23 are followed and completed, including the expiration of any appeal rights.
5. Licensee shall furnish its services on a fair, equal, and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable, and not unjustly discriminatory prices for its services; provided that Licensee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchases or other rational, reasonable basis. Non-compliance with this provision shall constitute a material breach of this License and in the event of such non-compliance, City shall have the right to terminate this License and any interest in property created without liability or at the election of the City or the United States either or both Governments shall have the right to judicially enforce this provision.
6. Licensee agrees that it shall insert the above five (5) provisions in any agreement or contract by which Licensee grants a right or privilege to any person partnership, or corporation to render services to the public on the Lease Areas pursuant to this License. Nothing in this

provision shall be construed as waiving any obligations or requirements of the Licensee pursuant to Subsection 4.3 and 9.3 of this License or abrogate the rights of the City pursuant to such subsection.

7. The License shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation, or maintenance of the Property.
8. This License, and all provisions hereof, shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Property or the exclusive or non-exclusive use of the Property by the United States during a time of war or national emergency.