

**CITY OF SAN FRANCISCO UPTOWN
PARKING CORPORATION**

**Request for Proposals for
Parking Facility Operation**

**SUTTER STOCKTON GARAGE
444 STOCKTON STREET
SAN FRANCISCO, CA 94108**

**UNION SQUARE GARAGE
333 POST STREET
SAN FRANCISCO, CA 94108**

MARCH __, 2008

**City of San Francisco
Uptown Parking Corporation**

Request for Proposals for Parking Facility Operation

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SUTTER STOCKTON and UNION SQUARE GARAGES

REQUEST FOR PROPOSALS FOR PARKING FACILITIES OPERATOR

I. INTRODUCTION

The City of San Francisco Uptown Parking Corporation (the “Corporation”) is pleased to issue this Request for Proposals (“RFP”) for the operation and management of the **Sutter Stockton and Union Square Garages** located at 444 Stockton Street and 333 Post Street, respectively, in San Francisco (the “Garages”).

The Corporation is a non-profit public benefit corporation, formed to assist the City and County of San Francisco (the “City”) and the Parking Authority of the City and County of San Francisco (“Parking Authority”) in improving, maintaining and operating the Garages, which it leases from the City. The Leases require that the City approve the parking operator and the terms of the operating agreements for the Garages.

The Garages are located in the center of one of the country’s busiest downtown areas, and serve customers and employees of major businesses, department stores, hotels, and restaurants. The Garages accommodate thousands of shoppers, tourists, and business people every day. The selected Garage Operator must be able to demonstrate experience and skill in the maintenance and growth of important, active and successful parking facilities, and must also be able to work with the community and businesses the Garages serve.

The Sutter Stockton Garage is a 12 level, 1,865-space public parking structure with separate entrances/exits at Bush and Stockton Streets, accommodating approximately 1.3 million transient parkers annually and approximately 268 monthly customers, generating over \$12,700,000 in gross revenues annually. The Sutter Stockton Garage has eleven (11) retail tenants on the ground floor, but the management of the rental operations will not fall within the scope of the Garage Operator’s responsibilities.

The Union Square Garage is a four level, 985 space underground public parking garage located directly under Union Square, with entrances and exits on Post and Geary Streets, accommodating approximately 865,000 transient parkers annually and approximately 115 monthly patrons and generating over \$8,400,000 in gross revenues annually.

The Corporation is a legal entity separate from the City. However, the Corporation desires to conform its contracting policies to certain City contracting policies and requirements. These policies and requirements are described in this RFP and in the Form Agreement attached as Attachment F to this RFP.

II. SCOPE OF WORK

The successful Proposer (the "Operator") will be responsible for all aspects of the day-to-day operations of the Garages, which must be performed in a first class and professional manner using best practices. The form of the operating agreement (the “Agreement”) contains a detailed description of the responsibilities of the Operator and other applicable terms and conditions. The selected Operator will be required to assume employment of all current operating employees of the Garages and all obligations pursuant to San Francisco Administrative Code Section 21.25-

2. Upon the effective date of the Agreement, all employees of the current operators will become permanent employees of the new Operator pursuant to Administrative Code Section 21-25.2.

The selected Operator will be paid a fixed monthly management fee of ten thousand dollars (\$10,000), adjusted annually based on the Bay Area Consumer Price Index, as well as a performance-based fee which will be negotiated with the winning proposer and which will incorporate three performance criteria: customer service; facility maintenance and conditions; and net revenues. The selected Operator will also be entitled to reimbursement of operating expenses properly incurred and paid by Operator in the performance of Operator's duties and as specified in the annual budget prepared by the Operator and approved by the Corporation in accordance with the terms of the Agreement.

The term of the Agreement will be four (4) years, with a maximum of two one-year extensions at the option of the Corporation.

Proposers should carefully review all of the terms of the Agreement before preparing their proposals.

III. PRE-SUBMISSION REQUIREMENTS AND SCHEDULE FOR PROPOSALS

A. Document Fee and Receipt of RFP Materials

On or before 5:00 p.m. on [insert date, 2008] persons wishing to obtain a copy of the RFP and proposal package must pay a nonrefundable document fee in the amount of One Hundred Dollars (\$100) in the form of a cashier's check made payable to the order of City of San Francisco Uptown Parking Corporation, with Memo to reference Sutter Stockton/Union Square Garages RFP. Upon receipt of such cashier's check, the Corporation will promptly arrange for such Proposer to pick up one (1) copy of the complete proposal package.

B. Pre-Proposal Conference

Interested parties are strongly encouraged to attend a pre-proposal conference on _____, **2008**, at **__:00 p.m.** to be held at _____, San Francisco. All questions will be addressed at this conference and any available new information will be provided at that time. Due to the limited availability of seating, Proposers must limit attendance to no more than two representatives, whose names, titles and contact information must be provided to the Corporation not later than **:00 p.m. on _____, 2008.**

The Corporation will keep a record of all parties who request and receive copies of this RFP. Any requests for information concerning this RFP submitted before or after the pre-proposal conference must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of this RFP from the Corporation. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP. **No questions or requests for interpretation of the RFP and associated documents will be accepted after 5:00 p.m. on _____, 2008.**

C. Experience, Financial and Taxpayer Responsibility of Proposer Questionnaire

Each Proposer must submit to the Corporation, on or before 5:00 PM on _____, 2008, the Experience, Financial and Taxpayer Responsibility of Proposer Questionnaire (Attachment A),

together with a statement from a financial institution verifying the Proposer's ability to provide or obtain one million dollars (\$1,000,000) either in liquid assets, an irrevocable letter of credit, a line of credit or a qualified loan commitment or demonstrate a working capital ratio greater than 2.5. This financial requirement assures the Corporation that the Proposer, if selected, will have sufficient funds to pay operating costs prior to request for reimbursements and is otherwise credit-worthy.

The Proposer must also provide reviewed financial statements for the previous three years, prepared by a certified public accountant in accordance to generally accepted auditing standards beginning with the most recent year or three years of notarized Federal Tax Statements.

The questionnaire is intended to evaluate whether the Proposer meets all of the minimum qualifications set forth in the RFP. Upon receipt of the questionnaire, the Corporation may require confirmation from financial institutions and the San Francisco Tax Collector. Such information will be used to determine whether proposers are eligible for further consideration. If additional information is required, Proposers will be expected to assist in securing the information on a timely basis.

D. Deadline for Submission of Proposals

Proposals, together with the bid security described below, must be received by 5:00 p.m. on _____, 2008, delivered in person or mailed to:

**City of San Francisco Uptown Parking Corporation
Sutter-Stockton Garage
444 Sutter Street
San Francisco, California 94108
Attn: Anson Lee, Corporate Manager**

Each proposer must submit ten (10) copies of its proposal in a sealed envelope clearly marked **Professional Parking Management – Sutter Stockton and Union Square Garages**. Proposals submitted by fax will **not** be accepted. Late submissions will not be considered. Proposals must be received by the due date and time. Postmarks will not be considered to determine whether a proposal was timely.

E. Schedule

The anticipated schedule for selecting an operator under this RFP is shown below:

Schedule	Date
Pre-Proposal Conference	TBD, 2008
Experience, Financial & Taxpayer Responsibility Questionnaire Due	TBD, 2008
Deadline for Submission of Written Questions or Requests for Clarification	TBD, 2008
Proposals and Bid Security Due	TBD, 2008
Selection Committee Review and Approval	TBD, 2008
SFMTA Review and Potential Approval	TBD, 2008
Commencement of Contract	TBD, 2008

IV. MINIMUM QUALIFICATIONS

To be considered for selection, a corporation or other legal entity or its managing members (a “Proposer”) must meet or exceed each of the following minimum qualifications (the “Minimum Qualifications”). Proposals and Proposers that do not meet the Minimum Qualifications will not be considered. The Corporation may, however, waive any inconsistencies or deficiencies which the Corporation deems, in its sole discretion, to be minor or technical.

A. Experience

1. The Proposer must currently be managing a parking garage that it has managed for a continuous period of three (3) years prior to the date of this RFP.

1. The Proposer must have a minimum of three (3) years of continuous, first-hand experience in all aspects of the operation of facilities similar in complexity and size to the Garages which, at all times during such three (3) year period, had:

- a. A parking space capacity of at least 900 spaces distributed in a multi-level structure;
- b. Annual Net Revenues (after parking tax, if any) of a least \$3,000,000; and
- c. An annual operating budget of at least \$1,500,000.

2. During said three (3) year period, the Proposer must have had (i) experience in the use of automated pay station and automated parking access and revenue control equipment and software, including sophisticated spreadsheet and information retrieval and organization software including but not limited to Microsoft Excel and other financial reporting software, and Power Point, and (ii) experience in managing at least ten (10) full-time operational employees at a garage that was staffed and opened to the public at a minimum of 18-hours per day, preferably on a 24-hour basis. The Proposer’s experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels will be considered favorably.

B. General

1. The Corporation will **not** accept a proposal if:

- a. any necessary proposal document is incomplete, misleading or missing
- b. any RFP forms are left blank, incomplete, or changed in any substantive way
- c. the Proposer does not meet the minimum qualifications set forth in this section and/or failed to submit the information required by Section III.C.
- d. the Proposer does not provide additional/clarification information as requested by the Corporation by the specified date
- e. the Proposer is not current in payment of applicable fee and taxes

2. The Proposer must prepare the proposal and submit its contents in accordance with the provisions set forth in this RFP.

3. Any attempt to influence any member of the selection committee, or any officer or employee of the Corporation, SFMTA, or the Parking Authority in the selection of a vendor to provide the services described herein outside of the formal selection process will disqualify a Proposer without further consideration.

C. Financial Requirements

The Proposer must have satisfied the financial requirements set forth above in connection with pre-proposal questionnaire.

D. San Francisco Business Tax Certificate

The Proposer must have a current San Francisco Business Tax Certificate prior to the Proposal and Bid Security due date.

E. Parking Rate Information

Pursuant to the San Francisco Charter, the Board of Directors of the SFMTA has the ultimate authority to set and to change parking rates for the Garages. Upon approval of any new parking rates, the Manager will be responsible for changing all rate signage, making software updates and charging each patron the appropriate parking fees. From time to time the Corporation may request Operator to conduct a parking rate survey and to make recommendations to the Corporation on the proposed rate adjustments.

V. SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA

Submissions in response to this Request for Proposals must submit the following information, in the order specified below:

A. LETTER OF INTRODUCTION AND EXECUTIVE SUMMARY (Required, but not scored)

Proposals must include a Letter of Introduction describing the proposer, how long it has been in business, its ownership structure, including the name(s) of owners, and its ability to provide the services in the RFP. The summary must be signed by and contain the name, address and phone number of the persons authorized by the proposer to obligate the proposer to perform the commitments contained in the proposal and to communicate with the Corporation in connection with this Request for Proposals. Submission of the letter will constitute a representation by the proposer that the proposer is willing, able and authorized to perform the commitments contained in its proposal.

B. EVALUATION CRITERIA

1. NEGOTIATED FEE CRITERIA (20 Points)

In addition to the monthly management fee, the selected Operator will receive a performance based fee which will be negotiated with the winning proposer and which will incorporate three performance criteria: customer service; facility maintenance and condition; and net revenues. Proposers must submit the criteria they wish to be included for the three performance areas. The

proposals will be evaluated based on:

- Comprehensiveness of the criteria;
- Whether or not the criteria truly reflect customer service, facility maintenance and condition and net revenues; and
- Measurability of the criteria.

The Corporation reserves the right to use these criteria, some of them or none of them during the negotiations

2. EXPERIENCE AND QUALIFICATIONS – (60 Points)

- a. The description of the Proposer's experience and qualifications must include the Proposer's experience in the off-street parking industry and operation of parking facilities comparable to the Sutter Stockton and/or the Union Square Garages within the past three (3) years, including any municipal contracts and central pay-on-foot equipment. The description should include staffing requirements, annual gross revenues, annual budget, successful programs that the Proposer implemented, new business that the Proposer attracted to the garage(s) it manages, and a summary of the scope of responsibilities. This section should also refer to any objective evidence of the quality of the Proposer's performance with respect to the facility, such as payment of incentive fees, exercise of renewal options, etc. The Proposer will be scored on experience in the Garage parking field, and specifically in operations with similar financing, ownership and operational requirements.

Proposers must describe their experience with the use of automated pay station and automated parking access and revenue control equipment and software, including sophisticated spreadsheet and information retrieval and organization software including but not limited to Microsoft Excel and other financial reporting software, Power Point, and any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels.

- b. This section should also include the qualifications of each key person outside of the direct Garage staff. Brief resumes may be included for each key person and the role each will play in the operations of the Garages, and a description of how each key person can enhance services or revenues at the Garages and how each key person will support and complement the current Garage staff. Key persons shall be available for meetings within five (5) days from notice of meeting.
- c. Proposer must be able to provide verifiable references from owners of the parking facilities that meet the requirements set forth above in Paragraphs A and B of Section IV -Minimum Qualifications (preferably other municipal or public benefit corporations).
(4 page maximum)

3. MANAGEMENT APPROACH/OPERATIONAL PLAN (40 Points)

Proposals must contain a narrative description of the services and activities to be provided to the Corporation, including but not limited to cash handling procedures, daily ticket auditing procedures, customer service assurance, employee training, and company policies at each Garage. Proposals must include an implementation plan for said services and activities designed to optimize the overall Garage performance, service and revenues. The selected Operator will be subject to employee retention requirements pursuant to law. Each proposer must state how it would staff the Garages given those restrictions, and include written assurance that Garage personnel will not be transferred to locations other than the Garages without the Corporate Manager's prior approval. [For information on Employee Retention requirements, see San Francisco Administrative Code Section 21.25-2, attached as Appendix I]. Proposers shall also explain how the Proposer will provide adequate coverage despite absenteeism, vacations, leaves or turnover of employees, as well as additional staff needed for special circumstances and the holiday shopping season. Each proposer must describe how it will support its on-site managers and assure the successful implementation of its proposal. Proposers must describe the authority the on-site managers will have as to vendor selection, shift scheduling, employee disciplinary actions, marketing, budgets, labor agreement issues, operational changes, compiling and safe keeping of records. Proposals may include a proposed valet-assisted operation at the Garages and address how that operation will best serve transient, monthly and high occupancy users. Proposers must attach their standard operating practices including hiring and training policies and procedures. **(4 page maximum, excluding attached procedures)**

4. FINANCIAL STABILITY – (Pass/Fail)

Each Proposer must provide proof of financial responsibility as described in Section III (C) of this RFP.

Proposer must also submit a signed letter from an insurance agent and/or broker stating that such broker has reviewed the insurance and bond requirements contained in the Agreement, and that the Proposer will be able to obtain and maintain the insurance and bonding required under the Agreement.

The Corporation will submit the above-described information to its outside auditor, who will provide a recommendation based on such information as to whether the Proposer meets the requisite financial stability required to be awarded the Agreement.

5. BUDGET (20 Points)

Provide a pro forma annual budget for each Garage that includes all projected costs and expenses in the format attached to the form Agreement as Appendix F.¹ The proposed budget must provide a projected twelve-month profit and

¹ Budgets submitted in response to the above question are intended only to demonstrate the proposer's

loss statement with detailed assumptions in all revenue and expense categories and with annual increases indicated and justified. Include a statement describing how Proposer would manage expenses without a negative impact on customer service and facility condition. The proposal must also include a 5-year capital improvement budget for each Garage listing each capital project, the reason for its inclusion, the impact of not addressing this item and the estimated cost and timeline for the completion of each capital project.

Proposers must describe two cost cutting programs that proposer implemented at other parking facilities that did not negatively impact services and facility condition, and describe the resulting cost savings. Proposers must also describe two of the largest capital improvement projects managed and completed at other parking facilities, the timeline, the budget and the process used to complete the project.

The Corporation will evaluate proposers based on the pro forma operating and capital budgets and cost containment measures included in their proposals. While the Corporation desires to keep costs to a minimum, merely speculative statements of lower costs will be disregarded if the basis for the lower cost is not clearly indicated and justified. The proposal should evidence an understanding of potential costs and revenues of the Garages, and their impact on services and facility condition. Emphasis will be placed on the Proposer's suggested means of cutting costs and completing capital projects, and past examples of these functions.

6. MAINTENANCE PLAN – (20 Points Maximum)

Janitorial services at the Garages are currently contracted out to a professional janitorial vendor. This should not be considered as the only method of maintenance means available. Alternative and unique solutions are welcome provided that they are thoroughly explained and their implementation meets the needs set forth by the Corporation.

Each Proposer must provide a detailed Maintenance Plan that describes how the Proposer will monitor, inspect, maintain and clean the Garages, paying careful attention to Appendix D of the Agreement and any additional requirements as provided by the Corporation pursuant to the Agreement. Maintenance equipment recommendations and requirements should also be provided. In addition to its other maintenance duties, the Manager will be responsible for scheduling special cleanings when necessary and for overseeing and giving appropriate instruction to any janitorial service companies. Plans to minimize maintenance and major capital expenses while balancing customer service and facility condition should also be included in the proposal.

Each Proposer's Maintenance Plan will be evaluated based upon its overall strength, coherence, and probable success in maintaining first-class, clean, well-maintained and fully operational Garages at the lowest possible cost. The Maintenance Plan should also demonstrate knowledge of and

knowledge and ability to present and formulate a working operational budget, and will not necessarily be accepted by the Corporation as the actual budget if the proposer is selected as the Manager.

conformance to the Corporation's maintenance expectations, as set forth in the Agreement. Finally, the Maintenance Plan will be evaluated based upon how well it satisfies the needs of the Garages. **(3 page maximum)**

7. MARKETING PLAN – (20 Points Maximum)

Each proposal must include a detailed marketing plan for the Garages describing how the Proposer would enhance each Garage's revenues, public image, advertising, outreach, and area merchant coordination. The target markets for the Garages must be addressed in the marketing plan, as well as plans for increasing Garage patronage. Proposers should also describe similar marketing strategies by marketing segments which have been successfully employed by the Proposer at comparable facilities. The Corporation wishes to explore all marketing ideas, including courtesies or amenities for its monthly and daily customers. Accordingly, the marketing plan should demonstrate an understanding of the marketing segments, including varied businesses (including retailers, restaurants and hotels) and residential communities' needs in the areas surrounding the Garages. The Proposer's awareness of the communities the Garages serve, the needs of the businesses and residents, and plans to successfully market to them and meet their needs should also be included in each Proposer's marketing plan.

The Sutter Stockton Garage is underutilized in the evenings and Sundays. The Garage Marketing Plan should also address how Proposer plans to increase patronage during these under-utilized hours (be as specific as possible), and include projected increases in vehicles and revenues.

The Marketing Plan will be evaluated based on how well it will promote the Garages, increase revenues, and respond to the needs of the Union Square, Financial District, and Downtown communities in a cost-effective manner. Creativity and innovation will be considered favorably, as will past examples of the Proposer's marketing successes. **(3 page maximum)**

8. SECURITY AND SAFETY PLAN – (20 Points Maximum)

Proposals must include a detailed Security and Safety Plan for maintaining both the security and safety of the customers and the assets, including the integrity of cash handling and ticket auditing procedures. Proposals must address equipment and other technical recommendations or requirements, staffing and scheduling needs, emergency and crisis handling procedures, surveillance methods and surveillance equipment as well as a disaster planning procedure. When preparing the Security and Safety Plan, Proposers must describe how management and supervisory staff will monitor and inspect the Garages to assure the security and safety of garage property and revenues and customer safety. The proposal should describe how security can be improved, with an emphasis on customer safety, employee safety and reducing break-ins of vehicles. Proposals must include contingency plans and staff for security matters including civil disobedience, riots, and response to the effects of acts of terrorism. The Proposer must submit a recommended Emergency Plan and a Disaster Recovery Plan and should also describe the specific training the proposed security company gives its employees regarding response to civil disobedience, riots, and the effects of acts of terrorism.

(4 page maximum)

The Security Plan will be evaluated in terms of the safety of customers and the integrity of cash handling procedures. Scoring will include considerations of the Proposer's ingenuity and originality in developing methods that will increase overall security and safety at the lowest possible cost without compromising best practices. The Security and Safety Plan should also demonstrate an acute understanding of the needs of customers and the Garages, as well as flexibility in responding to new and unexpected situations if and when they arise.

9. BID SECURITY (No points awarded, but failure to include will result in rejection of RFP)

Proposers must include with their proposal a bid security of Ten Thousand Dollars (\$10,000), in the form of a certified or cashier's check payable to the City of San Francisco Uptown Parking Corporation, or a bid bond naming the City of San Francisco Uptown Parking Corporation as beneficiary. Promptly after the rejection of any proposal, the Corporation will refund to the proposer the bid security, without interest. The bid security of the selected proposer will be retained by the Corporation until the Agreement has been approved by all necessary parties and executed by the proposer. Upon satisfaction of those requirements, the bid security will be held as part of the security deposit per Section 11.3 of the Agreement. Furthermore, immediately upon commencement of the Agreement, the Manager must provide an additional Ninety Thousand Dollars (\$90,000) in the form of a certified or cashier's check payable to the City of San Francisco Uptown Parking Corporation, security deposit in accordance with Section 11.3 of the Agreement.

If the selected Proposer fails to execute the Agreement within fifteen (15) days after receipt of notice from the Corporation, the proposal and its acceptance may be declared null and void by the Corporation and the bid security may be retained as liquidated damages to compensate the Corporation for its time and effort. By submitting a proposal, each Proposer acknowledges and agrees that the Corporation's damages would be difficult to determine, and this liquidated damages amount is not a penalty but is reasonable compensation based upon the facts and circumstances known to the Proposer at the time of its submittal.

C. NON-DISCRIMINATION STATEMENT (No points awarded, but failure to include will result in rejection of proposal)

Each Proposer must include a statement in its proposal that should it be awarded the operating agreement for the Sutter-Stockton and Union Square Garages, the Proposer will not discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Corporation or City employee working with, or applicant for employment with Operator, in any or Operator's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Operator.

The selected Proposer will be required to comply fully with and be bound by all of the provisions that apply to the Agreement under Chapters 12B and 12C of the Administrative Code, including but not limited to the remedies provided in such Chapters, except that said remedies will inure to the Corporation and the City. A penalty of \$50 for each person for each calendar day during which the Operator discriminated against any person in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

D. ATTESTATION STATEMENTS AND CERTIFICATIONS

The **proposer and all subcontractors named in a proposal** must individually sign the Attestation Statement and Certification included herein as Attachments **D and E**. Any proposal that does not include the executed Attestation Statement and Certification as required by the RFP **will be deemed non-responsive and will not be scored**. Any proposer who violates representations made in the Attestation Statement and Certification, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process for this contract.

E. DISCLOSURE OF PARKING-RELATED BUSINESSES

Each proposer must include a statement in its proposal that discloses all businesses, including but not limited to parking garages, parking lots and valet parking services, located or operating in the City in which the proposer either has an interest or proposes to have an interest. This statement shall also explain the nature and extent of any such interests listed in Appendix I. For purposes of this requirement, a reportable interest shall be any ownership interest of five percent or greater.

VI. EVALUATION, SCORING, AND CONTRACT AWARD

The Corporation intends to award this contract to the Proposer that it believes will provide the best, most professional overall parking management services at the most competitive cost. The Corporation reserves the right to accept other than the lowest priced offer and to reject any proposals that are not deemed responsive and/or responsible. The Corporation’s selection of a new Operator will be subject to the approval of the SFMTA. The Corporation reserves the right to refuse and reject any and all proposals.

A. Selection Committee

The proposals will be evaluated by a selection committee (the “Committee”) appointed by the Board of Directors of the Corporation.

B. Scoring

The Committee will score the proposals according to the evaluation criteria set forth in Section IV above based on the following:

CRITERION	MAXIMUM POINTS
Negotiated Fee Criteria	20 Points
Experience and Qualification Statement	60 Points
Management Approach / Operational Plan	40 Points
Budget	20 Points

Maintenance Plan	20 Points
Marketing Plan	20 Points
Security and Safety Plan	20 Points
TOTAL	200 POINTS

C. Contract Award

After the Committee has reported the evaluation results to the Corporate Manager, the Corporate Manager will prepare a package describing the selection process and scores for review and consideration by the Municipal Transportation Agency Board of Directors. If authorized by the SFMTA Board of Directors, the Corporation will execute the form Agreement with the selected Proposer. If the selected Proposer does not execute the form Agreement, the Corporation reserves the right to award the contract to the next highest-ranked Proposer or take other action as may be allowed or required.

This RFP is a solicitation for proposals; it is not an offer of a contract. Proposals and other responses to this RFP are offers, which are not binding until unconditionally accepted by the Corporation and said proposal and acceptance are reduced to and memorialized in a fully and properly executed written instrument substantially similar in form and content to the attached form Agreement.

VII. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP, the Agreement and all attachments and exhibits of each. Proposers must promptly notify the Corporation in writing if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Corporation promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. The Corporation and/or Corporate Manager will issue modifications and clarifications by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP other than inquiries at the pre-proposal conference must be directed to:

Anson Lee, Corporate Manager
City of San Francisco Uptown Parking Corporation
444 Stockton Street
San Francisco, California 94108
Telephone: (415) 982-7275, ext. 22
Fax: (415) 982-0520

Any inquiry or clarification must be shared with other prospective Proposers in written form by facsimile and/or mail.

C. Objections to RFP Terms

Should a Proposer object on any grounds to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued or

amended (if the objection relates to an amendment), provide written notice to the Corporation specifying the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Addenda to RFP

The Corporation may modify this RFP and /or the form Agreement, prior to the proposal due date, by issuing written addenda. Addenda will be sent via regular, first class U.S. mail or by facsimile to the last known business address or facsimile number of each Proposer listed with the Corporation as having received a copy of the RFP for proposal purposes. The Corporation will make reasonable efforts to notify Proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the Proposer must be responsible for ensuring that its Proposal reflects any and all addenda issued by the Corporation prior to the proposal due date regardless of when the proposal is submitted.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and Management Fee are valid for 270 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A Proposer may revise a proposal on the Proposer's own initiative at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

G. Errors and Omissions in Proposal

Failure by the Corporation to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

H. Financial Responsibility

The Corporation shall not have or incur any liability for any costs or other liability incurred by any Proposer in responding to this RFP. Submissions of the RFP will become the property of the Corporation. By submitting a proposal in response to this RFP, each Proposer agrees to accept the terms of this RFP without limitation.

I. Reservations of Rights by the Corporation

The issuance of this RFP does not constitute an agreement by the Corporation that any contract will actually be entered into by any parties. The Corporation expressly reserves the right at any time to:

1. Waive any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;

4. Procure any service by any other means;
5. Extend deadlines for accepting responses, or accept amendments to responses after expiration of deadlines;
6. Declare impasse with a selected proposer and offer the contract to the next highest ranked proposer; or
7. Determine that no project will be pursued.

J. Sunshine Ordinance

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

K. Public Access to Meetings and Records

The Corporation has decided to abide by San Francisco Administrative Code Chapter 12L. Accordingly, if a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local

officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

M. No Waiver

No waiver by the Corporation of any provision of this RFP shall be implied from any failure by the Corporation to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

N. Local Business Enterprise Goals and Outreach

The Corporation has adopted as its own policy for purposes of this RFP the requirements of the City's Local Business Enterprise and Non-Discrimination in Contracting Ordinance. The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP.

1. LBE Subcontractor Participation Goals

The LBE subcontracting goal for this project is 15% of the total value of the goods and/or services to be procured.

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

2. LBE Participation

The Corporation strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any proposers who are certified by the City's Human Rights Commission ("HRC") as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. Statement of LBE Certification

By submitting a response to this RFP, Proposer certifies that it has used good faith outreach to select LBE contractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9.

O. Standard Contract Provisions

The successful Proposer will be required to enter into an Agreement in the form of the Form Agreement. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an

abandonment of a contract offer. As explained above, in such circumstances the Corporation may keep the bid security as liquidated damages. Proposers must carefully review all terms and conditions of the Agreement before submitting a proposal.

P. Budget Year/Fiscal Year – Special Dates of First Budget to be Prepared

The selected operator will prepare and submit for approval budgets for the Garages that are the same as the Corporation's fiscal year (May 1 to April 30). However, if the starting date of the contract is not the same as the budget year, the Operator, in its first year of operation of the Garages, will prepare its initial budget with a budget start date that is the contract start date, and with a budget ending date of April 30, 2008 or assume the budget that was previously approved by the SFMTA Board of Directors and the City's Controller. Subsequent budgets will be based on the conventional May 1 to April 30 fiscal year budgets.

Q. Communications Prior To Contract Award.

It is the policy of the SFMTA and the Corporation that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA or Corporation staff member, other than a person with whom contact is expressly authorized by this RFP (Anson Lee), for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA. This prohibition does not apply to communications with SFMTA or Corporation staff members regarding normal City or Corporation business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors or the Corporation's Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the Board of Directors of both the SFMTA and the Corporation, and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA or Corporation staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA or Corporation staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (Attachment D) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

VIII. PROTEST PROCEDURES

A. Protest of Non-responsiveness Determination

Within five (5) working days of the Corporation's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the Corporation has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the Corporation on or before the fifth (5th) working day following the Corporation's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the Corporation to determine the validity of the protest. A Proposer's failure to submit a protest in the manner described above shall constitute an irrevocable waiver of further protest or award process challenge to the award of the agreement.

B. Protest of Contract Award

Within five (5) working days of the Corporation's issuance of a notice of intent to award the contract, any responsible firm that has submitted a responsive proposal and believes that the Corporation has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the Corporation on or before the fifth (5th) working day after the Corporation's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the Corporation to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the Corporation received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

Anson Lee, Corporate Manager
City of San Francisco Uptown Parking Corporation
444 Stockton Street
San Francisco, California 94108
Telephone: (415) 982-7275, ext. 22
Fax: (415) 982-0520

ATTACHMENT A

**QUESTIONNAIRE CONCERNING EXPERIENCE, FINANCIAL AND TAXPAYER
RESPONSIBILITY OF PROPOSER FOR THE SUTTER STOCKTON/UNION SQUARE
GARAGE AGREEMENT**

PROPOSERS MUST SUBMIT THE COMPLETED PREQUALIFICATION
QUESTIONNAIRE (PAGES 1-5) TO THE CORPORATION NO LATER THAN
5:00 P.M. ON _____, 2008.

The following statements as to experience, financial and taxpayer responsibility qualifications of the Proposer are submitted with the proposal along with a waiver authorizing the City Tax Collector to confirm the status of the Proposer with respect to payment of local business taxes and fees ("Taxpayer Responsibility"), as a part thereof; and any material misstatement of the information submitted herein must be grounds to prohibit the Proposer from submitting a proposal.

1. **NAME:** _____
Tel. No.: () _____ Fax No.: (_____)
(Print name of corporation, individual or firm name and type of entity under which business is to be conducted, as it is to appear on the agreement.)

2. **MAILING ADDRESS:** _____
St. Address/P.O. Box City State Zip Code

3. **PROPOSER INTENDS TO DO BUSINESS AS A** (Set forth with corporation, co-partnership, joint venture, or individual).

4. **PROPOSER'S SAN FRANCISCO BUSINESS TAX REGISTRATION
CERTIFICATE NO.** _____
A copy of the current year's certificate must be submitted with the questionnaire. If a joint venture proposal is to be submitted, provide certificate numbers and submit copies of certificates for each joint venture partner.

5. **FULL NAME, TITLE AND ADDRESS** of all of the principal personnel of Proposer:
If an individual, the name of the party bidding; if a co-partnership or joint venture, the members of the co-partnership or joint venture; if a corporation, the State of Incorporation, the president, vice-president and secretary.

PERSONNEL OF PROPOSER: (Full name - Do not use initials)

A. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Residence Address City State Zip Code

B. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Residence Address City State Zip Code

C. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Residence Address City State Zip Code

(Use separate sheet for additional personnel)

6. PARKING GARAGE OR LOT MANAGEMENT EXPERIENCE (Last Five Years):
Note: All parking experience stated below must be within the United States and Canada.

A. **General**
Annual average number of Garages or lots managed: _____
Annual average gross parking related revenue: \$ _____
Total annual no. of parking related employees: Full Time: ____ *Part Time:* ____
Type of Garage operation: (Provide number of each)
Self-Park: _____
Attendant Park: _____
Combination: _____

B. **Specific**
1) Parking Facility: _____
Type of facility: (Check one) Parking Garage: ____ Surface Lot ____
Address: _____
Name of operator (if different than Proposer): _____
Name of owner or agent: _____

Phone: _____
No. of spaces: _____ Dates of operation: _____
Cite specific duties performed: _____

Yearly vehicle volume: _____
Average number of days operated per year: _____

Yearly gross parking related revenues: \$ _____
Total annual no. of parking related employees: Full Time: ____ Part Time: ____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____ Combination: _____

2) Parking Facility: _____
Type of facility: (Check one) Parking Garage: _____ Surface Lot _____
Address: _____
Name of operator (if different than Proposer): _____
Name of owner or agent: _____
Phone: _____
No. of spaces: _____ Dates of operation: _____
Cite specific duties performed: _____

Yearly vehicle volume: _____
Average number of days operated per year: _____
Yearly gross parking related revenues: \$ _____
Total annual no. of parking related employees: Full Time: ____ Part Time: ____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____ Combination: _____

3) Parking Facility: _____
Type of facility: (Check one) Parking Garage: _____ Surface Lot _____
Address: _____
Name of operator (if different than Proposer): _____
Name of owner or agent: _____
Phone: _____
No. of spaces: _____ Dates of operation: _____
Cite specific duties performed: _____

Yearly vehicle volume: _____
Average number of days operated per year: _____
Yearly gross parking related revenues: \$ _____
Total annual no. of parking related employees: Full Time: ____ Part Time: ____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____ Combination: _____

7. Provide a brief history of Proposer's parking experience, and describe Proposer's

experience with the use of automated pay station and automated parking access and revenue control equipment and software, including sophisticated spreadsheet and information retrieval and organization software including but not limited to Microsoft Excel and other financial reporting software, Power Point, and any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels.

8. List on a separate page any businesses or business interests located or doing business in San Francisco in which the Proposer or individuals who control the Proposer have an interest. For each such interest, list the entity or individual, nature of the business, and term of the agreement, if applicable. If the Proposer wishes to have the response to this question treated as proprietary business information, the page containing this information should be clearly designated as such.
9. Has the Proposer (or any of its management staff) ever managed a parking operation that was declared in default of a parking management contract?
10. Has the Proposer or any of its management staff ever requested release from a parking management contract?
11. Has the Proposer or any of its management staff ever managed a parking operation in which the parking contract was cancelled or terminated by the owner?
12. Has the Proposer or any of its management staff ever been a party to any legal action or proceeding relating to a parking contract? Does the Proposer have any outstanding claims against any parking facility owners or their staff?
13. Has the Proposer, any of its management staff, or any firms controlled by any management staff previously been employed by or associated with a firm that has filed for bankruptcy in the last ten years?
14. Is the Proposer or any of its management staff now in arrears on taxes or fees due on any parking business or operation?
15. Has the Proposer or any of its management staff ever been the subject of an enforcement action taken by any governmental body for the non-payment of taxes or violations of any city, county, state or federal regulation, ordinance or statute?

NOTE: If the answer to any of the items 9-15 is "Yes", please explain below. Place the corresponding question number before each response. Attach separate sheet if necessary

ATTACHMENT B
AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION

The undersigned hereby authorizes the companies and/or individuals listed below to release to the CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION (444 Stockton Street, San Francisco, CA 94108) all pertinent and confidential information concerning the credit standing or account status of:

Name of Proposer

Authorized Signature

Date: _____

Print Name & Title

(1) Name of Bank: _____
Address: _____
City, State: _____
Contact Person: _____ Tel. No.: () _____
Account No. _____
Type of Account: _____
Account No. _____
Type of Account: _____

(2) Name of Bank: _____
Address: _____
City, State: _____
Contact Person: _____ Tel. No.: () _____
Account No. _____
Type of Account: _____
Account No. _____
Type of Account: _____

(3) Name of Surety Company: _____
Address: _____
City, State: _____
Contact Person: _____ **Tel. No.:** () _____
Policy No. _____
Type of Bond: _____
Policy No. _____
Type of Bond: _____

WAIVER

The undersigned taxpayer (the "Taxpayer") hereby requests and authorizes the Tax Collector of the City and County of San Francisco (the "Tax Collector") to disclose confidential information about the Taxpayer and any other entities owned or controlled by the Taxpayer, whether directly or indirectly, to the City of San Francisco Uptown Parking Corporation ("Uptown Parking"). The Taxpayer and each of the entities owned or controlled by the Taxpayer waive all their rights, including those under section 6.22-1 of Article 6 of the San Francisco Business and Tax Regulations Code, to have information about them in the Tax Collector's possession kept confidential. The Taxpayer and each of the entities owned or controlled by the Taxpayer acknowledge that the information disclosed to Uptown Parking may adversely affect Uptown Parking's evaluation of the Taxpayer's suitability to enter into an operating agreement with Uptown Parking pertaining to management of the Sutter Stockton and Union Square Garages.

The Taxpayer agrees to hold the Tax Collector, City and County of San Francisco and the Corporation harmless from any liability, claims, losses and damages caused by the Tax Collector's disclosure of confidential information about the Taxpayer and/or the entities owned or controlled by the Taxpayer.

This request and authorization is limited to the following specific items of information:

1. Outstanding parking taxes.
2. Outstanding business/payroll taxes.
3. Payment history of parking, business and payroll taxes.
4. Audit history, if any, including audits in progress
5. Filing history of parking, payroll and business tax returns.
6. Payment of miscellaneous license or permit fees.
7. Payment of possessory interest taxes.

THE TAXPAYER:

OTHER ENTITIES:

By: _____
(Signature)

Name: _____
(Print name)

Title: _____

Date: _____

EIN.: _____

1. Name: _____

By: _____
(Signature)

Title: _____

EIN: _____

If other entities exist, please list them on a separate sheet of paper and attach them.

ATTACHMENT C

GARAGE MANAGEMENT BID FORM

Name of Proposer: _____

1. The undersigned is a Proposer for the operation of the Sutter Stockton and Union Square Garages ("Garages") in accordance with the Request for Proposals ("RFP") issued by the City of San Francisco Uptown Parking Corporation on _____, 2008. All undefined terms used herein have the meaning given to such terms in the RFP.
2. If Proposer is selected to enter into the Agreement, the Proposer's monthly Management Fee will be Ten Thousand Dollars (\$10,000). In addition, if Proposer is selected to enter into the Agreement, the Corporation will negotiate a performance based fee with the Operator based on three performance criteria: customer service; facility maintenance and condition; and net revenues.
3. The undersigned has thoroughly reviewed the RFP and the Agreement. Proposer fully understands every provision therein and is ready, willing, and able to comply with all requirements and is willing and able to perform all obligations as set forth in this proposal and the Management Agreement.
4. All of Proposer's statements, representations and warranties in the proposal submitted with this certificate are true and correct as of the date hereof.
5. Proposer understands and agrees that the Corporation makes no representations or warranties with respect to the Garages, and that everything relevant to Proposer's proposal has been based on Proposer's own knowledge and the information contained in the written RFP materials.
6. Proposer has not agreed to pay now or in the future, and has not in fact paid, directly or indirectly, any fee, commission, or other thing of value to any Corporation or City and County of San Francisco employee, agent, representative, commissioner, or contractor in an effort to influence the selection of the successful proposal.
7. The terms of this certification shall survive the date hereof, and are a material part of the Corporation's willingness to consider Proposer's submittal. The Corporation would not be willing to consider Proposer's submittal without this certification.
8. The undersigned represents that it has no conflict of interest that could interfere with its operation and management of the Garage.
9. Proposer states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Proposer further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Proposer believes any officer or fellow employee of the City or the City presently has or will have in the agreements contemplated by this proposal or in the performance thereof or in any portion of the profits thereof.

10. The undersigned are authorized representatives of the Proposer.

Title _____

Title _____

ATTACHMENT D

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: _____

The Form is Submitted on Behalf of Firm: _____

Name of RFP: **CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION, REQUEST FOR PROPOSALS FOR PARKING FACILITY OPERATION**

1. I attest that I and all members of the firm listed above will and have complied to date with Section VII.P. of the above RFP. Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VII.P. of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date _____

ATTACHMENT E

CERTIFICATION REGARDING LOBBYING

(Proposer or Proposed Subcontractor Business Name)

certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors, the San Francisco Municipal Transportation Agency Board of Directors, the City of San Francisco Uptown Parking Corporation Board of Directors, or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the Corporation's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors, the San Francisco Municipal Transportation Agency Board of Directors, the City of San Francisco Uptown Parking Corporation Board of Directors or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

ATTACHMENT F

**FORM PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF SAN FRANCISCO UPTOWN PARKING COMPANY
AND**

**FOR THE OPERATION AND MANAGEMENT OF THE
SUTTER STOCKTON AND UNION SQUARE GARAGES**

AGREEMENT

BETWEEN

**CITY OF SAN FRANCISCO
UPTOWN PARKING CORPORATION**

AND

[INSERT COMPANY]

FOR THE MANAGEMENT OF THE

**SUTTER STOCKTON GARAGE
444 Stockton Street
San Francisco, CA 94108**

AND THE

**UNION SQUARE GARAGE
333 Post Street
San Francisco, CA 94108**

Dated: [INSERT DATE]

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**AGREEMENT
FOR THE OPERATION OF THE
SUTTER STOCKTON AND UNION SQUARE GARAGES**

This Agreement for the Operation of the Sutter Stockton and Union Square Garages ("Agreement"), dated for convenience as [INSERT DATE], is entered into by and between the City of San Francisco Uptown Parking Corporation, hereinafter referred to as "Corporation", and [INSERT COMPANY], hereinafter referred to as "Operator", a [INSERT TYPE OF ENTITY, E.G., PARTNERSHIP, SOLE PROPRIETORSHIP, CORPORATION, ETC.] doing business in the City and County of San Francisco, State of California, for the services and under the terms described herein.

1. RECITALS

- A. The City and County of San Francisco ("City") owns the land and improvements described in Exhibit A attached hereto as two sites for public off-street parking commonly known as the Sutter Stockton Garage and the Union Square Garage (the "Garages").
- B. Pursuant to those certain Public Parking Garage Leases, by and between the City and the Corporation, dated May 5, 1959, and extended as of April 1, 2001, for the Sutter Stockton Garage, and dated May 1, 1999 for the Union Square Garage (the "Leases"), the City leased the Sutter Stockton and Union Square Garages to the Corporation.
- C. Under the Leases, the Corporation is obligated to generally maintain and operate the Garages and to select a professional operator to manage the parking of vehicles at the Garages, subject to the approval of the City's Municipal Transportation Agency ("SFMTA") or its designee.
- D. The Corporation published a request for proposals ("RFP") for the operation of the Garages.
- E. The RFP submittals were evaluated by a selection panel appointed by the Corporation, and the Operator was selected for award of this Agreement.
- F. The Corporation desires to hire the Operator to provide management and supervisory services at the Garages under the terms and conditions of this Agreement.
- G. The Operator is engaged in the business of providing skilled management and supervision of parking facilities.

In consideration of the above recitals and the mutual covenants and agreements contained herein, the parties agree as follows:

AGREEMENT

2. SUMMARY OF TERMS

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

Reference Date:	<u>[INSERT DATE]</u>
Operator:	<u>[INSERT COMPANY]</u>
Names and Locations:	Sutter Stockton Garage 444 Stockton Street San Francisco, CA 94108 Union Square Garage 333 Post Street San Francisco, CA 94108
Term: (Section 5.1)	For a term of four years commencing: <u>[INSERT DATE]</u> , and expiring: <u>[INSERT DATE]</u> , unless extended.
Extension of Term: (Section 5.2)	Upon approval from the SFMTA Board of Directors, the Corporation shall have the right to extend this Agreement by providing Operator thirty (30) days' advance written notice prior to the expiration of the initial term. Such extension shall be on the same terms and conditions of this Agreement. No single extension can exceed one year. Total extensions cannot exceed two years.
Management Fee: (Section 6.1)	<u>\$10,000 (Ten Thousand Dollars) per month plus performance-based fee negotiated between the parties.</u>
Bid Security: (Section 11.3)	\$10,000 (Ten Thousand Dollars)
Security Deposit: (Section 11.3)	\$100,000 (One Hundred Thousand Dollars)
Subcontracting Goals:	The LBE subcontracting participation goal is 15% (Fifteen Percent).
Notices to be sent to: (Section 20)	City of San Francisco Uptown Parking Corporation 444 Stockton Street San Francisco, CA 94108
with Copies to:	San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7th Floor San Francisco, California 94103 Attention: Parking Authority

Key Contact for Corporation:	Anson Lee, Corporate Manager City of San Francisco Uptown Parking Corporation 444 Stockton Street San Francisco, CA 94108 Telephone No.: (415) 982-7275, ext. 22
Notice Address of Operator: (Section 20)	<u><i>[INSERT CONTACT NAME, MAILING ADDRESS & PHONE NUMBER]</i></u>
Key Contact for Operator:	<u><i>[INSERT CONTACT NAME, MAILING ADDRESS & PHONE NUMBER]</i></u>
Alternate Contact:	<u><i>[INSERT CONTACT NAME, MAILING ADDRESS & PHONE NUMBER]</i></u>

3. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall have the meaning ascribed to them in this Section. Capitalized terms not otherwise specifically defined in this Section shall have the meaning set out in Article 22 of the San Francisco Business and Tax Regulations Code, or the successor legislation to that Article.

3.1 “Access Card Deposit” means the \$50.00 deposit for each access card (electronic key card used to enter the Garages) issued to monthly users, as set forth in Section 7.1(b) hereof.

3.2 “Agents” means the officers, directors, corporate manager, employees, agents, contractors, licensees and subtenants of a referenced Party, and their respective heirs, legal representatives, successors and assigns.

3.3 “Agreement” means this document, its appendices and other documents incorporated by reference.

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

3.5 “Budget” (also “Approved Budget”) means the itemized projection of gross revenues and authorized operating expenses for each Fiscal Year for the Garages prepared by Operator and requiring approval by the Corporation, the SFMTA Board of Directors and the Controller.

3.6 “City” means the City and County of San Francisco, and its departments and agencies, and officers and employees, and the Parking Authority of the City and County of San Francisco and its officers and employees.

3.7 “Commencement Date” means [INSERT DATE], the first day this Agreement is in effect, which shall be determined by the SFMTA Board in its Resolution approving award of this Agreement.

3.8 “Contract Year” means the 365-day year or 366-day Leap year, commencing on the Commencement Date, and on each anniversary of the Commencement Date thereafter.

3.9 “Controller” means the Controller of the City.

3.10 “Corporation” means the City of San Francisco Uptown Parking Corporation and its officers, directors, corporate manager, and legal representatives

3.11 “Director” means the Executive Director/CEO of the City's Municipal Transportation Agency or his or her designee as identified in writing.

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

3.13 “Expiration Date” means [INSERT DATE], the last date this Agreement is in effect, unless sooner terminated or extended.

3.14 “Fiscal Year” means the annual Corporation budget period beginning May 1st and ending April 30th.

3.15 “Garages” means the land, facilities and all improvements commonly known as the Sutter Stockton Garage and the Union Square Garage as described in Exhibit A attached hereto.

3.16 “Garage Property” means supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Garages, including, but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings. (See section 9.1).

3.17 “Gross Revenues” means: all revenues, from whatever source, received from the operation of the Garages and from any income-generating activity carried on therein, including, but not limited to, the following: (1) all revenues received from the operation of the Garages for daily and monthly parking of any vehicle therein; (2) all revenue from pay telephones, vending machines, automatic teller machines (ATMs) and the selling price of all merchandise or services sold or otherwise provided for exchange in, on, about or from the Garages in the ordinary course of business by Operator; provided, however, that the selling price of any returned merchandise shall be excluded and, with respect to pay telephone revenue, ATM fees, and sales of merchandise by vending machines, only the amount of the commission paid to Operator for and on behalf of the Corporation on account of such sales shall be included; (3) all charges or claims of credit of any character made by Operator or a vendor under contract to the Operator or otherwise under Operator's control for the rendering of any service or work of any kind conducted in, on, about or from the Garages; (4) the gross amount of all deposits forfeited by Garage customers and retained or received by Operator in connection with the operation of the Garages, including all Access Card deposits collected, all valet no-key charges, and all refundable deposits subsequently returned to the depositor (except that for accounting purposes, these charges shall be treated as a liability); (5) all interest, or investment earnings, received from the Gross Revenues deposited in the Revenue Account, (6) commercial rents and fees collected for display and storage rental, and/or other commercial uses approved under Section 7.7; (7) the value of any in-kind services

received by the Operator in exchange for a benefit derived from the use of the Garages and (8) the amount of all Parking Taxes payable from the operation of the Garages.

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

3.19 “Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against the Corporation or the City, their respective Agents, or the Land, the Garages or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Land, the Garages or any Improvements, the loss or restriction of the use or any amenity of the Land, the Garages or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

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

3.21 “Indemnify” means, whenever any provision of this Agreement requires a person or entity (the “Indemnitor”) to indemnify any other entity or person (the “Indemnitee”), the Indemnitor shall be obligated to defend, reimburse, indemnify and protect the Indemnitee, its officers, employees, agents, stockholders, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition whether actual or alleged with respect to which the Indemnitor is required to Indemnify such Indemnitee, whether such act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; provided that no Indemnitor shall be obligated to Indemnify any Indemnitee against any Loss from the gross negligence or intentional wrongful acts or omissions of such Indemnitee, or such Indemnitee's agents, employees or contractors. If a Loss is partially attributable to the gross negligence or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), such Indemnitee shall be entitled to Indemnification for that part of the Loss not attributable to such Indemnitee's (or its agents, employees or contractors) gross negligence or intentionally wrongful acts or omissions. Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and

Corporation's and/or City's costs of investigating any claims against the Corporation and/or City.

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

3.23 "Invitees" means the clients, customers, and invitees to the Garages.

3.24 "Land" means the land, owned by the City, on which the Garages are located.

3.25 "Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Garages, the Land, Operator's operations or employees or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

3.26 "Leases" means that certain Public Parking Garage Lease, by and between the City and the Corporation, dated May 5, 1959, and extended as of April 1, 2001, for the Sutter Stockton Garage, and that certain Public Parking Garage Lease, by and between the City and the Corporation, dated May 1, 1999, for the Union Square Garage.

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

3.28 "Management Fee" shall have the meaning given such term in Section 6.1 below.

3.29 "Monthly Report" shall have the meaning given such term in Section 7.1(b) below.

3.30 "Municipal Transportation Agency" or "SFMTA" means the Municipal Transportation Agency of the City. The SFMTA Board of Directors serves *ex officio* as the Commission of the Parking Authority of the City and County of San Francisco.

3.31 "Occurrence" means an accident, theft, damage or other event of loss giving rise to a claim against the insurance policies described in Section 13 of this Agreement.

3.32 "Operating Expenses" means the following costs to Operator directly associated with its performance of its obligations under this Agreement and set forth in a Budget approved by the Corporation and the City, including and expressly limited to the actual costs to Operator without mark-up for: (1) reasonable salaries, payroll taxes and other payroll expenses; (2) charges for utility services; (3) expenses for repair and maintenance of equipment and furnishings; (4) expenses for routine maintenance and repair and for cleaning of the Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Premises; (5) the cost of Parking Tickets, supplies and equipment; (6) license and permit fees not related to an alteration of the physical plant of the Garages; (7) the cost of insurance attributable to

insuring Operator's property and insuring Operator against liability relating to the management and operation of the Premises where such insurance is requested in writing and authorized by the Corporation; (8) the cost of Workers' Compensation Insurance (within the limits set out in this Agreement) and the cost of the fidelity bond; (9) deductible amounts required under any of the insurance policies insuring Operator except as excluded in (b) below; (10) sales taxes and all other taxes resulting from operation of the Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes; (12) the cost of courier deposit services, (13) parking charge reimbursements for persons authorized by the City, (14) amounts paid by Operator in settlement of claims against Operator that are not paid by insurance carriers and are not the result of Operator's negligence or willful misconduct, and (15) all other costs and expenses of Operator that are approved by the Corporation and the City, including administrative expenses, and overhead expenses directly related to the operation of the Premises. Operating Expenses shall not include: (a) penalties or fees resulting from Operator's late payment of taxes, bills, or other charges; (b) insurance deductibles or other payments or costs resulting from theft, employee dishonesty, or other acts of malfeasance; (c) Operator's overhead costs that are not directly attributable to its operation of the Garages; (d) attorneys fees or costs incurred in connection with any dispute with the Corporation or the City or (e) costs to repair damage to the Garages resulting from Operator's and/or Operator's employees willful, intentional or grossly negligent acts.

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

3.34 "Parking Rates or "Parking Rate Schedule"'" means the rates set forth in Appendix ___, as amended by the SFMTA Board of Directors or other body with legal authority to set rates.

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

3.36 "Party" means the Corporation or Operator; "Parties" means both the Corporation and Operator.

3.37 "Performance-Based Fee" means the fee negotiated between the Corporation and the Operator to be paid to Operator upon the achievement of specified levels of performance, as set forth in Appendix I to this Agreement.

3.38 "Premises" means the land and improvements.

3.39 "Operator" means *[INSERT COMPANY]*.

3.40 "Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Garages or any other improvements constructed hereunder by or on behalf of Operator, the Corporation and/or City, or in, on, under or about the Land or the Garages or any portion thereof.

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

3.42 "Revenue Account" means a bank account established by the Corporation into which Operator is required to deposit Gross Revenues in accordance with Section 7.1(a).

3.43 "Security Deposit" shall have the meaning given such term in Section 11.3 hereof.

3.44 "Tax Collector" means the Tax Collector of the City.

3.45 "Term" means the period in which this Agreement is in effect, commencing on the Commencement Date terminating six years, unless earlier terminated or extended.

3.46 "Treasurer" means the Treasurer of the City.

3.47 "Unaccounted Parking Ticket" or "UPT" means any Parking Ticket described in Section 7.1(c)(3)(A) through (D).

3.48 "Valet Parking" means parking of customer vehicles by Operator.

3.49 "Valet Assisted Parking" means parking of customer vehicles by customers as directed by Operator, and/or parking of customer vehicles by Operator.

3.50 "Validator Deposit" means the deposit charged by Operator to a merchant when Operator issues a Parking Ticket validator or other equipment to the merchant, as set forth in Section 7.1 (c) hereof. For other equipment, the Corporation may, in writing at the time of issuance, increase the dollar value of the Validator Deposit.

4. MANAGEMENT SERVICES

4.1 Services for Hire. With the consent of the City, the Corporation hereby hires the Operator to provide the management and supervisory services for the Sutter Stockton and Union Square Garages described herein, and subject to the terms and conditions of this Agreement.

4.2 General Authority to Manage. Operator is hereby given general authority to manage and supervise the day-to-day operation of the Garages and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of this Agreement.

4.3 Control Retained by the Corporation and the City. (a) The Corporation and the City shall at all times retain the authority to exercise control over the Garages (as provided for under the Leases and applicable law), and Operator shall perform the duties required to be performed by it under this Agreement in accordance with policies and directives of the Corporation and the City. Any terms in this Agreement referring to direction from Corporation and/or the City shall be construed as providing for direction as to policy and the result of Operator's work only, and not as to the means by which such a result is obtained. The Corporation and the City do not retain the right to control the means or the method by which Operator performs work under this Agreement, provided however Operator shall work directly with Corporation's Corporate Manager in implementing this Agreement.

(b) The Garages are City assets to be administered, managed, operated and maintained for the benefit of the City. The City is an intended third party beneficiary to this Agreement, having full rights to enforce the terms of this Agreement to protect said assets and the revenues and other benefits thereof.

4.4 Subject to Leases. The Corporation's possession and use of the Garages is governed by the Lease between the City and Corporation, dated May 5, 1959, and amended March 1, 1973 and April 1, 2001 for the Sutter Stockton Garage, and by the Lease between the City and Corporation, dated May 1, 1999 for the Union Square

Garage. This Agreement does not amend the Leases and is not an assignment of the rights or duties of any party to the Leases. Operator is not a sublessee of the Garages. This Agreement is subject and subordinate to the terms and conditions of the Leases, and the Corporation shall have the right to terminate this Agreement without penalty or cost in the event that one or both of the Leases are terminated for any reason whatsoever. Operator and the Corporation agree to comply with all of the requirements of the Leases insofar as they govern the operation of the Garages and the performance of any duties to be performed by Operator or the Corporation hereunder. In the event of any unavoidable conflict between the terms and conditions of one or both of the Leases and the terms and conditions of this Agreement, the terms and conditions of the Leases shall prevail.

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

5. TERM OF MANAGEMENT AGREEMENT

5.1 Term. The term of this Agreement shall be for a period of four (4) years, commencing at 12:00 a.m. on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date, unless sooner terminated or extended as provided herein.

5.2 Extension. The Corporation, with the City's approval, acting through the SFMTA Board of Directors, shall have the right to extend this Agreement by providing Operator thirty (30) days' advance written notice prior to the expiration of the Term set forth in Section 5.1 above. Such extension shall be on the same terms and conditions of this Agreement, and the Management Fee paid to Operator shall be at the rate in effect during the last month of the initial term. During any such extension, the Corporation shall have the right to terminate this Agreement upon thirty (30) days notice to Operator and Operator shall have the right to terminate this Agreement upon one hundred eighty (180) days notice to the Corporation. No single extension may exceed one year, and the total Term of the Agreement, including all extensions, cannot exceed six (6) years (72 months) from the commencement date.

6. COMPENSATION AND REIMBURSEMENT OF OPERATING EXPENSES

6.1 Management Fee. Operator shall be paid a monthly Management Fee of [ten thousand dollars (\$10,000), exclusive of any Performance-Based Fee authorized under Section 6.7, below, provided Operator is not in default under this Agreement or an event has not occurred that, with the giving or notice or the passage of time, would constitute a default. The amount of the Management Fee shall be adjusted annually within 30 days of the anniversary date of this Agreement to reflect the annual change in the Bay Area Consumer Price Index, as reported by the Association of Bay Area Governments for the most recent 12 month period for which the data is available. The Management Fee shall be due and payable under the requisition procedure required by Section 11.4 below, provided the Corporation receives the monthly report required by Section 7.1(b) below. Should the Commencement Date or the Expiration Date occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

6.2 Reimbursement of Operating Expenses Operator shall be entitled to reimbursement from the Corporation for all Operating Expenses properly incurred and paid by Operator in the performance of Operator's duties hereunder and as specified in the approved Budget in accordance with Section 11.1, subject to Operator's compliance with the submittal procedures set forth in Section 11.7 and all Corporation and City approvals required under the Lease and this Agreement. Corporation's obligation to

reimburse Operator for wages, salaries or benefits is limited to reimbursement for time that employees of Operator are actually working at the Garages for the benefit of Corporation.

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

6.4 Fees During Suspended Operations If for any reason whatsoever, any condition prevents the operation of one or both of the Garages, or any portion thereof at any time for more than thirty (30) consecutive days, except where such condition is caused solely by the Corporation, the Management Fee and any Performance-Based Fee shall be suspended on a pro rata basis for that Garage, commencing from the expiration of such 30-day period and continuing until the earlier of (i) date the condition affecting the Garage(s) has been abated and normal operations of the Garages have been resumed or (ii) the termination of this Agreement.

6.5 Limitations on Payment of Fees. The Corporation's obligation for payment of Management Fees, Performance-Based Fees and reimbursement of Operating Expenses incurred by the Operator in the performance of this Agreement shall not exceed the amount listed in the line item in the Budget for each such fee or expense identified by Operator as the source for reimbursement under the Approved Budget. The Corporation's obligation for payment of Management Fees, Performance-Based Fees and reimbursement for Operating Expenses in the aggregate shall not exceed the total Approved Budget for these items without written approval by the City.

6.6 Gratuitous Services. Except as may be provided by laws governing emergency procedures, neither the Corporation nor its employees or officers are authorized to request Operator to perform services or provide materials, equipment and supplies that would result in Operator performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement as it may be amended in writing. The Corporation is not required to reimburse Operator for services, materials, equipment or supplies that are provided by Operator that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement and which were not approved by a lawfully executed written amendment to this Agreement.

No person, including any agents of the Corporation is authorized to offer or promise to Operator additional funding for this Agreement that would exceed the maximum amount of funding provided for in this Agreement for Operator's performance hereunder. Additional funding for this Agreement in excess of the maximum provided hereunder shall require lawful approval by the Corporation's Board of Directors and approval by the City and certification by the Controller. The Corporation is not required to honor any offered or promised additional funding that exceeds the maximum that has been certified by the Controller and approved by the SFMTA Board of Directors.

6.7 Performance-Based Fee. In addition to the Management Fee set forth in Section 6.1, upon meeting the specified criteria, Operator shall be entitled to the Performance-Based Fee negotiated between the parties as described in Appendix I.

Payment of such Fee shall be due and payable by the Corporation on an annual basis not later than ninety (90) days following the anniversary date of this Agreement.

7. OPERATOR'S DUTIES

7.1 General Operational Duties. Operator shall (i) supervise the proper and efficient parking of all cars utilizing the Garages, (ii) maximize the use of the space available in the Garages, (iii) use best efforts to maximize the revenues generated by the Garages and (iv) manage the parking of vehicles in the Garages in a first class and professional manner. In addition to the foregoing general duties, Operator shall be responsible for the following specific duties:

(a) Revenues 1. Operator shall collect, charge and deposit in accordance with Section (c) below the daily Parking Rate from all daily users of the Garages, and shall collect and account for all issued Parking Tickets.

2. All Gross Revenues, monies and deposits, including but not limited to parking taxes, collected or received by Operator arising out of operations of the Garages shall be deposited in the Revenue Account by the end of the next Banking Day after such amounts are received or collected. Notwithstanding Operator's receipt of Gross Revenues on behalf of the Corporation, Operator shall have no right, title, interest, lien or set-off rights on or against any portion of the Gross Revenues generated by the Garages. Operator shall safeguard all Gross Revenues with the highest degree of care.

3. Operator shall not commingle any revenue, monies or deposits with any other funds.

4. If Operator fails to deposit any revenues, monies or deposits within one Banking Day of receipt, Operator shall pay the Corporation interest on the amount which was not timely deposited at the prime rate of the financial institution holding the Corporation's accounts, plus three per cent (3%) per year, or, if a higher rate is legally permissible, at the highest rate permitted by law, which interest shall be known as late charges. However, interest shall not be payable on late charges incurred by Operator to the extent that this interest would cause the total interest to be in excess of that which is permitted by law. Payment of interest as hereinabove provided has been agreed upon by the Corporation and Operator after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Corporation will incur as a result of any such failure of Operator, the actual costs thereof being extremely difficult, if not impossible, to determine. The late payment charge constitutes liquidated damages to compensate the Corporation for its damages resulting from such failure to pay and shall be paid to the Corporation together with such unpaid amount.

5. Operator's failure to deposit Gross Revenues including parking taxes on a timely basis shall constitute a material breach of this Agreement and Operator's obligation to pay interest on funds not deposited shall not limit any other rights or remedies the Corporation may have under this Agreement with respect to such default.

(b) Reports

1. Operator shall prepare a daily report ("Daily Report") separately covering each Garage in a form approved by the Corporation, certified by Operator to be true and correct, for every day of operation, which shall be submitted to the Corporation on a daily basis. Operator may not modify the format of the Daily Report without the Corporation's prior written approval.

2. Within fifteen (15) days after the last day of each month, Operator shall deliver to the Corporation and the Director a monthly report ("Monthly Report") covering

both Garages. The Monthly Report shall be in the form provided by Corporation and shall include an accounting of all Gross Revenues and a description of Operator's Operating Expenses (as provided in Section 11.4 below).

(A) The Monthly Report shall provide an accounting for all Unaccounted Parking Tickets as set forth in Section 7.1(c)(3)(A)-(D) of this Agreement. The Monthly Report shall include the original of any UPT that has been altered or mutilated, and shall also include any remnants of any Parking Ticket claimed as destroyed, as well as the information set forth in Section 7.1(c)(3)(C) for any Parking Ticket claimed as lost, and the information required by Section 7.1(c)(3)(D) for any other irregular Parking Tickets. The Corporation may review the UPT information submitted by Operator, and may reject any such claim that the Corporation determines is not adequately supported by evidence. Where the total number of insufficiently documented UPTs is equal to or less than one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in that Garage in a calendar month as indicated by the revenue control equipment for the Garage, notwithstanding the provisions of Section 7.1(c)(3)(A)-(D), Operator shall not be charged for the UPTs. Where the number of such Parking Tickets exceeds one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in each Garage in a calendar month, Operator shall be liable for the full amount due in accordance with Section 7.1(c)(3)(A)-(D) of this Agreement for all insufficiently documented UPTs, which amount shall be deducted by Corporation from the next payment of Operating Expenses due to Operator under this Agreement.

(B) For each day submittal of the Monthly Report is late, Operator may incur a late charge of One Hundred Dollars (\$100.00) as liquidated damages payable to the Corporation to cover administrative costs for revenue report and projection revisions, and such late charge shall not be an Operating Expense. All submitted Monthly Reports must be certified as true, correct, and complete by Operator. Should the Corporation or City detect any inaccuracies in the Monthly Reports which were not previously communicated by Operator, Corporation may, in its discretion and without limiting the Corporation's other rights and remedies hereunder, impose a charge of Two Hundred Dollars (\$200.00) for each Monthly Report misreported to cover administrative costs to correct revenue reports and projections. Such charges shall be deducted from the Management Fee, Performance-Based Fee or Security Deposit. The aforementioned charges shall not be considered a penalty, but are the reasonable cost to the Corporation incurred by Operator's delay. The Corporation may modify the form of the Monthly Report and change the due date of the Monthly Report.

(c) Daily Parking

1. Operator shall establish and maintain a system of Parking Tickets for daily customers of the Garages in a form prescribed and approved by the Corporation. Operator shall be responsible for collecting and accounting for all Parking Tickets.

2. In consultation with the Corporate Manager, Operator shall order and purchase all Parking Tickets to be issued at the Garages. Upon receipt of the Parking Tickets from the supplier, and prior to the use of such Parking Tickets at the Garages, Operator shall deliver to the Corporate Manager the printer's manifest showing beginning and ending serial numbers, certified as correct by the printer.

3. Operator shall issue a Parking Ticket from the Parking Ticket dispenser to the operator of each vehicle entering the Garages unless the vehicle operator enters

using a valid monthly access card or prepaid debit card. Each Parking Ticket that is issued shall be date and time stamped to indicate arrival and departure of the vehicle, and shall also be stamped upon payment with the charged amount. The operator of each vehicle for which a Parking Ticket is issued shall pay the current posted Parking Rate as the SFMTA Board of Directors may amend those rates from time to time.

(A) **Altered Parking Tickets.** Any alteration to the dates or times of occupancy or charge different from the applicable posted rate must be approved by a Garage manager and must state the reason for the change. Any changes made without such approval and written explanation shall be disregarded, and the Parking Ticket shall be deemed to have been collected in accordance with the date and time of entry and exit stamped on the Parking Ticket and the current Parking Rates approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the Corporation in accordance with the requirements of Section 7.1(b)(2)(A) of this Agreement, whether or not such amount is actually received by Operator from the customer.

(B) **Mutilated or Destroyed Parking Tickets.** If a Parking Ticket is mutilated or destroyed, Operator shall prepare a report, which shall be included with the Monthly Report required by Section 7.1(b)(2)(A) of this Agreement, showing the number of the destroyed or mutilated Parking Ticket, explaining how it was destroyed or mutilated, attaching thereto any remnants of such Parking Ticket, and explaining how the Parking Rates were applied. An appropriate amount for each mutilated or destroyed Parking Ticket, based on the current Parking Rates approved by the SFMTA Board of Directors shall be included in the Gross Revenues due to the Corporation in accordance with the requirements of Section 7.1(b)(2)(A) of this Agreement, whether or not such amount is actually received by Operator from the customer.

(C) **Lost Parking Tickets.** If a Parking Ticket is lost by a customer parked in the Garages, Operator shall prepare a charge slip showing (i) the amount charged for parking, (ii) the license plate or vehicle identification number, and (iii) the driver's license number of the customer. The completed charge slip must be signed by the vehicle operator. For each lost Parking Ticket, Operator shall include the amount for lost Parking Tickets specified in the current Parking Rates approved by the SFMTA Board of Directors in the Gross Revenues due to the City in accordance with the requirements of Section 7.1(b)(2)(A) of this Agreement, whether or not such amount is actually received by Operator from the customer.

(D) **Other Irregular Parking Tickets.** Any other Parking Tickets for which payment is not received and remitted in accordance with the applicable posted rate and the date and time of entry and exit (including a Parking Ticket that is issued, but for which there is no record of payment) shall be treated as a lost Parking Ticket and Operator shall be deemed to have collected the amount for lost Parking Tickets specified in the current Parking Rates approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the Corporation in accordance with the requirements of Section 7.1(b)(2)(A) of this Agreement, whether or not such amount is actually received by Operator from the customer.

(d) Monthly Parking

(1.) Operator shall collect all monthly parking fees no later than the fifth calendar day of each month. Operator shall assess a late charge (as set forth in the Schedule of Parking Rates approved by the SFMTA Board of Directors) to monthly users

who are delinquent in payment of their monthly parking fee. If a monthly user has not paid his or her monthly parking fee by the fifth calendar day of each month, the Operator shall invalidate the security access cards of such delinquent monthly users before the sixth day of the month for which the monthly parking fee is unpaid. Delinquent monthly users may reactivate security access cards by paying a Twenty-five Dollar (\$25.00) late charge, in addition to the delinquent monthly fee, to the Operator. Operator may waive such late charges only in instances of written mutual consent between Operator and Corporation. Operator shall maintain a written record of all late charges it waives. Operator shall supervise and control the billing and collection of the approved monthly Parking Rate. The Operator shall collect an access card deposit of Fifty Dollars (\$50.00) for each card issued (the "Access Card Deposit"). For any lost or destroyed cards, Operator shall reissue a new card and shall collect a charge for the lost or destroyed card in accordance with the current approved rate structure. Upon termination of any monthly agreement, and return of the access card, Operator shall immediately refund to the monthly user his or her deposit, without interest. Once refunded, Operator may seek reimbursement from the Corporation for the refunded amount as an Operating Expense, provided that the Operator provides satisfactory evidence that such refund has been paid to the monthly customer.

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

(e) Monthly Parking Agreement

Operator shall require all monthly parking customers to execute Corporation's Month-to-Month Parking Agreement, and comply with Corporation's Rules and Regulations concerning monthly parking customers, copies of which are attached hereto as Exhibit ___ and made a part hereof.

(f) Validation Parking

When and as directed by the Corporation, Operator shall enter into agreements with local merchants for validation parking with guidelines established by the Corporation. Operator shall establish procedures for validation parking. Operator shall collect a Validator Deposit established by the Director for each hand or electronic validator issued. Upon request of the Director, Operator shall request the return of any validator, and upon its return shall immediately return the deposit in full, without interest. For lost or destroyed validators, Operator shall issue a new validator and shall collect an additional Validator Deposit.

(g) Valet and Valet-Assisted Parking

When and as directed by the Corporation, Operator shall provide for Valet and/or Valet-Assisted Parking in the Garages.

(h) Revenue Protection

(1) Operator shall take all necessary measures, applying the highest standard of care, to ensure that all parking charges, rents, fees, and other Gross Revenues are properly collected, and accounted and remitted to the Corporation's Revenue Account.

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

7.2 Public Use of Garages.

Operator acknowledges that the public is entitled to use the Garages, subject to the rates, charges, hours, space availability and rules of operation as set forth herein and adopted pursuant to the terms of this Agreement.

7.3 Rules and Regulations.

Operator shall use its best efforts to ensure that all patrons of the Garages comply with all rules, regulations, or restrictions that the Corporation or the City may adopt during the Term of this Agreement.

7.4 Parking Rates.

For all vehicles parking in the Garages, Operator is authorized and directed to charge and collect parking fees according to Parking Rate Schedule for that Garage. A copy of the current Parking Rate Schedule is attached hereto as Exhibit B. Upon a change in the Parking Rate Schedule by the SFMTA Board, the Corporation will give written notice to the Operator as to the new Parking Rates and their effective date. Upon receiving such notice, the Operator shall take such measures necessary to implement the new Parking Rates on the effective date. Operator shall not adjust the authorized Parking Rates or collect any other rates or charges at the Garages or provide free (no charge) parking to any person, except as specifically authorized or directed by the Corporation. Operator shall not be entitled to any further compensation or consideration by a change in the Parking Rate Schedule beyond that provided for in this Agreement. Any agreement by Operator to provide parking at the Garages at the High Volume rate shall require the approval of the Corporation.

7.5 Hours of Operation.

The Operator shall operate and remain open 24 hours per day, 7 days a week, every day of the year, including Holidays. Operator may close the Garages only with the express written permission of the Corporation.

7.6 Signs and Advertising.

Except for signs stating the Parking Rates and other pertinent information, and any signs required by applicable law, Operator shall not erect any signs, billboard, advertising, displays or political endorsements at the Garages or permit the circulation of any commercial announcements, pamphlets or circulars without the prior consent of the Corporation. Operator shall cooperate in good faith with the Corporation and any third parties with whom Corporation has an agreement for advertising.

7.7 Storage Rental.

Operator shall not allow any storage rental unless pre-approved in writing by the Corporation. If such storage rental is approved, Operator shall require all monthly users to execute a rental agreement provided by Corporation.

7.8 Commercial Use.

Except for parking, Operator shall not permit the use of any portion of the Garages for commercial purpose without the prior consent of the Corporation. The Corporation retains the right to lease any or all parts of the Garages for other commercial uses, including, without limitation vending machines, telephone services, storage rentals,

and High Volume rate parking. Such arrangements may be under separate agreements between the Corporation and any third party.

7.9 Other Services.

Operator shall perform such other acts and duties as are required under the terms of this Agreement, and shall perform such other management and supervisory functions related to the operation of the Garages as the Corporation may require.

7.10 Compliance with Laws.

Operator shall comply and conform with all laws and all existing governmental regulations, rules and orders, and as such may be enacted during the Term of this Agreement, relating to, controlling or limiting the use and operation of the Garages and Operator's employees, including any rules or regulations of the SFMTA generally applicable to City-owned garages and governing the operation or management of such garages. To the extent that there is any conflict between such generally applicable regulations and the terms of this Agreement, such regulations shall control. Operator shall secure all permits and licenses specifically required for the operation of the Garages (copies of which shall be promptly provided to the Corporation). Any violation of these requirements shall be deemed a breach of this Agreement, and Corporation shall have all rights and remedies set forth in said Laws and Regulations, as well as the rights and remedies set forth in this Agreement, including, but not limited to the right to terminate this Agreement. Operator shall not use or occupy the Garages in an unlawful, noisy, improper or offensive manner and shall use its best efforts to prevent any occupancy of the Garages or use made thereof which is unlawful, noisy, improper or offensive or contrary to any law or ordinance applicable to the Garages. Operator shall not cause or maintain any nuisance in or about the Garages, and shall use its best efforts to prevent any person from doing so. Nor shall Operator cause or allow any rubbish, dirt or refuse to be placed in the streets, sidewalks or alleys adjoining the Garages or to accumulate in the Garages.

7.11 Emergency and Disaster Response Plan. Operator shall maintain a current Emergency and Disaster Response Plan at each Garage in a format acceptable to the Corporation with a current copy to the Director. This plan shall consist of Emergency Procedures and Corporation and City contact information. This plan must outline procedures for employees to follow in the event of an emergency and describe a plan of action for each Alert Level defined for a specific threat or disaster.

7.12 Operating Manual . Operator shall maintain a current Operating Manual containing policies and Standard Operating Procedures for each Garage. This Operating Manual shall contain information including, but not limited to, safety standards and procedures, cash handling procedures, customer service standards and Garage maintenance standards.

7.13 Revenue Control and Parking Receipts

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

this Agreement conflicts with any provision of the San Francisco Business and Tax Regulations Code or other City ordinance, the ordinance shall govern.

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

7.14. Coordination with Corporate Manager. Operator shall use its best efforts to keep the Corporation's Corporate Manager informed of issues affecting the management and operation of the Garages, and shall make the on-site Garage managers available for meetings with the Corporate Manager not less than bi-weekly.

8. STAFFING AND EMPLOYEES

8.1 General Provisions.

(a) All employees engaged in the operation of the Garages shall be employees of Operator, subject to its sole supervision, direction and control, and under no circumstances shall they be considered employees of the Corporation or City. Operator shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to all employees. Operator shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Operator. Operator shall select, furnish and employ on its own behalf such competent and qualified operating personnel to operate the Garages in an efficient and workmanlike manner. The duties of such personnel shall include but not be limited to the issuance of monthly permits, collection of parking fees from all daily users of the Garages, and notification to monthly users of the status of their parking fee payment and to prospective monthly users of their placement on the Garage waiting list.

(b) Except as otherwise provided herein, Operator shall have the exclusive right to select, hire, assign, supervise, manage, discipline, suspend, terminate, lay off and otherwise discharge its employees. Notwithstanding the above, the Corporation shall have the right, in its reasonable discretion to request that Operator relocate or transfer any employee from the Garages whose presence on the site the Corporation deems detrimental to the facility, or to direct the Operator to hire additional employees if the Corporation reasonably determines that the Operator is failing to operate the Garages in an efficient or appropriate manner and Operator shall use its best effort to comply with such request.

(c) Operator shall commit adequate resources and personnel to manage and operate the Garages, and shall make a good-faith effort to maximize the number of full-time employees. Notwithstanding the Operator's right to hire the necessary employees to operate the Garages, the Corporation shall have the right to direct the Operator to either hire additional employees or reduce the number of employees staffing the Garages if the Corporation reasonably determines that the Operator is failing to operate the Garages in an efficient and appropriate manner. The Operator shall pay particular attention to effective and efficient operation of the Garages so as not to cause users unreasonable delays in entering and exiting the Garages.

(d) All employees shall wear uniforms of a design and color chosen by Operator to present a clean and efficient image and the Corporation reserves the right to require changes in such uniforms in its reasonable discretion, subject to approval by the Corporation.

8.2 Operations Manager. Operator shall select, hire and appoint an on-site Operations Manager for each Garage, who must be a highly-qualified and experienced manager of automobile parking facilities, charged with responsibility and authority by Operator to manage the Garage operation. When the on-site Operations Manager is not present, one on-duty and on-site employee shall be designated the Acting Operations Manager and shall be authorized to direct any other employees to respond to emergencies, inquiries and complaints. In addition, the Operations Manager shall be competent in creating reports from the Revenue Control Equipment and other on site parking equipment, including, but not limited to, revenue reports and parking utilization reports. The Operations Manager shall have a working knowledge of the figures contained in each Monthly Report and must be able to prepare and produce specific reports requested by the Corporation or the City, including graphs and tables. The duties of each Operations Manager shall be exclusively and entirely dedicated to the operations of the Garages.

8.3 Maintenance Personnel and Contracting. If directed by the Corporation, Operator shall employ or contract for sufficient personnel to perform the routine maintenance and repair work to the Garages in a prompt and efficient manner so as to keep the premises at all times in a first-class operating condition that is clean, safe and attractive. Operator shall provide evidence acceptable to the Corporation that any contractor engaged by Operator to perform work on the property maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the Corporation and the Director, including but not limited to Worker's Compensation Insurance (including Employers' Liability Insurance), general liability insurance covering personal injury and property damage, and insurance covering the use of owned, non-owned or hired vehicles and equipment. Corporation reserves the right to contract out directly with these service providers, and will notify Operator of such occurrence(s).

8.4 Security Personnel and Contracting. If directed by the Corporation, Operator shall enter into a security agreement in a form and from a contractor acceptable to the Corporation to provide security guards to be stationed at the Garages to protect the Garages, Garage users and property of the Garages against damage, injury, theft or other loss. At least one (1) uniformed security guard shall be on duty at each Garage at all times. Guards hired to provide security at the Garages shall not carry a firearm, unless specifically approved in writing by the Corporation and the Director. Should the Corporation determine at any time that Operator has not employed sufficient security guards for the Garages, the Corporation shall notify Operator in writing of such deficiency. Should Operator fail to remedy the situation within one (1) day of such notice, the Corporation shall have the right to contract for temporary security guards and direct such guards to work at the Garages until such time Operator has provided the Corporation with satisfactory evidence that the Garages will be adequately staffed with security personnel. The Corporation shall have the right to deduct administrative costs associated in providing security from the Management Fee, Performance-Based Fee, Security Deposit or any other available source of funds or security. Corporation reserves the right to contract out directly with a security service provider, and will notify Operator of such occurrence(s).

8.5 Payroll and Taxation. Operator shall make or cause to be made all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes, and prepare, maintain and file or cause to be filed all necessary reports with respect to such taxes or deductions, and all other necessary statements and reports pertaining to labor employed in or about the Garages. Notwithstanding Operator's direct employment of Garage employees, all approved compensation (including fringe benefits) paid to such personnel by Operator shall be

considered Operating Expenses of the Garages during the Term of the Agreement and any extensions of the Term.

8.6 Independent Contractor; Payment of Taxes.

(a) Operator is an independent contractor providing the services described in this Agreement for hire. Operator shall provide the management, operations, and supervisory services described herein, subject to the terms and conditions of this Agreement. The services to be rendered by Operator pursuant to this Agreement are as an independent contractor only. Operator or any agent or employee of Operator shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Corporation under this Agreement. Neither Operator nor its employees or agents shall have employee status with Corporation or City, or be entitled to participate in any plans, arrangements, or distributions by Corporation or City pertaining to or in connection with any retirement, health or other benefits that Corporation or City may offer their employees. Operator or any agent or employee of Operator is liable for the acts and omissions of itself, its employees and its agents. Operator shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Operator 's performing services and work, or any agent or employee of Operator providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Corporation or the City and Operator or any agent or employee of Operator. Operator, or any agent or employee of Operator, is liable for the acts and omissions of itself, its employees and agents.

(b) If a local, state or federal taxing authority determines that Operator or any of its employees is an employee of the Corporation or City for purposes of collection of any employment taxes, the amounts payable to Operator under this Agreement shall be reduced by an amount equal to the employee and employer portions of the amount due to such taxing authority pursuant to that determination ("Tax Liability"), offsetting any credits for amounts already paid by Operator that can be applied against such Tax Liability. If the taxing authority determines that a Tax Liability exists for past services performed by Operator or its employees under this Agreement, Operator shall promptly remit an amount equal to the Tax Liability to the Corporation upon written request of the Corporation or the Director. If such Tax Liability is not promptly remitted, the Corporation may cause the amount of such Tax Liability to be withheld from future payments due to Operator under this Agreement offsetting any amounts already paid by Operator that can be applied as a credit against such Tax Liability. Corporation will then forward those amounts to the relevant taxing authority.

(c) A determination of employment status pursuant to this Section 8.6 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Operator and its employees shall not be considered employees of the Corporation or the City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Operator or any of its employees is an employee of the Corporation or the City, the Corporation shall reduce the amount owed to Operator under this Agreement so that the total expenses of the Corporation and the City under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Operator and/or its employees were not employees of the Corporation or the City.

8.7 Subcontracting and Other Parking Business Operations.

a. **Subcontracting Must Be Authorized.** Except as otherwise authorized under this Agreement, to ensure the quality of work performed on the Garages, Operator is prohibited from subcontracting this Agreement or any part of it unless such

subcontracting is first approved by Corporation in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made by Operator and a subcontractor that is in violation of this provision shall confer no rights on any party and shall be null and void.

b. Notification of Other Parking Business Operations . Operator shall promptly notify the Corporation and the Director in writing of any other business located or operating in the City in which Operator has an interest, or in which Operator proposes to have an interest. Operator shall list in Appendix I any businesses, including but not limited to parking garages, parking lots and valet parking services, located or operating in the City in which the Operator has an interest, as well as the nature and extent of that interest, as of the date of this Agreement. The Corporation reserves the right to terminate this Agreement at no additional cost to the Corporation if the Corporation determines that the Operator's interest in other business operations are not in the best interests of the Corporation. For purposes of this paragraph, a reportable interest shall be any ownership interest of five percent or greater.

8.8 Employee Retention and Prevailing Wages. Operator hereby acknowledges that it has read and understands San Francisco Administrative Code, Chapter 21, Section 21-25.2 and agrees that this Agreement shall be subject to and Operator shall comply with all obligations and requirements imposed by that ordinance.

8.9 Minimum Compensation for Employees. Corporation has adopted as its own policy for purposes of this Agreement the City's Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. Operator agrees to comply fully with and be bound by all of the provisions of the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Operator agrees to all of the following:

(c) For each hour worked by a Covered Employee during a Pay Period on work performed pursuant to and during the term of this Agreement, Operator shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Operator shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that if Operator is a Nonprofit Corporation or a public entity, it shall pay a minimum of \$9.00 an hour for the term of this Agreement.

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

(e) Operator understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Operator of the terms of this Agreement. The City, acting through the SFMTA, may determine whether such a breach has occurred.

(f) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Operator fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Operator fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Corporation and/or the City, acting through the SFMTA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(i) The right to charge Operator an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(ii) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Operator under this Agreement;

(iii) The right to terminate this Agreement in whole or in part;

(iv) In the event of a breach by Operator of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(v) The right to bar Operator from entering into future contracts with the Corporation or the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Corporation. Any amounts realized by the Corporation pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

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

(h) Operator shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Operator from the Corporation which communications are marked to indicate that they are to be distributed to Covered Employees.

(i) Operator shall provide the Corporation and/or the City with access to pertinent records after receiving a written request from the Corporation to do so and being provided at least five (5) business days to respond.

(j) The Corporation or City may conduct random audits of Operator. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Operator every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude either the Corporation or the City from investigating any report of an alleged violation of the MCO.

(k) Any subcontract entered into by Operator for services under this Agreement shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Operator and a third party which requires the third party to perform all or a portion of the services covered by this Agreement.

(l) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section.

8.10 Requiring Health Benefits for Covered Employees

The Corporation has adopted as its own policy for purposes of this Agreement the City's Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided therein, and the City's implementing guidelines and rules. Unless exempt, Operator agrees to comply fully with and be bound by all of the provisions of the HCAO, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(c) Operator's failure to comply with the HCAO shall constitute a material breach of this agreement. Corporation shall notify Operator if such a breach has occurred. If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Operator fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Operator fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Corporation and/or City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Corporation.

(d) Any Subcontract entered into by Operator shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Operator shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Corporation may pursue the remedies set forth in this Section against Operator based on the Subcontractor's failure to comply, provided that Corporation has first provided Operator with notice and an opportunity to obtain a cure of the violation.

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

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

(g) Operator shall keep itself informed of the current requirements of the HCAO.

(h) Operator shall provide Corporation with access to records pertaining to compliance with HCAO after receiving a written request from Corporation and/or City to do so and being provided at least five business days to respond.

(i) Corporation may conduct random audits of Operator to ascertain its compliance with HCAO. Operator agrees to cooperate with Corporation when it conducts such audits.

8.11 First Source Hiring Program

(a) Incorporation of Administrative Code Provisions by Reference

Corporation has adopted as its own policy for purposes of this Agreement the City's First Source hiring Program, as set forth in San Francisco Administrative Code Chapter 83 (Chapter 83), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein, except that for purposes of this Agreement, the definition of the term "Contractor" shall be deemed to include Operator. Operator shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) First Source Hiring Agreement.

Operator will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;

(i) Operator will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;

(ii) Operator agrees to use good faith efforts to comply with the First Source hiring requirements. A Operator may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Operator's employment records.

(c) Hiring Decisions.

Operator shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) Exceptions.

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) Subcontracts

Any subcontract entered into by Operator shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

8.12 EIC Forms.

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

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

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

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

9. EQUIPMENT AND CAPITAL IMPROVEMENTS

9.1 Ordering and Purchasing of Supplies, Equipment and Furnishings Under the Direction and Supervision of the Corporation. Operator shall provide such supplies, equipment and furnishings required for performance of its management and supervision services in the operation of the Garages, including, but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings. The cost of purchasing all such supplies, equipment and furnishings shall be considered Operating Expenses. All equipment, supplies and other tangible personal property paid for as an Operating Expenses shall be and remain the property of the Garages. Operator shall be responsible for the care and safekeeping of all Garage Property and shall use such property only in connection with the operation of the Garages. Except for supplies and other property that are routinely used and consumed in the operation of the Garages, Operator shall not dispose of any Garage Property without the written consent of Corporation.

9.2 Construction of Improvements. The Corporation may require Operator to implement specific capital improvements during the term of this Agreement. Any such capital improvements shall require the approval of the SFMTA Board of Directors and shall be done (i) in strict accordance with any plans and/or specifications approved in

advance by the Corporation in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the Corporation following a competitive bid process approved by the Corporation (provided, in no event shall Operator solicit less than three (3) bids for any contract), (iii) in a good and workmanlike manner, (iv) in strict compliance with all laws and subject to all other conditions that Corporation may impose. Prior to the commencement of any work, Operator shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the Corporation upon receipt. No material change from the plans and specifications approved by Corporation may be made without the Corporation's prior consent. The Corporation shall have the right to inspect the progress of the capital improvement work at all times. Upon completion of the capital improvements, Operator shall furnish Corporation with a complete set of final as-built plans and specifications. Notwithstanding anything in this Agreement to the contrary, the costs and expenses incurred by Operator in the performance by it of the obligations set forth in this Section shall be an "Operating Expense" approved in the Annual Budget. Upon completion of the improvement, the City shall own all capital improvements completed pursuant to this Section.

10. MAINTENANCE AND REPAIRS

10.1 Routine Maintenance and Repairs. Operator shall maintain the Garages in a clean, safe, sanitary and attractive condition commensurate with the standards of maintenance, repair and operation set forth in Exhibit D attached hereto and incorporated herein by this reference. For purposes of this Agreement, "routine maintenance and repair work" means all ordinary maintenance and repair of the premises and equipment and replacement of supplies that are normally performed on a daily or routine basis in order to keep the Garages in an efficient, clean and safe condition unless specifically notified by the Corporation to the contrary. Such routine maintenance and repair work shall include without limitation:

(a) Repairing lamps and lighting fixtures and replacing bulbs, fluorescent tubes and ballasts; replacing Parking Tickets in Parking Ticket issuing machines; maintaining and replacing, if required, arms on traffic entry and exit gates; maintaining, repairing and replacing sliding or overhead doors and gates, and roll up doors; maintaining revenue control equipment; repairing, replacing and cleaning signs; maintaining heating, ventilating and other mechanical equipment; maintaining fire alarm call boxes, extinguishers and hose boxes in good working order; maintaining plumbing in good and sanitary working order; and performing emergency maintenance and repairs as required to maintain the premises in good and safe condition.

(b) Regular cleaning of all parking areas, Garage offices and other portions of the Garage premises; regular washing of all windows; prompt removal of dirt, debris, oil, grease and other liquids from the parking areas, floors and stairways; regular cleaning of floors, walls and ceilings of the pedestrian areas; regular removal of accumulated trash and other rubbish; regular cleaning of the sidewalks on all sides of the Garages; regular cleaning and maintenance of the common areas and bathrooms (including trash removal); and such other cleaning as shall be required to keep the premises in a clean, safe and attractive condition.

(c) Striping of the floors and surfaces of the Garages as needed.

(d) Otherwise cleaning, repairing and painting the floors and walls and fences of the Garages and the sidewalks, curbs and driveways thereof as needed (particularly when such surfaces have been marred by graffiti or other forms of vandalism).

(e) Contracting for full-service elevator maintenance, if applicable, with a subcontractor acceptable to the Corporation.

(f) Contracting for electricity, telephone, uniforms, vermin extermination, trash collection, water, sewer and any other similar utilities or services necessary to the operation of the Garages.

(g) Steam cleaning of all sidewalks, and interior and exterior stairwells shall be performed on a quarterly basis, and of the entire Garages on a semi-annual basis. At the discretion of the Corporation, steam cleaning may be required to be performed less frequently if the Garages, including sidewalks and stairwells, are maintained in a clean and orderly state.

(h) Prompt removal of pigeon droppings from floors and all accessible surfaces.

(i) Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis.

(j) Any other maintenance or repair required by the Corporation.

Operator shall perform all the foregoing maintenance duties in accordance with the Maintenance Schedule provided by Corporation or as otherwise directed by the Corporation. The Corporation shall have the right to require the Operator to perform certain duties specified in such schedule more frequently than provided therein. Operator shall be responsible for completing the Maintenance Checklist provided by Corporation and maintaining such checklist at each Garage at all times. Upon demand by the Corporation, Operator shall present such Maintenance Checklist to the Corporation.

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

10.3 Long-Term Maintenance and Repairs. As used in this Agreement, the term “long-term maintenance and repairs” means all such maintenance and repair work that the Corporation reasonably determines is extraordinary and beyond the normal routine maintenance and repair work to be performed by Operator. Subject to approval of the budget by the SFMTA Board of Directors, as set forth in Section 11, the Corporation may request Operator to seek bids for the specific project. After submission of such bids, the Corporation may elect to (i) award the bid to the most qualified bidder or (ii) reject all bids. If the Corporation elects to proceed with the proposed project, Operator shall cause the work to be done, pay for the work when it has been completed and include such payment in the next Monthly Report. Operator shall inform the Corporation of long-term maintenance or repair projects that are necessary to maintain the Garage in its current or better condition.

11. FISCAL DUTIES AND MATTERS

11.1 Annual Budget/Marketing Plan. Operator shall prepare, at its expense, an annual operating budget and marketing plan (“Budget”) for every Fiscal Year, which shall contain separate budgets for each Garage. Operator shall submit a draft of each Budget for the following Fiscal Year to the Corporation for review no later than October 1. The Corporation will review the draft Budget and marketing plan, recommend such changes as are required, and return the Budget and marketing plan to Operator by October 15. Operator shall then make such changes to the draft Budget as recommended by the Corporation and shall return the final Budget to the Corporation no later than November 1, for submission to the Director and Controller. Corporation may require Operator to pay liquidated damages in the amount of one thousand dollars (\$1,000) for each month or portion of a month that Operator submits the draft or final Budget after the deadlines set out herein as compensation for the additional administrative costs to the Corporation and the City of last minute budget and finance adjustments incurred by late submission of projected financial data from Operator. The aforementioned liquidated damages shall not be considered a penalty, but are the reasonable cost to the Corporation and the City incurred by Operator’s delay. The Budget shall be in the form provided by the Corporation.

11.2 Revenue Account. The Corporation has established and maintains two separate special bank accounts designated as the Revenue Accounts for the Sutter Stockton and Union Square Garages respectively (the “Revenue Accounts”). Operator shall be authorized and required to make daily deposits into the Revenue Accounts.

11.3 Security Deposit. (a) The Corporation will establish and maintain a special account designated as the Security Deposit Account in the amount of One Hundred Thousand Dollars (\$100,000) (the “Security Deposit”). This account will be established from Operator’s Bid Security of Ten Thousand Dollars (\$10,000) received during the RFP process plus an additional Ninety Thousand Dollars (\$90,000) to be paid by Operator upon commencement of this Agreement. Any Bid Bond submitted as a Bid Security during the RFP process may not be used as a Security Deposit and Operator must submit a check in the amount equivalent to the Bid Security.

(b) Upon termination or expiration of this Agreement, the Corporation will inspect the Garages and report in writing to Operator, all routine maintenance and repair work necessary to put the premises in good and clean condition and in a proper state of repair. Upon issuance of such report, the Corporation may cause such routine maintenance and repair work to be performed with the cost thereof to be disbursed from the Security Deposit. If the balance of the Security Deposit is insufficient to cover the cost of such work, Operator shall pay upon demand any deficiency to the Corporation. After payment of such costs, the Corporation shall have the right to use any funds remaining in the Security Deposit to satisfy any unpaid financial obligation or liability that Operator may have under this Agreement. After satisfaction of such unpaid amounts, the remaining balance shall be returned to Operator, with any interest having accrued thereon. The provisions of this Section shall survive the termination of this agreement.

11.4 Operating Expenses. (a) For all Operating Expenses for which Operator seeks reimbursement, Operator shall, for each Garage, submit twice per month or as needed complete documentation, an invoice and statement listing all operating expenses for the month together with all original invoices, receipts or other evidence, including all operating expenses incurred since the previous invoice and statement, including all salaries, wages, payroll taxes, and benefits described in Sections 3.32, 6.2 and 11.1, and Operator’s management fee. Each invoice, in a form approved by the Corporation and Controller, shall be accompanied by such supporting documentation evidencing such operating costs, salaries, wages, payroll taxes and benefits as the Corporation shall require. The monthly invoice shall include as a credit to the Corporation any amounts

due for UPTs in accordance with Section 7.1(b)(2). All invoices for which Operator is seeking payment of shall: (A) be prepared by Operator and signed by the authorized representative of Operator; (B) identify the line item of the Approved Budget under which reimbursement is requested; (C) include documentation of the quotes or bids obtained when required pursuant to paragraph (b) below; (D) for unbudgeted expenses, include written approval of the Corporation, and (E) be submitted to the Corporation for approval. To qualify as an Operating Expense, the following conditions must also be satisfied: (i) Operator must have submitted the required documentation requested above, (ii) the expenditure must have been authorized in the Approved Budget, and (iii) the expenditure must have been approved by the Corporation and the Controller. The Corporation will reimburse Operator by disbursing a check at the address specified in Section 20. The Corporation shall not reimburse Operator for any interest charges or late penalties imposed on Operator due to late payment of its bills, taxes or fees. Notwithstanding the foregoing, those Operating Costs related to Operator's labor expenses described in Section 6 above shall be reimbursed, subject to the documentation and approval requirements described above, on a monthly basis. Controller has ultimate approval of all Operating Expenses.

(b) In no event shall Operator contract for or purchase any one item, other than payroll, which exceeds One Thousand Dollars (\$1,000.00) in cost or any item which costs in excess of the amount set out on the approved Budget without the prior written approval of Corporation. Any rebate or discount obtained by Operator in connection with this Agreement shall be the property of Corporation. All expenses in excess of One Thousand Dollars (\$1,000.00), including reoccurring expenses such as Parking Tickets unless service is from a sole source supplier, shall be documented with three written quotes submitted for written approval before the purchase is made.

11.5 Parking Taxes. (a) Operator shall comply with the requirements imposed by Sections 6.6-1 and 6.7-1 of Article 6, and Section 604 of Article 9 of the San Francisco Business and Tax Regulations Code to collect all Parking Taxes, sales taxes and other taxes which shall be deposited into the Revenue Account and accounted for separately. Operator shall submit to the Corporation with each Monthly Report a full accounting of all taxes due and payable to any third party, including the City. Operator shall provide the Corporation and the City with the monthly prepayment statement ten (10) days prior to date due. Operator is liable for any interest or penalties incurred due to late payment of taxes, which shall not be considered an Operating Expense or otherwise reimbursed by the Corporation or the City. A Certificate of Authority to collect Parking Tax shall be posted in a prominent location at all times in each Garage during the Term of this Agreement.

(b) Operator shall comply with the requirement imposed by Section 6.6-1 of Article 6 of the San Francisco Business and Tax Regulations Code, requiring Operator to post a Parking Tax Collection Bond on behalf of itself and the Corporation in the appropriate amount required.

11.6 Possessory Interest Tax. Operator recognizes and agrees that this Agreement may create a possessory interest subject to property taxation and that Operator may be subject to the payment of property taxes levied on such interest. Any levied possessory interest tax shall be an Operating Expense.

11.7 Taxes, Assessments, Licenses, Permit Fees and Liens. Operator shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Land or the Garages or Operator's personal property. Operator shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and

assessments levied on or assessed against the Land or the Garages for which the Corporation receives the tax bill directly from the taxing authority, Corporation shall forward such bills to Operator, who shall pay on behalf of, and seek reimbursement from, the Corporation for payment.

11.8 Right to Audit and Inspect Records. Operator agrees to maintain and make available to the Corporation, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Operator will permit Corporation to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Operator shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The City, the State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Corporation by this Section. Upon a written request from the Corporation, Operator shall contract with a qualified Certified Public Accountancy to conduct an audit. Operator shall submit Certified Audited Financial Statements of the Operator's company, in accordance with generally accepted auditing standards, for each completed calendar year during the term of this Agreement, the cost of which shall not be considered a reimbursable Operating Expense under this Agreement. Certified Audited Financial Statements shall be submitted to the Corporation not later than 120 days following the end of each calendar year.

11.9 Books and Records. Operator shall establish and maintain at each Garage facility books, records and systems of account, including all records relating to revenue control equipment at that Garage in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Operator transacted under this Agreement. To the extent Operator has not complied with generally accepted accounting principles, the Corporation may require Operator to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by Operator during the term of this Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the Corporation, the City or their agents. Upon expiration or early termination of this Agreement, all such books, records and systems of account shall be delivered to the Corporation. All used and unused Parking Tickets, tapes and other records used in the operation of the Garages are owned by the Corporation, but shall be retained by Operator at the Garages unless the Corporation and the City request otherwise. Such Parking Tickets, tapes and records shall be available at all reasonable times, with or without, notice for inspection and audit by either the Corporation, the City, or their respective agents, and shall not be destroyed or removed without prior written consent from the Corporation.

12. HAZARDOUS MATERIAL COVENANTS

12.1 No Hazardous Materials. Operator covenants and agrees that neither Operator nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Garages or the Land or transported to or from the Land or the Garages, provided that Operator may store and use such substances in the Garages and on the Land in such limited amounts as are customarily used in a parking garage so long as such storage and use is at all times in full compliance with all applicable Environmental Laws. Operator

shall immediately notify the Corporation and the City if and when Operator learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Land or the Garages. The Corporation and/or the City may request Operator to provide information required for the Corporation and/or the City to determine whether any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Operator shall promptly provide all such information.

12.2 Operator's Environmental Indemnity. If Operator breaches any of its obligations contained in Section 12.1 above, or, if any act or omission or negligence of Operator or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Land or the Garages (including any Improvements thereon) or any other City or Garage property without limiting Operator's general Indemnity contained in Section 14 below, Operator, on behalf of itself and its successors and assigns, shall Indemnify the Corporation and the City and their respective officers, agents and employees, and each of them, from and against all Hazardous Materials Claims arising during or after the termination or expiration of this Agreement and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Garage(s) and the Land or any other Garage or City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Land or other City or Garage property. Without limiting the foregoing, if Operator or any of Operator's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Land, Garages or any other City or Garage property, Operator shall, immediately, and at no expense to the Corporation or City, take any and all appropriate actions to return the Land, Garage(s) or other Garage or City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Operator shall provide the Corporation and City with written notice of and afford the Corporation and City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Operator specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Corporation and City from any claim which actually or potentially falls within this indemnity provision even if such allegation is groundless, fraudulent or false, and at all times before the determination of the validity of any such claim. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Operator.

13. INSURANCE AND SURETY BONDS

13.1 Required Insurance. Operator will secure and maintain the Required Insurance for the Garages as set forth in this Agreement. If authorized by the Corporation, all costs under this Section 13 shall be Operating Expenses. If directed by the Corporation, Operator shall arrange and maintain throughout the term of this Agreement the following insurance policies and any additional insurance as may be required:

(a) Property insurance on an all-risk form, excluding earthquake and flood, but including sprinkler leakage, in the amount of one hundred percent (100%) of the replacement value of building, equipment and contents which value is estimated at Sixty-five Million Dollars (\$65,000,000) for the Sutter Stockton Garage and Thirty-five Million dollars (\$35,000,000) for the Union Square Garage. Said policy shall also insure against business interruption, including coverage for the Corporation and the City, in an amount not less than one hundred percent (100%) of Gross Revenues for the previous thirty-six

(36) months. The Corporation's liability to reimburse Operator for payment of any deductible under such policy shall not exceed \$10,000 for each Occurrence. The policy shall contain a standard replacement cost endorsement providing for full replacement and no deduction for depreciation and a stipulated amount endorsement. Upon request by the Corporation, Operator shall obtain earthquake coverage under such property insurance policy, the cost thereof to be an Operating Expense.

(b) Boiler and machinery insurance, comprehensive form, in an amount of \$2,000,000 with respect to loss of or damage to insured objects, and \$7,500 expediting expense insuring ventilating and electrical equipment and any other equipment or machinery typically insured under such a policy. The Corporation's liability to reimburse Operator for payment of any deductible under such insurance shall not to exceed \$10,000 for each Occurrence.

(c) Commercial general liability insurance with limits not less than \$5,000,000 each occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as the Corporation may reasonably require, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. The Corporation's liability to reimburse Operator for payment of any deductible under such insurance shall not to exceed \$10,000 for each Occurrence.

(d) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. The Corporation's liability to reimburse Operator for payment of any deductible under such policy shall not exceed \$10,000 for each occurrence.

(e) Garage-keeper's legal liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for loss and damage to vehicles in Operator's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision. The Corporation's liability to reimburse Operator for payment of any deductible under any such policy shall not exceed \$1,000 for each occurrence. The Corporation's liability to reimburse Operator for payment of any insurance deductible for non-automobile (personal) property customarily left in the custody of the Garages shall not exceed \$5,000.

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

13.2 Additional Requirements.

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

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

(c) All liability insurance policies shall be endorsed to provide the following:

(1) The insurance policies required under subsections (a) through (e) above shall have Operator the named insured and shall be endorsed to name as additional insureds: the City of San Francisco Uptown Parking Corporation, and the City and County of San Francisco, and the officers, agents and employees of these parties.

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

(d) All policies shall be endorsed to provide thirty (30) days advance written notice to the Corporation and the City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for the Corporation and the City set forth in Section 20.

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

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

(g) Operator's compliance with the provisions of this Section shall in no way relieve or decrease Operator's liability under Section 12.2 or Section 14 of this Agreement, or any of Operator's other obligations or liabilities under this Agreement.

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

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

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

13.4 Required Bonds. Within thirty (30) days of mutual execution of this Agreement, subject to approval by the Corporation and the City of the surety companies and bond forms, Operator shall deposit with the Corporation and shall maintain throughout the term of this Agreement, and pay the cost thereof as an Operating Expense, the following bonds made payable to the Corporation and naming the Corporation as obligee:

(a) Parking Tax Collection Bond in the amount of Two Hundred Thousand Dollars (\$200,000) and meeting the requirements of San Francisco Business and Tax Regulations Code Section 6.6-1.

(b) Blanket fidelity bond covering all officers and employees of Operator employed at the Garages or who have access to the Garage revenues or funds, with a limit of Two Million Dollars (\$2,000,000), and any deductible not to exceed \$5,000 for each loss.

13.5 Miscellaneous Insurance and Bond Matters.

(a) Upon mutual execution of this Agreement, Operator shall provide Corporation and the City two copies each of the fidelity bond and the Parking Tax Collection Bond, two copies of each original policy for the property insurance and the boiler and machinery insurance, and two copies of the policy endorsement for all other insurance. Complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the Corporation or the City if requested at any time.

(b) The Corporation reserves the right to cancel any or all of the insurance required under this Agreement and to replace such canceled insurance with one or more master insurance policies providing similar insurance coverage and covering any or all of the parking garages owned or leased by the Corporation. In such event, Operator shall no longer be required to place and maintain the canceled insurance but may, at its expense, obtain any other insurance it may wish to have. In the event such an insurance policy replaces a policy of insurance or a portion of a policy of insurance required to be carried by Operator pursuant to this Agreement, Operator will make premium payments to the Corporation's insurance carrier as an Operating Expense.

(c) Upon the Corporation's request, Operator shall provide evidence satisfactory to the Corporation, that Operator has adequately provided for Social Security and Unemployment Compensation benefits for Operator's employees employed at the Garages.

(d) Operator shall comply with the provisions of any insurance covering Operator or the Corporation, with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.

(e) In the event that the Corporation or the City receives notice that any insurance or bond, are to be or have been cancelled or non-renewed, the recipient shall notify Operator, in writing, of this failure to meet the requirements of this Agreement. If Operator does not provide to the Corporation and the City satisfactory written certification of renewed or replacement insurance or bond within five (5) business days of the receipt (if delivered) or mailing date of the aforementioned written notice to Operator, the Corporation shall have the right to (i) obtain the required insurance or bond on behalf of Operator and to deduct the premiums therefore from payment of the next Management Fee, Performance-Based Fee, or Security Deposit, together with an administrative fee of One Thousand Dollars (\$1,000) or (ii) solely at the Corporation's option, terminate this Agreement for default.

14. INDEMNIFICATION AND HOLD HARMLESS

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

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

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

14.4 In the event that any action or proceeding is brought against the Corporation or the City by reason of a claim arising out of any Loss suffered on or about the Garages, and upon written notice from the Corporation or the City, Operator shall, at its sole expense answer and otherwise defend such action or proceeding using counsel approved

in writing by the Corporation and the City. The Corporation and the City shall have the right, exercised in their sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against themselves in connection with the Garages.

15. DAMAGE OR DESTRUCTION

15.1 Partial Destruction or Damage. If one or both of the Garages are partially destroyed or damaged, the Corporation and/or City shall determine, in its sole and absolute discretion, whether it wishes to continue to operate the affected Garage(s). Should the Corporation and/or City elect to continue the operation of the Garage(s), the Corporation and/or City shall proceed with the reconstruction of the damaged portion of the Garage(s). So long as the damage to the Garage(s) was not due to negligence or willful misconduct of Operator, the Corporation shall pay the cost of repairing the Garage(s). To the extent insurance proceeds are received from the policies required to be maintained by Operator under Section 13.1 hereof, the cost of reconstruction shall be paid out of such proceeds. Upon receiving any insurance proceeds, Operator shall transfer such amounts to the Corporation. If the Corporation and/or City does not elect to continue the operation of the Garage(s), this Agreement shall terminate as to the affected Garage(s) upon written notice thereof from the Corporation.

15.2 Management Agreement During Reconstruction. In the event that the Corporation and/or City elects to reconstruct the damaged portions of the Garage(s), the Corporation and/or City will make a determination as to whether the Garage(s) will continue to operate during the reconstruction period. If the Corporation and/or City determine that the Garage(s) will operate during such time, this Agreement shall remain in full force and effect; provided, however, the Management Fee may be adjusted during the reconstruction period so that the percentage that the Management Fee for the last complete month of operation prior to such damage bears to Gross Revenues for such month is the same percentage the adjusted Management Fee bears to the Gross Revenues for the months during the reconstruction period. If the Corporation and the City determine that the Garage(s) cannot continue to operate during all or part of the reconstruction period, the Corporation shall suspend this Agreement as to the affected Garage during such period of inoperability without altering the Expiration Date.

15.3 Total Destruction. If one or both of the Garages are totally destroyed from any cause, whether or not covered by the insurance required hereunder, this Agreement shall automatically terminate with respect to that Garage as of the date of such total destruction.

15.4 Damage Near End of Term. If one or both of the Garages are partially destroyed during the last twelve (12) months of the term of this Agreement from any cause, whether or not covered by the insurance required hereunder, the Corporation may, at its option, terminate this Agreement as to that Garage by giving written notice thereof to Operator.

16. OPERATOR'S REPRESENTATIONS AND WARRANTIES

Operator hereby represents and warrants as follows:

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

16.2 Formation. Operator is duly incorporated, validly existing and in good standing under the laws of the State of California, and qualified to do business in the State of California.

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

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

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

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

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

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

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

17. EVENTS OF DEFAULT; REMEDIES

17.1 Events of Default. Each of the following events shall constitute an "Event of Default" by Operator upon which the Corporation may terminate the Agreement:

(a) Material Provisions. Operator fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, including but not limited to: 4.5

(Access to Garage), 7.1(a) (Revenues and Deposits), 7.1(b)(2) (Monthly Accounting), 7.1(m) (Compliance with Laws), 7.4 (Parking Rates), 7.5 (Hours), 8.7 (Subcontracting), 8.8 (Prevailing Wages), 8.9 (Minimum Compensation), 8.10 (Health Care), 11.2 (Revenue Account), 11.5 (Parking Taxes and Parking Tax Bond), 11.7 (Taxes), 11.8 (Inspection of Records), 11.9 Books and Records), 12.1 (No Hazardous Materials), 13 (Insurance) (in its entirety), 14 (Indemnity) (in its entirety), 16 (Representations and Warranties) (in its entirety), 21.1 (Assignment), 21.5 (Drug-free Workplace), 21.6 (False Claims), 21.22 (Compliance with Laws), 21.29 (Confidential Information).

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

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

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

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

(f) Failure to Open Garages. Operator fails to open and keep Garages open during the hours prescribed in Section 7.5 hereof.

(g) Failure to Cure Breach. Operator fails to comply with any other term, covenant or condition of this Agreement; and such failure continues for a period of fifteen (15) days after written notice thereof from the Corporation; provided, Operator shall be entitled to such notice on only two (2) occasions in any Contract Year with respect to a particular failure, and thereafter any additional occurrence of the particular failure in such Contract Year shall be an immediate event of default without the need for further notice.

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

(i) Other Agreement and Obligations. Operator fails to pay when due any amount owing from Operator to the Corporation, whether or not such amounts are related to the operation of the Garages, and such failure continues for a period of ten (10) days after written or oral notice from the Corporation or the City; provided, Operator shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so in such Contract Year shall be an immediate event of default without the

need for notice. The failure of the Corporation or the City to insist upon the strict performance of any of the terms, conditions, covenants, or provisions herein contained shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, covenants and provisions in this Agreement.

17.2 Remedies. Upon an Event of Default by Operator, the Corporation shall have the right to exercise all legal and equitable remedies including, without limitation, the right to terminate this Agreement or seek specific performance of all or parts of this Agreement. If Operator fails after reasonable notice from the Corporation to perform any of its obligations under this Agreement, as determined by the Corporation in consultation with the City, the Corporation shall have the right to cause such work or service to be performed. Any cost incurred by the Corporation in causing such work to be performed shall be due and payable by Operator upon Corporation's demand. The Corporation can elect to deduct any amount payable from the Management Fee, Performance-Based Fee, Security Deposit or any other available monies or security.

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

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

17.5 Liability of the Corporation and the City. The obligations of the Corporation to Operator under this contract shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall the Corporation or the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, without limitation, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

17.6 Responsibility for Equipment. Neither Corporation nor City shall be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Operator, or by any of its employees, even though such equipment be furnished, rented or loaned to Operator by Corporation.

17.7 Consolidated Contract. The purpose of this Agreement is to achieve the coordinated and consolidated operation of the Garages, and the operation of both Garages

is a material term of this Agreement. Contractor's default or other failure to meet the terms of this Agreement as to its operation of either of the Garages shall constitute a breach of the entire Agreement, and the application of the Agreement shall not be severed to apply to each Garage separately or individually.

18. RIGHT OF TERMINATION

18.1 Termination for Convenience.

(a) After expiration of twelve (12) months from the Commencement Date of this Agreement, with the approval of the SFMTA Board of Directors, the Corporation shall have the right to terminate this Agreement, without cause, by providing at least one hundred eighty (180) days prior written notice to the Operator of its election to terminate. Termination shall be effective upon the expiration of the 6-month notice period or at such later date as is specified in the notice.

(b) During any extension period, the Corporation shall have the right to terminate this Agreement, without cause, upon thirty (30) days notice to Operator of its election to terminate. Termination shall be effective upon written expiration of the 30-day notice period or at such later date as is specified in the notice.

(c) Upon receipt of the notice, Operator shall commence and perform, with diligence, all actions necessary on the part of Operator to effect the termination of this Agreement on the date specified by Corporation and to minimize the liability of Operator, Corporation and City to third parties as a result of termination. All such actions shall be subject to the prior approval of Corporation. Such actions shall include, without limitation:

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

(ii) Avoid making orders or subcontracts for materials, services, equipment or other items.

(iii) Terminating all existing orders and subcontracts.

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

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

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

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

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

(i) The reasonable cost to Operator, without profit, for all services and other work Corporation directed Operator to perform prior to the specified termination date, for which services or work Corporation has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed

a total of 10% of Operator's direct costs for services or other work. Any overhead allowance shall be separately itemized.

(ii) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Operator can establish, to the satisfaction of Corporation, that Operator would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

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

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

(g) The Corporation's payment obligation for reimbursable Operating Expenses under this Section shall survive termination of this Agreement.

18.2 Termination for Cause. The Corporation, with the authorization of the SFMTA Board of Directors shall have the right to terminate this Agreement upon the occurrence of any event of default; provided, Operator shall have the notice and cure rights set forth in Section 17.1(b) above or as otherwise stated in this Agreement or as otherwise entitled under applicable Law. Termination under this section shall be effective immediately upon written notice by Corporation to Operator and after the expiration of any applicable cure periods. Upon such termination, all rights, powers, privileges and authority granted to Operator under this Agreement shall cease, and Operator shall immediately thereupon vacate both Garage premises. The Corporation's right to terminate this Agreement under this section is not its exclusive remedy but is an addition to all other remedies provided to it by Law or the provisions of this Agreement. Notwithstanding anything to the contrary in this Agreement, should the City elect to terminate the Lease, this Agreement shall terminate on the date coinciding with the termination of the Lease.

19. DUTIES UPON TERMINATION AND EXPIRATION

19.1 Duties Upon Termination and Expiration. On or before the last day prior to the termination or expiration of this Agreement, the Corporation and Operator shall cause an inspection of the Garages to occur as required by Section 11.3 hereof. Upon satisfactory completion of such inspection, the amounts remaining in the Security Deposit Account, if any, shall be disbursed to Operator as such procedure is prescribed in Section 11.3 and the Parties shall pay all other amounts due to each other hereunder. Operator shall deliver to the Corporation the originals of all books, permits, plans, records, licenses, contracts, unused Parking Tickets and other documents pertaining to the Garages and their operation, any insurance policies, bills of sale or other documents evidencing title or rights of the Corporation or the City, and any and all other records or documents pertaining to the Garages, whether or not enumerated herein, which are requested by the Corporation or are necessary or desirable for the ownership and operation of the Garages, which are in Operator's possession. Operator further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the Garages without detriment to the rights of the Corporation or to the continued management of the Garages.

19.2 Provisions Surviving Termination and Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 2 (Summary), 3 (Definitions) (in its entirety), 4.1 (Independent Contractor), 4.4 (Subject to Lease), 6 (Compensation) (in its entirety), 7.1(a) (Revenues), 8.1(a) and (b) (Control of Employees), 8.5 (Payroll and Taxation), 8.6 (Independent Contractor), 11.3 (Security Deposit), 11.5 (Parking Taxes and Parking Tax Collection Bond), 11.7 (Taxes), 11.8 (Inspection of Records), 11.9 (Books and Records), 12 (Hazardous Materials) (in its entirety), 13 (Insurance) (in its entirety), 14 (Indemnification) (in its entirety), 16 (Warranties and Representations) (in its entirety), 17.2 (Remedies), 17.3 (Damages), 17.4 (Liability), 17.5 (Equipment), 19 (Duties Upon Termination) (in its entirety), 20 (Notice) (in its entirety), 21.3 (Authority), 21.4 (Consent to Notice), 21.6 (False Claims), 21.7 (Integrated Agreement), 21.14 (Political Activity), 21.18 (Waiver), 21.19 (Modification), 21.20 (Administrative Remedies), 21.21 (Venue), 21.25 (Construction of Agreement), 21.26 (Severability), 21.27 (Successors and Assigns), 21.29 (Confidential Information), 21.30 (Ownership of Results), 21.31 (Works for Hire).

19.3 Delivery of Work. Except as to provisions of this Agreement that survive termination or expiration of this Agreement, upon termination of this Agreement prior to expiration of the term specified in Section 5, this Agreement shall terminate and be of no further force or effect. Operator shall transfer title to Corporation, and deliver in the manner, at the times, and to the extent, if any, directed by Corporation, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Corporation. This subsection shall survive termination of this Agreement.

20. NOTICE REQUIREMENTS

All notices required to be given hereunder shall be in writing and either served personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this Section 20. Any notice of default must be sent by registered mail.

OPERATOR:

[INSERT CONTACT]

CORPORATION:

City of San Francisco Uptown Parking Corporation
444 Stockton Street
San Francisco, CA 94108
Attn: Corporate Manager

With copies to:

Keil and Connolly
244 Kearny Street, 9th Floor
San Francisco, CA 94108
Attention: Paul Newman, Esq.

San Francisco Municipal
Transportation Agency

1 South Van Ness Avenue, 7th Floor
San Francisco, California 94103
Attention: Parking Authority

21. GENERAL PROVISIONS.

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

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

21.3 Authority. Unless otherwise limited by law and except as set out in this Agreement, all rights, powers and privileges of the Corporation and the City under this Agreement may be exercised, on behalf of the Corporation or the City, by persons designated by those entities.

21.4 Consent to Notice of Nonpayment of Parking Tax.

(a) Operator hereby agrees that the City's Tax Collector and Controller may notify Corporation of any nonpayment by Operator of any Parking Taxes owing from Operator to the City, regardless of whether such unpaid Parking Taxes are related to the Garages.

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

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

(d) Upon demand by City, Corporation shall withhold from any payments owed to Operator an amount equivalent to the amount of unpaid parking taxes owed to City and shall transmit that amount to the Tax Collector.

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

21.6 False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or

paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of then false claim.

21.7 Integrated Agreement. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and this Agreement supercedes and renders null and void all previous agreements and understandings, whether written or oral. This Agreement may only be modified as provided for in Section 21.20 of this Agreement.

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

21.9 Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance

Corporation has adopted as its own policy for purposes of this Agreement the requirements of the City's Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Operator shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Operator's obligations or liabilities, or materially diminish Operator's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. For purposes of this Agreement, the term "Contractor" as defined in Chapter 14A shall be construed to include Operator in its relationship with Corporation under this Agreement. Operator's willful failure to comply with any applicable provision of the LBE Ordinance is a material breach of Operator's obligations under this Agreement and shall entitle Corporation or City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Operator shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

1. Enforcement

If Operator willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions

of this Agreement pertaining to LBE participation, Operator shall be in default of this Agreement, and shall be subject to termination in accordance with Section 18.2.

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

2. Subcontracting

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

3. Subcontract Language.

Operator shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Operator's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Operator shall include in all subcontracts with LBEs made in fulfillment of Operator's obligations under this Agreement, a provision requiring Operator to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Operator does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Operator received advance approval from the SFMTA Director to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

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

4. Payment of Subcontractors

Operator shall pay its subcontractors within three working days after receiving payment from the Corporation unless Operator notifies the SFMTA Director in writing within ten working days prior to receiving payment from the Corporation that there is a bona fide dispute between Operator and its subcontractor and the SFMTA Director waives the three-day payment requirement, in which case Operator may withhold the disputed amount but shall pay the undisputed amount.

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

21.10 No Tobacco Advertising. Operator acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Corporation or City, including the Garages. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

21.11 Nondiscrimination; Penalties.

(a) Operator Shall Not Discriminate. Corporation has adopted as its own policy for purposes of this Agreement the City's nondiscrimination requirements and Equal Benefits Ordinance as set forth in Chapter 12B of the San Francisco Administrative Code. In the performance of this Agreement, Operator agrees not to discriminate against any employee, Corporation employee or City employee working with the Operator, or subcontractor, applicant for employment with the Corporation, the Operator or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Operator shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in those Chapters. Without limiting the foregoing, Operator understands that

pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Operator and/or deducted from any payments due Operator.

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

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

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

21.15 Limitations on Contributions. Through execution of this Agreement, Operator acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the

later of either the termination of negotiations for such contract or six months after the date the contract is approved. Operator acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Operator further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Operator's board of directors; Operator's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Operator; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Operator. Additionally, Operator acknowledges that Operator must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

21.17 Public Transit Information. Operator shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Operator employed in the Garages, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Garages and encouraging use of such facilities, all at Operator's sole expense.

21.18 Waiver. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

No waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by an authorized representative of the Corporation, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement.

21.19 Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

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

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

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

21.23 Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Operator to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

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

21.25 Construction of Agreement.

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

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

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

21.27 Successors and Assigns. Subject to the restrictions on assignment set forth in Section 21.1 above, each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of the Corporation, the City, and Operator, and the legal representatives, successors and assigns of any of them.

21.28 Time of Essence. Time is of the essence of each provision of this Agreement.

21.29 Proprietary or Confidential Information. Operator understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Operator may have access to private or confidential information which may be owned or controlled by Corporation and/or the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Corporation or City. Operator agrees that all

information disclosed by Corporation or City to Operator shall be held in confidence and used only in performance of the Agreement. Operator shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

21.30 Ownership of Results. Any interest of Operator or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Operator or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to, Corporation. However, Operator may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

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

21.34. Food Service Waste Reduction Requirements .

Effective June 1, 2007, Operator agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein

by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement.

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

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

Any failure of Operator to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

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

CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION	OPERATOR
---	-----------------

By:

Sidney Goodwill, President
Uptown Parking Corporation

Approved as to Form:
Corporate Legal Counsel

By:

Paul Newman
Keil and Connolly

By: _____

[INSERT NAME OR SIGNATORY]

APPENDIX A

DESCRIPTION OF THE PROPERTY

SUTTER STOCKTON GARGE

BEGINNING at the point of intersection of the northerly line of Sutter Street with the easterly line of Stockton Street; running thence easterly along said line of Sutter Street 275 feet; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle westerly along said line of Harlan place 23 feet and 1-3/8 inches to a point distant thereon 130 feet and 10-5/8 inches westerly from the westerly line of Grant Avenue; thence northerly at a right angle to said line of Harlan Place 23 feet to the northerly line of said Harlan Place; thence continuing northerly 58 feet and 0-1/2 of an inch to a point which is perpendicularly distant 130 feet and 8-1/8 inches westerly from the westerly line of Grant Avenue and also perpendicularly distant 67 feet and 11-1/2 inches southerly from the southerly line of Bush Street; thence easterly parallel with said southerly line of Bush Street 23 feet and 2-1/8 inches; thence at a right angle northerly 67 feet and 11-1/2 inches to the southerly line of Bush Street; thence at a right angle westerly along said line of Bush Street 137 feet and 6 inches to a point distant thereon 137 feet and 6 inches easterly from the easterly line of Stockton Street; thence southerly at a right angle to said line of Bush Street 137 feet and 6 inches; thence at a right angle westerly 137 feet and 6 inches to the easterly line of Stockton Street; thence at a right angle southerly along said line of Stockton Street 137 feet and 6 inches to the point of beginning.

UNION SQUARE GARAGE

COMMENCING at a point formed by the intersection of the Southerly line of Post Street with the Easterly line of Powell Street, running thence Easterly and along said Southerly line of Post Street 412 feet 6 inches to the Westerly line of Stockton Street, thence at right angles Southerly and along said Westerly line of Stockton Street 275 feet to the Northerly line of Geary Street, thence at right angles Westerly and along said Northerly line of Geary Street 412 feet 6 inches to the Easterly line of Powell Street, then at right angles Northerly and along said Easterly line of Powell Street 275 feet to the Southerly line of Post Street and the point of commencement.

APPENDIX B (1) - SUTTER STOCKTON GARAGE

Rate Category	Approved Parking Rates (effective April 1, 2007)
Transient Parking	
<u>Day Rates – Monday thru Friday Until 6:00 PM</u>	
0 – 1 Hour	\$2.00
1 – 2 Hours	\$5.00
2 – 3 Hours	\$7.00
3 – 4 Hours	\$9.00
4 – 5 Hours	\$12.00
5 – 6 Hours	\$15.00
6 – 7 Hours	\$18.00
7 – 8 Hours	\$22.00
8 + Hours	\$26.00
24 Hour Maximum	\$33.50
Lost Ticket	\$33.50
Motorcycle Flat Rate (24 hours)	\$5.00
High Volume (taxable)	\$12.50
High Volume (non-taxable)	\$10.00
Pre-Paid Bulk Rate (min. purchase \$450)	\$18.00
<u>Evening & Sunday Rates</u>	
<u>Evenings 6:00 PM to 7:00 AM</u>	
<u>Sundays 7:00 AM to 6:00 PM</u>	
0 – 1 Hour	\$2.00
1 – 2 Hours	\$4.00
2 – 3 Hours	\$5.50
3 + Hours	\$7.50
Monthly Parking	
Regular	\$375.00
Carpool	\$185.00
Car Sharing	\$185.00
Assigned	\$500.00
Motorcycle	\$65.00
Miscellaneous Charges	
Late Monthly Payments	\$25.00
Lost Access Card	\$25.00
Damaged Access Card	\$25.00
Access Card Deposit	\$50.00
Re-opening Garage Fee	\$50.00
No Key Charge – at Valet Parking	\$25.00

APPENDIX B (2) - UNION SQUARE GARAGE

Rate Category	Approved Parking Rates (effective April 1, 2007)
Transient Parking	
0 – 1 Hour	\$2.50
1 – 2 Hours	\$5.50
2 – 3 Hours	\$8.50
3 – 4 Hours	\$12.00
4 – 5 Hours	\$16.00
5 – 6 Hours	\$21.00
6 – 7 Hours	\$26.00
7 – 24 Hour Maximum	\$31.00
Lost Ticket	\$31.00
Motorcycle Flat Rate (24 hours)	\$5.00
High Volume (taxable)	\$15.00
High Volume (non-taxable)	\$12.00
Pre-Paid Bulk Rate (min. purchase \$500)	\$20.00
Monthly Parking	
Regular	\$375.00
Carpool	\$185.00
Car Sharing	\$185.00
Assigned	\$500.00
Motorcycle	\$70.00
Miscellaneous Charges	
Late Monthly Payments	\$25.00
Lost Access Card	\$25.00
Damaged Access Card	\$25.00
Access Card Deposit	\$50.00
No Key Charge – at Valet Parking	\$25.00

APPENDIX C

Maintenance Standards

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

1. **Lighting** All lights must be in working order and bright enough to convey a sense of safety, especially in and around stairways and restrooms. Burned out bulbs or lamps must be replaced within 24 hours. Non-working fixtures must be repaired or replaced, with energy efficient fixtures within 72 hours. Bulbs or lamps must be secured and must be the same color. Emergency lights must be inspected at least once each month and non-operating battery packs must be changed within one week.
2. **Walls** All walls must be kept clean and free of stains, dirt and graffiti. Special attention shall be given to stairwells, restrooms and their surrounding areas. Graffiti must be removed or painted over within 24 hours. Black marks from bumpers must be painted over as needed but, in no event, not less than once a month.
3. **Odors** Foul odors must be removed within 24 hours. Special attention shall be given to stairwells, restrooms and their surrounding areas. Stairwells and sidewalks must be steam cleaned as needed but, in no event, not less than once a month.
4. **Cleaning** The entire facility must be cleaned daily, including interior and exterior stairwells, restrooms, parking areas, and sidewalks. Parking areas and Garage floors must be swept, grease and oil must be removed, foul odors must be deodorized, pigeon droppings must be removed, and all litter must be removed.
5. **Steam Cleaning** Steam cleaning of all interior stairwells shall be performed on a quarterly basis and the entire Garage on a semi-annual basis. At the discretion of the Director, steam cleaning may be required to be performed less frequently if the Garage, including interior stairwells, is maintained in a clean and orderly state.
6. **Ventilation Equipment** Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis.
7. **Windows** All windows, mirrors and glass cases must be cleaned as needed, but in no event not less than once a month.
8. **Signs** Signs must be easily understood and professionally made, not hand printed or copy machine reproduced. Manager will be allowed to post nonprofessional signs only in case of an emergency, but the emergency signs must be replaced within one week. Signs must also be repaired or replaced promptly when damaged.

9. **Plants** Any vegetation must be pruned and watered regularly, consistent with water restrictions of the San Francisco Water Department. Weeds must be pulled as needed, but in no event not less than once a month and trees must be pruned once a year.

10. **Safety Equipment** Equipment including fire alarm call boxes, fire extinguishers, and fire hose units must be maintained in good working order and inspected at least once a month. Closed circuit cameras and the intercom system must be inspected at least once a week.

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

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

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

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

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

APPENDIX D

**FORM OF MAINTENANCE SCHEDULE
(GARAGE NAME)**

Lights	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Inspect lights	X					
Replace burnt-out bulbs	X					
Inspect broken fixtures	X					
Replace discolored covers	X					
Cleaning						
Elevator areas	X					
Stairwell areas	X					
Bathroom & lobbies	X					
Parking areas	X					
Pick-up litter	X					
Cashier booths/stations		X				
Windows			X			
Steam-clean stairwells				X		
Ventilation Vents					X	
Steam-clean Garage					X	
Painting						
Paint over graffiti	X					
Paint over foreign marks			X			
Touch-up						X
Inspect striping						X
Elevators (if applicable)						
Inspect elevator operations		X				
Professional Periodic Maintenance			X			
Professional inspection						X
Landscaping						
Inspect Irrigation System		X				
Remove Weeds			X			
Prune trees and plants						X
Signs						
Inspect signs		X				
Repair/replace damaged signs		X				
Mechanical						
Doors open and lock properly		X				
Inspect parking equipment		X				
Inspect HVAC operations			X			
Safety						
Inspect emergency lights			X			

Lights	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Inspect exit lights			X			
Inspect sidewalks			X			
Inspect fire alarm/equipment			X			
Inspect/Service closed circuit cameras system				X		
Structural						
Inspect for water leaks						X
Inspect floors for exposed rebar						X
Inspect concrete for cracks						X
Inspect metal for rust						X

APPENDIX E

**FORM OF MAINTENANCE CHECKLIST
(GARAGE NAME)**

ITEM	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials
Windows	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
	6/10/2008			6/10/2009			6/10/2010			6/10/2011		
	7/10/2008			7/10/2009			7/10/2010			7/10/2011		
	8/10/2008			8/10/2009			8/10/2010			8/10/2011		
	9/10/2008			9/10/2009			9/10/2010			9/10/2011		
	10/10/2008			10/10/2009			10/10/2010			10/10/2011		
	11/10/2008			11/10/2009			11/10/2010			11/10/2011		
	12/10/2008			12/10/2009			12/10/2010			12/10/2011		
	1/10/2009			1/10/2010			1/10/2011			1/10/2012		
	2/10/2009			2/10/2010			2/10/2011			2/10/2012		
	3/10/2009			3/10/2010			3/10/2011			3/10/2012		
	4/10/2009			4/10/2010			4/10/2011			4/10/2012		
Steam - clean stairwells	7/10/2008			7/10/2009			7/10/2010			7/10/2011		
	10/10/2008			10/10/2009			10/10/2010			10/10/2011		
	1/10/2009			1/10/2010			1/10/2011			1/10/2012		
	4/10/2009			4/10/2010			4/10/2011			4/10/2012		
Inspect / Service Close Circuit Camera System	7/10/2008			7/10/2009			7/10/2010			7/10/2011		
	10/10/2008			10/10/2009			10/10/2010			10/10/2011		
	1/10/2009			1/10/2010			1/10/2011			1/10/2012		
	4/10/2009			4/10/2010			4/10/2011			4/10/2012		
Clean Ventilation Vents	10/10/2008			10/10/2009			10/10/2010			10/10/2011		
	4/10/2009			4/10/2010			4/10/2011			4/10/2012		

APPENDIX E (cont.)

ITEM	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials
Steam - Clean Garage	10/10/2008			10/10/2009			10/10/2010			10/10/2011		
	4/10/2009			4/10/2010			4/10/2011			4/10/2012		
Paint over foreign marks	5/20/2008			5/20/2009			5/20/2010			5/20/2011		
	6/20/2008			6/20/2009			6/20/2010			6/20/2011		
	7/20/2008			7/20/2009			7/20/2010			7/20/2011		
	8/20/2008			8/20/2009			8/20/2010			8/20/2011		
	9/20/2008			9/20/2009			9/20/2010			9/20/2011		
	10/20/2008			10/20/2009			10/20/2010			10/20/2011		
	11/20/2008			11/20/2009			11/20/2010			11/20/2011		
	12/20/2008			12/20/2009			12/20/2010			12/20/2011		
	1/20/2009			1/20/2010			1/20/2011			1/20/2012		
	2/20/2009			2/20/2010			2/20/2011			2/20/2012		
	3/20/2009			3/20/2010			3/20/2011			3/20/2012		
	4/20/2009			4/20/2010			4/20/2011			4/20/2012		
Inspect HVAC operations	5/25/2008			5/25/2009			5/25/2010			5/25/2011		
	6/25/2008			6/25/2009			6/25/2010			6/25/2011		
	7/25/2008			7/25/2009			7/25/2010			7/25/2011		
	8/25/2008			8/25/2009			8/25/2010			8/25/2011		
	9/25/2008			9/25/2009			9/25/2010			9/25/2011		
	10/25/2008			10/25/2009			10/25/2010			10/25/2011		
	11/25/2008			11/25/2009			11/25/2010			11/25/2011		
	12/25/2008			12/25/2009			12/25/2010			12/25/2011		
	1/25/2009			1/25/2010			1/25/2011			1/25/2012		
	2/25/2009			2/25/2010			2/25/2011			2/25/2012		
	3/25/2009			3/25/2010			3/25/2011			3/25/2012		
	4/25/2009			4/25/2010			4/25/2011			4/25/2012		

APPENDIX E (cont.)

ITEM	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials
Inspect Emergency lights	5/25/2008			5/25/2009			5/25/2010			5/25/2011		
	6/25/2008			6/25/2009			6/25/2010			6/25/2011		
	7/25/2008			7/25/2009			7/25/2010			7/25/2011		
	8/25/2008			8/25/2009			8/25/2010			8/25/2011		
	9/25/2008			9/25/2009			9/25/2010			9/25/2011		
	10/25/2008			10/25/2009			10/25/2010			10/25/2011		
	11/25/2008			11/25/2009			11/25/2010			11/25/2011		
	12/25/2008			12/25/2009			12/25/2010			12/25/2011		
	1/25/2009			1/25/2010			1/25/2011			1/25/2012		
	2/25/2009			2/25/2010			2/25/2011			2/25/2012		
	3/25/2009			3/25/2010			3/25/2011			3/25/2012		
	4/25/2009			4/25/2010			4/25/2011			4/25/2012		
Inspect exit lights	5/25/2008			5/25/2009			5/25/2010			5/25/2011		
	6/25/2008			6/25/2009			6/25/2010			6/25/2011		
	7/25/2008			7/25/2009			7/25/2010			7/25/2011		
	8/25/2008			8/25/2009			8/25/2010			8/25/2011		
	9/25/2008			9/25/2009			9/25/2010			9/25/2011		
	10/25/2008			10/25/2009			10/25/2010			10/25/2011		
	11/25/2008			11/25/2009			11/25/2010			11/25/2011		
	12/25/2008			12/25/2009			12/25/2010			12/25/2011		
	1/25/2009			1/25/2010			1/25/2011			1/25/2012		
	2/25/2009			2/25/2010			2/25/2011			2/25/2012		
	3/25/2009			3/25/2010			3/25/2011			3/25/2012		
	4/25/2009			4/25/2010			4/25/2011			4/25/2012		

APPENDIX E (cont.)

ITEM	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials	Date Scheduled	Date Completed	Garage Supervisor's Initials
Inspect fire alarms / equipment	5/25/2008			5/25/2009			5/25/2010			5/25/2011		
	6/25/2008			6/25/2009			6/25/2010			6/25/2011		
	7/25/2008			7/25/2009			7/25/2010			7/25/2011		
	8/25/2008			8/25/2009			8/25/2010			8/25/2011		
	9/25/2008			9/25/2009			9/25/2010			9/25/2011		
	10/25/2008			10/25/2009			10/25/2010			10/25/2011		
	11/25/2008			11/25/2009			11/25/2010			11/25/2011		
	12/25/2008			12/25/2009			12/25/2010			12/25/2011		
	1/25/2009			1/25/2010			1/25/2011			1/25/2012		
	2/25/2009			2/25/2010			2/25/2011			2/25/2012		
	3/25/2009			3/25/2010			3/25/2011			3/25/2012		
	4/25/2009			4/25/2010			4/25/2011			4/25/2012		
Inspect water leaks	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Inspect floors for exposed rebar	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Inspect concrete for cracks	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Inspect metal for rust	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Touch-up paint	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Inspect striping	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Professional elevators inspection	5/10/2008			5/10/2009			5/10/2010			5/10/2011		
Prune trees and plants	5/10/2008			5/10/2009			5/10/2010			5/10/2011		

APPENDIX F
(FORM OF ANNUAL BUDGET)

Revenue & Expense Categories	Proposed May 01, 2008 thru April 30, 2009
Parking Revenues	
Transient Parking	
Monthly Parking	
Business Validation	
Misc. Parking Revenue	
Validation	
Other (tax-exempt)	
Government Parking (tax-exempt)	
Gross Parking Revenue	
Adjustment to Parking Revenues	
Parking Tax	
Net Parking Revenue	
Other Operating Income	
Commercial Rent	
Sale/Service/Advertising Space	
Miscellaneous	
Total Net Revenue	
EXPENSES	
Personnel Cost	
Administrative Salaries	
Parking Operations Salaries	
Janitorial (non-contract)	
Payroll Expenses	
Payroll Taxes	
SF Business & Payroll Taxes	
General Welfare & Pension	
Worker's Compensation	
Utilities	
Electricity	
Water	
Telephone	
Scavenger	
Services & Supplies	
Insurance	
Repairs / Maintenance	
Office Supplies	
Garage Supplies	
Parking Supplies	

APPENDIX F
(FORM OF ANNUAL BUDGET) cont.

Revenue & Expense Categories	Proposed May 01, 2008 thru April 30, 2009
Management Fee	
Incentive Fee	
Professional / Personal Services	
Accounting / Bookkeeping	
Garage Audit	
Garage Legal	
Garage Security (Contractual)	
Janitorial (Contractual)	
Personnel Training	
Bank Charges	
Uniform Cleaning	
Payroll Processing	
Administrative Services	
Other Contractual Services	
Other Costs	
Taxes & Licenses	
Marketing	
Garage Claims	
Capital Expenditures	
Miscellaneous	
Total Garage Expense	
Garage Operating Income/(Loss)	

Note: All applicable proposed budget line items must have a detailed description of the income or expense. Line items may be added or deleted at appropriate.

APPENDIX G

Monthly Report Form

To be provided upon commencement.

APPENDIX H

Form of Faithful Performance Bond

_____ (Surety)

KNOW ALL MEN BY THESE PRESENTS:

That we [Name of Contractor] , as Principal, and [Surety Company] , a
_____, as Surety, are held and firmly bound unto the City and County of San
Francisco, as Obligee, in the sum of _____ (\$_____) lawful money of the United
States of America, to be paid to the City and County of San Francisco for which payment, well and truly
to be made, we bind ourselves, our heirs, executors and successors jointly and severally, firmly by these
presents.

THE CONDITION OF THE FOREGOING OBLIGATION is such that

WHEREAS, the Principal has entered into an Agreement, effective _____, 19____, with the
City and County of San Francisco, for the provision of a comprehensive parking citation processing and
collection system and is required to give this bond in connection therein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully
perform all of the covenants, terms and conditions of said Agreement (which by reference is made a part
hereof), then this obligation shall be null and void, otherwise to remain in full force and effect; and shall
be effective _____, 19____; provided that the Surety hereby agrees to give at least thirty (30)
days written notice be certified mail to the City at the following address prior to the expiration or any
termination of this bond for any reason: Director, the City and County of San Francisco, c/o San
Francisco Department of Parking and Traffic, 25 Van Ness Avenue, Suite 410, San Francisco, CA
94102 and the Controller, City and County of San Francisco, Office of the Controller, 875 Stevenson
Street, Room 210, San Francisco, CA 94103.

Surety, for value received, hereby stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the contract or to the work to be performed thereunder or to the
specifications accompanying the same shall in any wise affect its obligations on this Bond, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the
contract or to the work or to the specifications.

Signed, sealed and dated this _____ day of _____, 19____.

Principal:

Surety:

APPENDIX I

Parking Related Business In Which Operator Has Interest

In accordance with Section 8.7 b. of the Agreement, please provide information requested below for each parking related business.

1. Business name
2. Type of ownership (e.g. full ownership, active partner, silent partner, lease/agreement, etc)
3. Percent of ownership or interest
4. Term of ownership or interest
5. Address of business and phone number
6. Proximity to contract location
7. Type of business
8. Is there any parking related activities associated with this business?
9. If so, type of parking (e.g. attended, valet, unattended, etc.)? Number of marked stalls?
10. Do you anticipate any benefits to the contract garage operations from this business? If so, please describe.

Do you anticipate any relationship between contract garage operations and this business? If so, please describe