



## MEMORANDUM

To: Brenda Wisneski  
From: Nelson\Nygaard Project Team  
Date: August 5, 2013  
Subject: DRAFT Parking Benefit District & Shared Parking Implementation

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### INTRODUCTION

The 2012 Balboa Village Parking Master Plan (BVPMP) proposed a coordinated set of recommendations designed to improve parking within Balboa Village. Among the innovative parking management strategies identified in the BVPMP was the creation of a Balboa Village Parking Benefit District (PBD) to manage parking in Balboa Village. The purpose of this memorandum is to establish the goals, rules, regulations, and operating structure for a commercial PBD in Balboa Village. In addition, this memorandum outlines policies related to shared parking, which will be a crucial component of implementing a successful PBD.

### Parking Benefit District Overview

PBDs are defined geographic areas, typically in downtowns or along commercial corridors, in which any revenue generated from on-street and off-street parking facilities within the district is reinvested back into local neighborhood improvements. PBDs manage and coordinate parking programs and policies so that parking is, above all, convenient and easy for motorists.

PBDs typically employ a number of parking management techniques, including shared parking, demand-based pricing, and the removal of time limits. Experience has shown that in order to secure community and business support for these strategies, the most important component is revenue reinvestment. If parking revenues “disappear” into the General Fund, where they may appear to produce no direct benefit for the area where they are collected, there may be little support for new parking fees or demand-based pricing. However, when area merchants and property owners can clearly see that parking revenue is spent for the benefit of their district and on projects that they have chosen, they are more willing to support and take an active interest in parking pricing. Although motorists often prefer not to pay for parking or to pay less for parking, a PBD can create a new local constituency for proactive parking management.

Potential PBD expenditures can include a wide variety of transportation related expenditures designed to not only improve parking management, but also improve overall mobility, accessibility, and quality of life within the district.

## Shared Parking Overview

The conventional development pattern in U.S. cities over the past half century has been to require on-site parking for each individual building or land use. As a result, visitors will often drive between different uses—for example, from a restaurant to a movie theatre, or between different shops—even if they are within short walking distance. A shared parking district, or “park once” district uses a common pool of parking facilities to allow visitors to park a single time and then walk easily between different destinations.

Districts with shared parking manage parking spaces as if they are available for public use, rather than reserved for the tenants and visitors associated with a particular property. Shared parking policies do not treat the parking supply as discrete units specific to particular businesses or uses, but rather emphasize the efficient use of the parking supply by including as many spaces as possible in a common pool of shared, publicly available spaces.

Pooling parking resources increases the efficiency of the existing supply in two ways. Because many different land uses (a bank and a bar or restaurant, for example) have different periods of peak parking demand, they can easily share a common parking facility, thereby limiting the need to provide additional parking. Shared parking also greatly increases the effective supply through internal capture (i.e. trips that are entirely “captured” within larger, mixed-use developments and can be made on foot). By eliminating the need to “re-park”, cities can enable people to walk between local destinations. As a result, the number of required spaces, vehicle trips, congestion, and vehicle trips are all reduced. Finally, shared parking promotes pedestrian activity and commercial vitality.

## OVERVIEW OF BEST PRACTICES

A number of cities in California have implemented successful PBDs including Pasadena, Redwood City, and Ventura. Included below is a brief summary of these best practices. Through effective parking management within their respective PBDs—including shared parking agreements and demand-based pricing—these cities have translated parking revenues into tangible benefits in the districts where the revenue is collected.

### Old Pasadena, CA

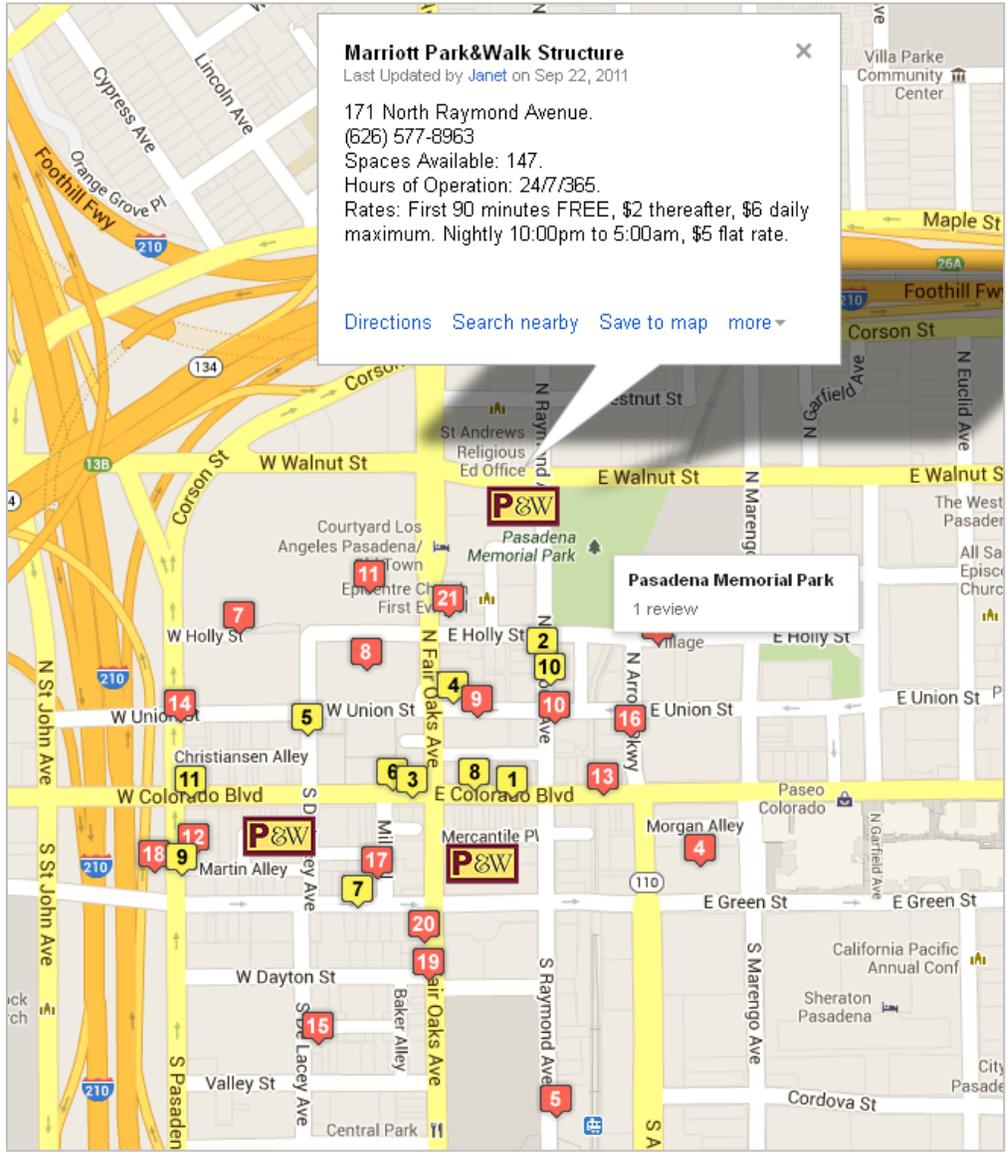
In the early 1990s, the City’s efforts to revive Old Pasadena were being hindered by a lack of convenient and available parking spots for customers. At that time, Old Pasadena had no parking meters, and proposals to install them were opposed by local merchants, who feared charges would further drive customers away. In 1993, the Old Pasadena Parking Meter Zone was created and meters were installed. Borrowing against future meter revenues, the City was able to fund substantial streetscape, maintenance, beautification, safety projects, as well as new parking supply.

With meter revenues, the City’s new garages have been wrapped in ground floor retail and restaurants, in order to minimize their impact on the pedestrian environment. In addition, parking meter revenue from the downtown area has funded the beautification of many downtown alleys. These are often used for loading in the early morning and provide space for outdoor cafes during the day. The alleys also provide pedestrian access and light wells for many garages. In sum, these investments helped to reverse the decline in the district, and an increase in sales tax revenue has created a cycle of reinvestment and additional development making Old Pasadena a

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popular destination. Today, the district is managed by the Old Pasadena Management District (OPMD), a non-profit management entity. The OPMD is managed by professional staff, but led by a variety of stakeholders including merchants, tenants, property owners, residents, and City staff.

Figure 1 Old Pasadena Public Parking Facilities



Source: <http://www.oldpasadena.org/map.asp>

Figure 2 Old Pasadena Meters (left) and Revitalized Alleyway (right)



Source: Flickr users Cheryl & Rich (left) and liberrianPH (right)

## Redwood City, CA

Redwood City uses a variety of tools to comprehensively manage parking. The City has used performance-based pricing to manage on-street demand and maintain parking availability. To implement the program, it created an ordinance that grants its parking management director authority to adjust meter rates based on documented utilization patterns and an explicit availability target of 15%. The City carefully monitors supply and occupancy trends to adjust meter prices and to identify when and where new parking should be built. As a result of the program, parking occupancy along the City's most oversubscribed street has fallen to 82%, congestion has decreased, sales of monthly permits for off-street lots increased 50%, and parking stays have averaged 72 minutes.<sup>1</sup> In Redwood City, effective parking pricing made time limits unnecessary and businesses and their customers happy. Since district inception, parking revenue collected within the district has been used to build a 600-space underground public parking garage and finance other district improvements that benefit the blocks where the money was collected.



The removal of time limits and demand-based pricing within the downtown PBD improved parking availability, satisfying businesses and their customers. Source: [ci.redwood-city.ca.us](http://ci.redwood-city.ca.us)

<sup>1</sup> Dan Zack, City of Redwood City

Figure 3 Parking in Downtown Redwood City



## Downtown Ventura, CA

In response to significant development in Downtown Ventura and subsequent pressure on parking spaces, the City established a downtown parking benefit district in 2009 to make on-street parking more convenient for customers, improve utilization of off-street lots, and reduce traffic congestion.<sup>2</sup> All off-street parking is free, and 318 “high-demand” on-street parking spaces are metered with the goal of maintaining 15% available parking at any one time.

Within the PBD, all on-site parking can be shared between land uses with different periods of peak parking demand, by ordinance. Shared parking is allowed to satisfy 100% of the minimum parking requirement for each land use, providing a degree of flexibility in code-mandated minimum parking requirements. While shared parking within the PBD was formally approved in 2009, a subsequent lack of development has led to the slow adoption of shared parking downtown. In 2013, the first shared parking agreement was formalized. The new office leases 52 spaces in an existing off-street parking structure for \$71/month for parking between the hours of 8 AM and 5 PM. For exclusive reserved spaces, the cost to lease parking is \$142/month. Revenues from this program help fund PBD expenditures.

In its first year of operation, the PBD generated \$530,000 from monthly structured parking permits and 318 on-street metered spaces. Program revenue has been used to provide free

<sup>2</sup> City of Ventura Traffic & Transportation <http://www.cityofventura.net/parking>

outdoor wireless internet service within the Downtown PBD. Visitors can access the wireless internet for a total of one hour at a time. Parking meter revenue has also been used to fund streetscape, landscaping, and lighting improvements in Downtown Ventura and a full-time police officer dedicated to Downtown.

Figure 4 Downtown Ventura



Source: Flickr user Ken Lund

## **BALBOA VILLAGE PARKING BENEFIT DISTRICT**

### **Goals**

As Balboa Village and surrounding communities continue to grow and evolve, the Village's parking needs will also change. As discussed above, parking benefit districts and shared parking programs offer the flexibility to quickly respond to these changes. To maximize the benefits of PBDs and shared parking, address current parking challenges, and allow the City to be nimble in their response to future parking challenges, the following goals are proposed to guide implementation:

- The parking supply should be a public resource that is convenient and easily accessible for all user groups
- The Balboa Village parking supply (public and private) should be managed as part of an integrated, district-wide system
- Parking facilities should be managed with a focus on making the most efficient use of all public and private parking facilities before increasing supply
- Parking regulations should not prevent visitors and residents from coming to (or staying in) Balboa Village

- Demand-based pricing should be utilized as a tool to manage parking supply and demand
- Any potential parking revenue should fund transportation programs that maintain adequate parking supply and enhance mobility in Balboa Village
- The City and PBD should be proactive in community engagement to ensure that local businesses, residents, and visitors understand any new parking policies and programs and how those policies will improve parking in Balboa Village

The following sections establish the rules and regulations associated with establishing a PBD and shared parking program to meet these goals.

## **Implementation**

### **District Initiation**

Under California state law<sup>3</sup>, parking meter zones and parking meter rates can only be established by ordinance. In an ordinance to create a parking zone or PBD, a city need only specify the following:

- District boundaries
- Parking rates within the district
- How the funds will be used

Some cities, such as San Diego, have established ordinances that require a set percentage of revenues (45% in San Diego's case) to be returned to the zone. Others, like Redwood City and Pasadena, return all net revenue, excluding City administration and enforcement costs.

Recommendations on allowable program expenditures and parking rates can be found in subsequent sections. Sample PBD Ordinances can be found in Appendix A.

### **Proposed District Boundary**

All commercial streets with meters and public parking lots from Adams Street to A Street would comprise the PBD. Shared parking policies and demand-based pricing would also be pursued within these bounds.

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<sup>3</sup> California Vehicle Code Section 22508

Figure 5 Balboa Village PBD Boundary



### Proposed Organizational Structure

The body overseeing shared parking provisions and the parking benefit district can take several forms. With the disestablishment of the Balboa Village Business Improvement District (BID) in May 2013, it is recommended that the City manage the allocation of PBD funds with input from Balboa Village merchants, tenants, residents, and property owners. City staff would also be responsible for managing the Balboa Village parking program, monitoring parking occupancy, and implementing parking meter and pricing structures to facilitate demand-based pricing within the PBD.

It is recommended that the following powers and duties be established as part of the PBD:

- Establish criteria by which to select projects and programs
- Define a list of eligible projects and programs
- Allocate funds to selected projects and programs, to be approved by City Council
- Pursue shared parking agreements with private parking operators

- Establish well-defined procedures for soliciting and incorporating community input
- On-going evaluation, management, and reporting of PBD policies and expenditures

To initiate these powers and duties, at a minimum the following should be described:

- The purpose, powers, and duties of those overseeing the PBD, as discussed above
- City membership structure and input process from stakeholders, as discussed above
- Voting or other rules necessary to determine the expenditure of PBD funds
- Meeting and minutes (For example, meetings will be held monthly or as needed. Meeting minutes shall be drafted by the Secretary and made publicly available.)

### **Program Expenditures**

In accordance with the ordinance operationalizing the PBD, the City is charged with adopting a defined list of allowable projects and programs to be funded by PBD revenues and crafting a decision making process for the PBD's expenditures of funds. In general, revenue from the District should be invested in:

- A full spectrum of transportation mobility strategies for Balboa Village employees, visitors, and residents, including transit, carpool, vanpool, bicycle and pedestrian projects and programs
- Streetscape improvements and other beautification projects

Specifically, District revenue could be used for any of the following, as established in a PBD ordinance:

- Purchase and installation costs of meters (e.g., through revenue bonds or a “build-operate-transfer” financing agreement with a vendor) and ongoing operational costs
- Shuttle to remote park-and-ride facilities during peak periods
- Valet parking services during peak periods
- Leasing of private spaces
- Construction of additional parking, if deemed to be necessary
- “Mobility Ambassadors” to provide assistance to visitors as well as additional security
- Landscaping and streetscape greening
- Multimodal wayfinding signage
- Street cleaning and maintenance
- Transit, pedestrian, and bicycle infrastructure and amenities
- Additional parking enforcement
- Marketing and promotion of PBD and local businesses
- Management activities
- Additional police or security services
- Transportation & parking planning

Specific projects can be gathered from existing planning documents and public outreach. In addition, the District could issue a call for projects to business owners and residents to identify potential priority projects.

### **Expenditure Criteria**

The City should develop evaluation criteria to prioritize specific Balboa Village improvement projects. These criteria should be closely linked to the Balboa Village PBD goals articulated above to help ensure that funded projects align with community priorities. Potential project evaluation metrics could include:

- Visitor/business/resident convenience and easy access to destination in Balboa Village
- Parking availability: Maintain target parking availability, especially near local businesses
- Efficient parking utilization: Achieve target on- and off-street parking utilization before building additional parking
- Street operations: Promote multimodal circulation and access to Balboa Village
- Pedestrian connectivity: Ensure safe, secure, comfortable pedestrian facilities to and within Balboa Village
- Bike connectivity: Ensure comfortable, direct paths of travel for cyclists
- Aesthetics and design quality: Ensure that projects contribute to the overall aesthetic environment in Balboa Village
- Customer friendliness: Maximize convenience for visitors, employees, and residents
- Preservation of coastal access; ensure access to coastal resources
- Level of community/district support

The City should measure potential projects using an evaluation framework and prioritize and execute the highest scoring projects to the extent that PBD funds can support.

### **Program Revenues**

City of Newport Beach staff should be responsible for implementing parking meters and pricing structures that facilitate demand-based pricing and ensuring proper oversight of program revenues generated within the Balboa Village PBD.

It should be noted that currently close to 90% of the \$1.5 million of parking revenue generated in Balboa Village is currently allocated to the City's Tidelands Fund. The Tidelands Fund is used to finance a variety of projects to improve access and operations of the City's marine resources. The remaining 10% (\$192,000 in FY 2010-11) is shared between the private parking operator and the City's General Fund. In Balboa Village, General Fund revenue was used to purchase the land for the public lot at East Balboa Boulevard and Palm Street.

Given the City's ongoing obligation to the Tidelands Fund and private parking operator, it is expected that the majority of revenue generated in Balboa Village will not be available for use by the PBD. Nevertheless, it is reasonable to expect that annual parking revenue for a Balboa Village PBD would be less than \$150,000-\$200,000.

### **Demand-based Pricing**

The Balboa Village Parking Management Plan recommended that the City consult with the Coastal Commission and explore upgrading its existing "smart" parking meters for all curb spaces along the primary commercial corridors in Balboa Village. On- and off-street parking should use variable pricing as a means to meet target occupancy levels and generate an appropriate level of turnover.

As described in more detail below, motorists would be allowed to park in a parking space for as long as they like, as long as they pay for it. Prices would be based on length of stay and also

adjusted to respond to seasonal fluctuations in demand so that when parking demand is higher or lower, prices would increase or decrease accordingly.

The primary goal of demand-based pricing is to make it as easy and convenient as possible to find and pay for a parking space. By setting specific availability targets and adjusting pricing, demand can be effectively managed so that when a motorist chooses to park, they can do so without circling the block or searching aimlessly. Demand-based pricing can result in the following benefits:

- Consistent availability and ease of finding a parking space, especially near local businesses and ground floor retail uses
- Flexible time limits, thereby eliminating the need to move a vehicle to avoid time restrictions
- Convenient payment methods that eliminate the need to “plug the meter” and make it easier to pay for parking and avoid parking tickets
- Incentivizes long-term parkers and daily commuters to park in off-street lots
- Reduces search time for parking, resulting in less local congestion and vehicle emissions
- Reduces illegal parking
- Provides a more equitable and efficient way to account for the real costs to a city for providing parking
- Offers a potential revenue stream for the City that should be reinvested in local transportation and mobility improvements

### **Meter Type**

New meters should employ “smart” technology that accepts multiple forms of payment, including credit cards and pay-by-phone technology.

### **Target Occupancy Rate**

Target occupancy rates for on-street spaces should be 85% and 90% for off-street spaces, which would translate into approximately one space per block and several spaces per lot being available at all times of the day.

### **Initial Hours & Pricing Structure**

Current meter rates are \$1.50 per hour. Hours and pricing should be based on demand and proximity to prime parking destinations. Furthermore, the price of off-street parking should be set lower than on-street rates in order to incentivize motorists to seek out underutilized off-street spaces. Ideally, all off-street “pay” facilities would employ consistent pricing structures. Outlined below is the proposed hours and pricing structure for Balboa Village:

#### *On-street*<sup>4</sup>

- Peak period (Summer)
  - 8 AM – 6 PM, 7 days
  - \$2.00 per hour (0-2 hours)
  - \$2.50 per hour (2+ hours)

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<sup>4</sup> Based on data to be collected in the summer, 2013, it may be beneficial to lengthen the hours of operation for on-street meters to 8 PM on weekends.

- Off-peak period (non-Summer)
  - 8 AM – 6 PM, 7 days
  - \$1.00 per hour (0-2 hours)
  - \$1.50 per hour (2+ hours)

Off-street

- Peak period (Summer)
  - \$1.50 per hour (no max)
- Off-peak period (non-Summer)
  - \$.50 per hour (no max)

**Meter Pricing Adjustments**

It is possible that the initial pricing structure proposed above will not achieve the target occupancy rate. Therefore, meter prices should not be static, but periodically adjusted to respond to changes in demand. Rates need not change constantly or abruptly. When revising meter hours or rates, it is safest to increase or decrease rates slowly, with occupancy checks before and after each rate adjustment, in order to avoid overshooting and accidentally driving away customers or visitors.

This Plan recommends that City of Newport Beach Staff be authorized to increase parking prices up or down in \$0.25 increments a maximum of four times per year, with an upper price limit of \$3.00 per hour.

If and when Staff deems that it is necessary to increase the price further on certain blocks or in certain parking facilities in order to manage higher parking demand in those locations, Staff must return to City Council to request authorization to do so, at which time a new price threshold (upper limit) on parking prices can be also be established.

**Shared Parking**

A shared parking district—an area where multiple businesses or land uses share off-street parking facilities—allows visitors to park once and then walk between different destinations. This scenario reduces the amount of parking that has to be provided to maintain a given level of availability and promotes pedestrian activity.

Chapter 20.40.110 of the City of Newport Beach Municipal Code includes strict provisions for joint use or shared parking. Shared parking, to a certain extent, does exist in Balboa Village, as much of the existing parking supply is already publicly available. However, there are close to 120 off-street spaces that are specifically dedicated to tenant or customer parking within the proposed PBD. Adopting revised shared parking policies would formalize a flexible shared parking policy that, to the greatest extent feasible, ensures that existing parking supply is made public. Furthermore, this recommendation is aimed at guaranteeing that any additional future parking supply accompanying new development in Balboa Village is publicly available.

**Shared Parking Agreements for Existing Parking**

Currently, off-street lots are utilized less than on-street spaces in Balboa Village. The parking occupancy disparity is even greater for privately-owned, off-street parking. Mid-week during the Spring 2013 survey, public off-street facilities were utilized at higher rates than private ones during all count times except 8-10 AM. Public facility utilization peaked at 56% (2-4 PM), while

private facility utilization peaked at 42% (2-4 PM). On Saturday, public facilities continued to be utilized at higher rates than private ones during all count times. The utilization of public off-street facilities exceeded target rates during two count times, 2-4 PM and 4-6 PM (96%). Private off-street facility utilization peaked at 53% (4-6 PM).

Shared parking agreements can help to more evenly distribute parking demand across public and private facilities. Before building additional parking, the PBD should work with private owners of key off-street lots to coordinate pricing and regulatory structures between on- and off-street facilities. These agreements would enable the PBD to establish consistent pricing and regulations throughout Balboa Village and could help relieve some of the pressure on on-street spaces and publicly-owned off-street lots, particularly on weekends. Should additional publicly-owned parking be needed to meet demand, the PBD should approve a policy ensuring that it will first be purchased or leased from existing private parking lots or structures from willing sellers prior to the construction of new parking lots or structures.

To initiate shared parking, the PBD should evaluate existing supply and demand trends in order to identify priority areas for acquisition of off-street supply. Initially, the occupancy data collected by Nelson\Nygaard in Spring 2013 (to be supplemented in Summer 2013) could serve to identify potential private parking candidates for shared parking agreements.

There are three basic types of public/private agreements which the PBD could enter into with a private property owner. These include:

1. **Direct purchase:** The PBD would simply purchase these parcels of land, thereby allowing it control over the parcels.
2. **Lease the private lot:** Under this arrangement the PBD would essentially “rent” the parking spaces from the property owner, and would be entitled to control pricing and regulations of the facility. The PBD would enforce compliance with regulations.
3. **Private owner, public management:** Under this arrangement the PBD would pay for the installation of meters and be entitled to control pricing and regulation of the facility. However, all meter revenue would go to the property owner. The PBD would be responsible for parking enforcement and would collect all citation revenue.

Liability issues often emerge as a potential concern, yet these issues are typically covered in standard liability coverage in any land use policy to cover public passage. In addition, liability can be more comprehensively addressed through well-written lease agreements that include provisions requiring the leaser to maintain a good state of repair, ADA access, etc., along with provisions that the lessee provide adequate and appropriate signage for patrons and take actions to avoid overcrowding or other hazardous situations. To serve as a basis for private facility leases, sample operating and liability agreements can be found in Appendix B.

### **Shared Parking Agreements for New Construction**

To guarantee that shared parking is provided at any new development within the PBD, the City of Newport Beach should amend the Municipal Code and create a parking overlay zone for properties within the PBD. Currently, Chapter 20.40.110 allows shared parking for new development with the approval of a conditional use permit, which certifies that various conditions regarding proximity, different peak parking demands, long-term occupancy, etc., are met. It is recommended that the City of Newport Beach establish a parking overlay zone for the Balboa Village PBD requiring as a condition of approval:

1. Applicants shall be able to meet their minimum parking requirements by right through the provision or leasing of nearby off-site facilities. Due to the denser nature of urban districts, 1,250 feet (a 5-minute walk) is considered acceptable for commercial and 400 feet for residential (a 1.5-minute walk). Note that shopping centers on multiple parcels with reciprocal access agreements are considered on-site by right.
2. All newly constructed private parking in any non-residential development or adaptive reuse project within the PBD be made available to the public
3. Allow parking to be shared among different uses within a single new, mixed-use building within the PBD, by right.

Overlay zones were used in the City of Buenaventura to implement shared parking in the Ventura Downtown PBD (refer to Appendix C).

## **APPENDIX A: SAMPLE PARKING BENEFIT DISTRICT ORDINANCES**

## **APPENDIX B: SAMPLE SHARED PARKING OPERATING & LIABILITY AGREEMENTS**

## **APPENDIX C: SAMPLE SHARED PARKING ORDINANCE**

## **APPENDIX A**

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### Sample Parking Benefit District Ordinances



## CITY OF VENTURA, CA

### ORDINANCE NO. 2009-\_\_\_\_ \_

#### **AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN BUENAVENTURA AMENDING CHAPTERS 2.410, 2.455, 4.400, 16.215, 16.220 AND 16.225 OF THE SAN BUENAVENTURA MUNICIPAL CODE FOR THE PURPOSES OF REGULATING PUBLIC PARKING IN THE DOWNTOWN AND CREATING A DOWNTOWN PARKING DISTRICT AND A DOWNTOWN PARKING ADVISORY COMMITTEE**

The Council of the City of San Buenaventura does ordain as follows:

Section 1. The City Council finds and determines as follows:

- A. The City provides vehicular parking in the downtown area within parking structures, upon surface parking lots, and upon public streets; and
- B. The City has conducted a substantive review of current parking practices and literature to determine the most effective ways of managing parking supply and demand; and
- C. The City has conducted public meetings about parking supply, parking demand and parking management as a part of, and subsequent to, the development and adoption of the Downtown Specific Plan; and
- D. Based upon that review and subsequent public meetings the City Council adopted a Downtown Parking Management Program as a part of the Downtown Specific Plan that establishes a program of managing on-street and off-street parking to achieve a 15% vacancy rate through various programs and pricing outlined in the adopted Downtown Parking Management Program; and
- E. A vacancy rate of approximately 15% is necessary and desirable to facilitate utilization of parking resources by as many different people as possible; and
- F. Using metered parking to achieve a vacancy rate of 15% eliminates the need for time restrictions on those metered parking spaces; and
- G. The existing parking permit and parking meter ordinances require modification in order to meet the changing parking demands; and
- H. California Vehicle Code section 22508 authorizes cities to establish parking meter zones and to fix the rates for such zones; and
- I. The City Council has determined that a parking meter system is justified to defray the cost of installation, operation, and control, as well as the costs of other parking management activities; and

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- J. This Chapter is for the dual purposes of regulating traffic and the parking of vehicles and collecting fair and reasonable charges for parking services; and
- K. Revenues from parking meters may be used not only in defraying the expenses of installation, operation, and control of such parking spaces and parking meters, but also those incurred in the control of traffic and enforcement of traffic regulations; and
- L. Revenues from parking meters may be used to fund alternative transportation programs, projects and enhancements that reduce the demand for, or increase supply of parking resources in the parking district which receipts are generated; and
- M. Nothing in this ordinance shall be deemed to affect any existing parking district.

Section 3. Chapter 2.455 is added to read as follows:

**Chapter 2.455 Downtown Parking Advisory Committee**

**Sec. 2.455.010. Administration.**

The director of public works, or designee, shall serve as the committee secretary and custodian of its records but shall have no vote.

**Sec. 2.455.020. Qualifications for Service.**

- A. One member shall be a City resident whose principal address is within the Downtown Parking District Area.
- B. Two members shall be business owners, operators or managers whose business is within the Downtown Parking District Area.
- C. Two members shall be the owners of commercial property situated within the Downtown Parking District Area.
- D. One member shall be a City resident of the recommended for appointment by a downtown organization that has been identified by the City Council.
- E. One member shall be a City resident appointed to represent parking users in general.

**Sec. 2.455.030 Duties.**

The downtown parking advisory committee shall have the power, and it shall be its duty, to:

1. Consider and make recommendations on issues or questions relating to downtown parking.
2. Assist, advise, and make recommendations to the City Council, Planning Commission, and staff, upon request of those bodies and persons.

3. Advise on parking management strategies and programs in the Downtown Parking District area.
4. Review and make advisory recommendations regarding management, maintenance and operations of the Downtown Parking District, including such matters as maintenance, operating and capital budgets, hours of operation, parking pricing policies, valet programs, and employee commuter parking policies.

Section 4. Chapter 4.400 is added to read as follows:

### **Chapter 4.400 Downtown Parking District**

#### **Sec. 4.400.010. Establishment of District and of District Boundaries.**

A Downtown Parking District is hereby established. The boundaries of the district shall be the same as the Downtown Specific Plan Boundary as approved by the City Council in March 2007, as it may be amended from time to time.

#### **Sec. 4.400.020. Purpose.**

The Downtown Parking District is established to manage public parking supply and demand within the district boundaries as well as improve transportation and parking related facilities and programs.

#### **Sec. 4.400.020. Use of Revenue.**

All revenues collected from parking pay stations, meters, leases, and permits, in the Downtown Parking District shall be placed in a special fund, which fund shall be used exclusively for activities benefiting the parking district. The specific authorized use of revenues shall be as follows:

1. For purchasing, leasing, installing, repairing, maintaining, operating, removing, regulating and policing of pay stations and/or parking meters in the parking district and for the payment of any and all expenses relating thereto.
2. For purchasing, leasing, acquiring, improving, operating and maintaining on- or off-street parking facilities.
3. For installation and maintenance of alternative mode programs, landscaping, pedestrian linkages, sidewalk cleaning, street, way finding systems, and traffic-control devices and signals.
4. For the painting and marking of streets and curbs required for the direction of traffic and parking of motor vehicles,
5. For proper security within the district.

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6. For the proper regulation, control, enforcement and inspection of parking and traffic upon the public streets and off-street parking facilities.
7. To be pledged as security for the payment of principal of and interest on financing mechanisms used by the city to meet any of the purposes authorized by this section.
8. For transportation and parking planning, marketing and education programs related to the Downtown Parking District.
9. For construction and maintenance of public restrooms that enhance parking facilities.
10. Revenues from residential parking permits may, in addition to the foregoing, be used for sidewalk, landscaping and other transportation, pedestrian or bicycle enhancements on streets where the residential permit parking is provided.

Section 5. Section 16.215.030 is repealed and reenacted in its entirety to read as follows:

**Sec. 16.215.030 Parking prohibited during certain hours on certain streets.**

- A. Signs designating hours. When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified by sign on any day except Sundays and public holidays upon any of the streets so posted.
- B. Twenty-four-minute parking. Green curb markings shall mean no standing or parking for a period of time longer than 24 minutes at any time during certain hours on any day as posted. When authorized signs, pay stations, parking meters or curb markings have been determined by the city traffic engineer, with the approval of the city manager, to be necessary and are in place giving notice thereof, no operator of any vehicle shall stop, stand or park said vehicle adjacent to any such legible curb marking or sign or parking meter in violation thereof.
- C. Forty-minute parking. When authorized signs, parking meters or curb markings have been determined by the city traffic engineer, with the approval of the city manager, to be necessary and are in place giving notice thereof, no operator of any vehicle shall stop, stand or park said vehicle during certain hours of any day as posted, for a period of time longer than 40 minutes.
- D. One-hour parking. When authorized signs, pay stations, parking meters or curb markings have been determined by the city traffic engineer, with the approval of the city manager, to be necessary and are in place giving notice thereof, no operator of any vehicle shall stop, stand or park said vehicle during certain hours of any day as posted for a period of time longer than one hour.
- E. Two-hour parking. When authorized signs, pay stations, parking meters or curb markings have been determined by the city traffic engineer, with the approval of the city manager, to be necessary and are in place giving notice thereof, no operator of any vehicle shall stop, stand or park said vehicle between the hours posted of any day for a period of time longer than two hours.

- F. One-hour or two-hour parking in certain school neighborhoods. When authorized signs, parking meters or curb markings have. Been determined by the city traffic engineer, with the approval of the city manager, to be necessary and are in place giving notice thereof, no operator of any vehicle shall stop, stand or park said vehicle on any portion of a local street that is within a one-quarter mile radius of a high school or college for a period of time longer than one hour between the hours of 8:00 a.m. and 3:00 p.m. of any day that the nearby high school or college is holding classes. Notwithstanding the parking restrictions of this section, residents on those streets where a parking restriction is posted contiguous to their residence pursuant to this section may receive a preferential parking permit. Permits may be obtained at City Hall by completing an application. The required application shall include, at minimum, a valid California Department of Motor Vehicles registration showing the address of the registered owner as meeting the requirements of this section. No more than three permits will be issued per parcel. Each permit will require a separate registered vehicle to which it is assigned. A fee will be charged and the permit will remain valid for two years.
- G Special event or construction permits. The city traffic engineer is authorized to issue special permits to reserve parking spaces for special events or activities related to construction or maintenance. A daily fee will be charged to the permittee.
- H. Downtown residential parking permits. Notwithstanding the parking restrictions of this section and when determined by the city traffic engineer, residents within the Downtown Parking District on those streets where a one-hour, two-hour, or paid parking restriction is posted may receive a preferential residential parking permit. Permit stickers may be obtained at City Hall by completing an application. Residential permits will be issued based upon on-street utilization, offstreet utilization, impact from non-residential uses, impact to neighborhood commercial and retail activity, existing land uses, nonconforming uses and other essential factors determined by the city traffic engineer. The required application shall include, at minimum, a valid California Department of Motor Vehicles registration showing the address of the registered owner as meeting the requirements of this section. No more than one sticker per residential unit will be issued. Each sticker will require a separate registered vehicle to which it is assigned. A fee will be charged and the permit will remain valid for two years.

Section 6. Section 16.220.010 is repealed and reenacted in its entirety to read as follows:

**Sec. 16.220.010. Generally.**

- A. Authority to establish loading zones.
1. The city traffic engineer is hereby authorized to determine and to mark loading zones and passenger loading zones as follows:
    - (a) At any place in the central traffic district or any business district.

**BALBOA VILLAGE PARKING BENEFIT DISTRICT & SHARED PARKING IMPLEMENTATION |  
APPENDIX A**

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- (b) Elsewhere in front of the entrance to any place of business or in front of any hall or place used for the purpose of public assembly.
2. In no event shall more than one-half of the total curb length in any block be reserved for loading zone purposes.
  3. Loading zones shall be indicated by yellow paint upon the top of all curbs within such zones and with markings indicating the time and days in effect.
  4. Passenger loading zones shall be indicated by white paint upon the top of all curbs in said zones and with markings indicating the time and days in effect.
- B. Curb markings to indicate no-stopping and parking regulations.
1. The city traffic engineer, with the approval of the city manager, is hereby authorized, subject to the provisions and limitations of this chapter, to place, and when required herein, shall place, the following curb markings to indicate parking and standing regulations, and said curb markings shall have the meanings as herein set forth:
    - (a) Red zones shall mean no stopping, standing or parking at any time except as permitted by the Vehicle Code, and except that a bus may stop in a red zone marked or signed as a bus zone.
    - (b) Yellow zones shall mean no stopping, standing or parking at certain posted hours of any day except Sundays and holidays for any purpose other than the loading or unloading of passengers or materials, provided that the loading or unloading of passengers shall not consume more than three minutes nor the loading or unloading of materials more than 20 minutes. Loading zones are in effect only for posted hours as determined by the city traffic engineer, with the approval of the city manager.
    - (c) White zones shall mean no stopping, standing or parking for any purpose other than loading or unloading of passengers, or for the purpose of depositing mail in an adjacent mailbox, which shall not exceed three minutes. White zones are in effect only for posted hours as determined by the city traffic engineer, with the approval of the city manager of any day except Sundays and holidays and except as follows:
      - (1) When such zone is in front of a hotel, the restrictions shall apply at all times.
      - (2) When such zone is in front of a theater, the restrictions shall apply at all times except when such theater is closed.
    - (d) Blue zones shall mean no stopping, standing, or parking at any time, except for the handicapped, as defined and permitted by the Vehicle Code.
    - (e) When the city traffic engineer, as authorized under this section, has caused curb markings to be placed, no person shall stop, stand, or park a vehicle adjacent to such legible curb markings in violation of any of the provisions in this section.

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- C. Effect of permission to load or unload.
1. Permission herein granted to stop or stand a vehicle for purposes of loading or unloading of materials shall apply only to commercial vehicles and shall not extend beyond the time necessary therefore, and in no event for more than 20 minutes.
  2. The loading or unloading of materials shall apply only to commercial deliveries, also the delivery or pick-up of express and parcel post packages and United States mail.
  3. Permission herein granted to stop or park for purposes of loading or unloading passengers shall include the loading of personal baggage but shall not extend beyond the time necessary therefore and in no event for more than three minutes.
  4. Within the total time limits above specified, the provisions of this section shall be enforced so as to accommodate necessary and reasonable loading or unloading but without permitting abuse of the privileges hereby granted.

Section 7. Section 16.220.060 is added to read as follows:

**Sec. 16.220.060. Valet Parking**

- A. The city traffic engineer may permit valet parking stands to use public streets in such places and in such a manner as he or she shall determine and approve. Valet parking may be permitted only when the permittee demonstrates availability and control of sufficient off-street parking to meet projected demand. A fee shall be charged in an amount determined by the City Council.
- B. Appropriate signs approved by the city traffic engineer shall identify each valet parking stand. The signs shall be posted during operation hours at each location where they take possession of vehicles. The sign shall identify the name, address and telephone number of the operator, the rate charged and hours of operation. In addition, the permittee shall be responsible for the cost of regulatory signage determined to be necessary by the city traffic engineer.
- C. The valet parking operator shall, upon receipt of each motor vehicle accepted for valet parking, give a claim check to the owner. The claim check shall explicitly state the terms and conditions under which the vehicle is being accepted. The valet parking operator shall not disclaim the responsibilities of a bailee.
- D. The city traffic engineer, police chief, or fire chief, or their designee, may suspend valet parking operations, without prior notice or hearing, when it may interfere with public safety efforts or programs, street improvement activities, special events, construction activities, cleaning efforts or with the health, welfare or safety of the public.

Section 8. Chapter 16.225 is repealed and reenacted in its entirety to read as follows:

**Chapter 16.225 Parking Pay Stations and Parking Meter Zones**

**Sec. 16.225.010. Generally.**

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- A. Parking pay station and meter zones are those streets or portions of streets established by ordinance of the City Council as zones within which the parking of vehicles may be controlled, regulated, and inspected with the aid of parking pay stations or parking meters.
- B. Parking pay stations and meter zones may be established in areas to manage the supply of parking and to make it reasonably available when and where needed. To accomplish this goal, a target on-street occupancy rate of eighty five percent (85%) is hereby established for pay station and parking meter zones.
- C. The city traffic engineer shall cause parking pay stations or meters to be installed and maintained in all parking pay station and meter zones. The maximum rate shall be set by the City Council. During a fiscal year, the City Transportation Manager may adjust pay station and meter rates up or down 50 cents per hour in 25-cent increment based on average occupancy rates in order to achieve a target occupancy rate of eighty five percent (85%). Any increase over 50 cents per hour in a fiscal year shall require City Council approval.

**Sec. 16.225.020. Manner of installation.**

- A. Parking pay stations and meters shall be installed upon the curb or sidewalk area adjacent to parking spaces. Each pay station or meter shall be placed in such manner as to show or display that the parking space is or is not legally in use.
- B. Each parking pay station or meter shall be able to clearly display, after the operational procedure has been completed, a sign or signal indicating when the lawful parking period will expire for that space.

**Sec. 16.225.030. Parking pay stations and meters.**

- A. Time of operation. The provisions of this ordinance relating to the operation of parking pay stations or parking meters shall be effective for posted hours and days as determined by the city traffic engineer.
- B. Operational procedure to be followed. Immediately after occupancy of a paid parking space, the operator of a vehicle shall deposit a coin or paper currency of the United States or use a credit card or other acceptable form of payment in said parking pay station or meter and follow operational procedures in accordance with the instructions posted on the parking pay station or parking meter.
- C. Unlawful to park after pay station or meter time has expired. No operator of any vehicle shall permit said vehicle to remain parked in any parking space during any time that the pay station or meter is illegally in use other than such time immediately after the original occupancy as is necessary to operate the pay station or meter to show legal parking.

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- D. Unlawful to extend time beyond limit. No person shall allow a vehicle to be parked for a period beyond the maximum legal parking time limit that has been established for the parking space.
- E. Improper use of pay station or meter. No person shall deposit, attempt to deposit, or cause to be deposited in any parking pay station or meter any defaced or bent coin, or any slug, device or metallic substitute for a coin of the United States, or deface, injure, tamper with, open or willfully break, destroy or attempt in any manner to impair the usefulness of any parking pay station or meter.
- F. Deposit of payment in pay station or meter by unauthorized person. No person, other than the owner or operator of a vehicle, shall deposit any acceptable form of payment in any parking meter without the knowledge or consent of said owner or operator of the vehicle using the parking space controlled by said meter or pay station.
- G. Parking pay stations, meters and parking meter standards not to be used for certain purposes. No person shall attach anything to or allow a bicycle, news rack or any other chapter or thing to lean against a parking pay station, parking meter or parking meter standard.
- H. Special reservation of parking pay station or parking meter spaces. The city traffic engineer is authorized to issue special permits to reserve pay station or parking meter spaces. A pay station space or parking meter space may be reserved for special events or it may be reserved for activities related to construction or maintenance, thereby allowing parking of commercial vehicles for the performance of work . A daily fee will be charged to the permittee.

**Sec. 16.225.040. Rule of evidence.**

The parking or standing of any motor vehicle in a parking space, at which space the parking meter displays the sign or signal indicating illegal parking, shall constitute a prima facie presumption that the vehicle has been parked or allowed to stand in such space for a period longer than permitted by this ordinance.

**Sec. 16.225.050. Use of money deposited in parking pay stations and meters.**

All moneys collected from parking pay stations, and meters in this city shall be placed in a special fund, which fund shall be devoted exclusively to purposes within the geographic boundaries of the parking district from which the revenue is collected. Such moneys shall be used for the purposes stated in the parking district establishment ordinance:

**Sec. 16.225.060. Application of other chapters.**

No section of this chapter shall be construed as permitting any parking in violation of any other provision of this ordinance.

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**Sec. 16.230.020. Permits for loading or unloading at curb.**

- A. The police department or city traffic engineer is authorized to issue special permits to permit the loading or unloading of merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized herein.
- B. It shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit.
- C. If the permit is in a parking pay station or parking meter zone, the permittee shall pay an amount at least equal to the lost revenue of the parking spaces.

**Section 9. No Effect on Existing Parking Districts.**

The City Council does not intend this ordinance to be interpreted to have any effect on existing parking districts within the City.

**Section 10. CEQA Findings.**

**EXEMPTION, FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

The City Council finds that the enactment of the parking regulations pursuant to this Ordinance is determined to be exempt under Section 15061 (b)3 of the of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that the adoption of these regulations will not result in reasonably foreseeable construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

## CITY OF AUSTIN, TX

### ORDINANCE NO. 2011006-053

#### AN ORDINANCE AMENDING TITLE 12 OF THE CITY CODE TO ADD CHAPTER 12-6 ESTABLISHING A PARKING BENEFIT DISTRICT PROGRAM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART 1.** Title 12 of the City Code is amended to add a new Chapter 12-6 to read as follows:

#### **CHAPTER 12-6 PARKING BENEFIT DISTRICTS.**

##### **12-6-1 DEFINITIONS.**

In this chapter:

**DIRECTOR** means the director of the Austin Department of transportation or the director's designee.

**DISTRICT** means a parking benefit district.

**NEIGHBORHOOD ORGANIZATION** means an organization that is registered as a neighborhood organization with the City.

**NOTICE OWNER** means the owner of real property as shown on the records of the tax appraisal district in the county in which the property is located.

##### **12-6-2 PARKING BENEFIT DISTRICT.**

A parking benefit district is an area defined by separate ordinance in which a percentage of the funds collected from a paid parking space within district is used to fund improvements that promote walking, cycling, and public transit use within the district.

##### **12-6-3 PARKING BENEFIT DISTRICT REQUIREMENTS.**

- (A) A district must include at least 96 paid parking spaces, the minimum number of spaces required to pay for the expenses of maintaining and operating parking pay stations and meters in the district.
- (B) At the time that a district is created, the required paid parking spaces may include both existing and new spaces.
- (C) Fifty-one percent of the funds from the paid parking spaces within the district that is in excess of the cost of maintaining and operating parking pay stations and meters shall be set aside to pay for improvements within the district.
- (D) Funds from the paid parking spaces may be used in conjunction with other city funds available for neighborhood improvements within the district.
- (E) The director shall determine the timing and order in which the improvements identified in the ordinance creating the district will be initiated.
- (F) Unless terminated earlier by Council, a district shall remain in existence until each improvement identified in the ordinance creating the district is complete.
- (G) The City may terminate a district if paid parking spaces do not generate more than the amount needed to pay all annual expenses.

**12-6-4 APPLICATION TO CREATE A DISTRICT.**

A representative of a neighborhood organization whose boundaries are completely or partially located within the proposed district may file an application for a district with the director.

**12-6-5 PRE-APPLICATION REQUIREMENTS.**

- (A) A pre-application meeting with the director's staff is required.
- (B) A pre-application community meeting is required.
  - 1) The applicant shall convene a community meeting at least 2 weeks before an application for the creation of a district is submitted to the director.
  - 2) Not later than two weeks before the community meeting, the applicant shall:
    - a) Coordinate with staff to send notification of the meeting by electronic mail to all registered neighborhood organization whose boundaries are located:
      - i. Completely or partially within the proposed district; and
      - ii. Within 1500 feet of the proposed district;
    - b) A notice under Subsection (B)2 shall include the time, date, location, subject matter, and applicant contact information.

**12-6-6 APPLICATION REQUIREMENTS.**

- (A) The director shall establish submittal requirements for an application for the creation of a district and for the modification of an existing district. At a minimum, an application shall include:
  - 1) The boundaries of the proposed district identified by streets and static land features;
  - 2) A justification for the proposed district;
  - 3) A visual representation of the proposed block faces that have paid parking spaces or that are proposed to have paid parking spaces;
  - 4) Identification of other parking management tools that have been requested;
  - 5) Proposed improvement projects, in priority order, to be funded by parking pay station and meter revenue, including an estimated timeline for project completion and expected sustainability of the project;
  - 6) A copy of the sign-in sheets from the community meeting; and
  - 7) If a vote on the application occurred at the community meeting, the results of the vote.
- (B) The director may not accept an application unless the application is complete.

**12-6-7 APPLICATION REVIEW.**

- (A) The director shall review each application for the creation of a district or the modification of an existing district submitted under Section 12-6-6 (*Application Requirements*). The director shall set the application for a public hearing and shall provide the Urban Transportation Commission with:
  - 1) A recommendation on the application; and
  - 2) If a vote on the application occurred at the community meeting, the results of the vote.

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- (B) The Urban Transportation Commission shall hold a public hearing on the application not later than the 60<sup>th</sup> day after the application is filed and shall submit a recommendation on the application to the council.
- (C) The council shall consider an ordinance for the creation of a proposed district or the modification of an existing district not later than the 60<sup>th</sup> day after the date of the Urban Transportation Commission action on the application.
- (D) An ordinance adopted by the city council under this section shall include a list of improvements to be funded by revenue from the paid parking spaces.

**12-6-8 NOTICE OF PUBLIC HEARING.**

- (A) The director shall give notice of a public hearing before the Urban Transportation Commission by mailing notice not later than the 11<sup>th</sup> day before the date of the hearing to the:

- 1) Applicant
- 2) Notice owner of real property located:
  - a) Within the proposed district; and
  - b) Within 500 feet of the proposed district
- 3) A registered neighborhood organization whose declared boundaries are within 1500 feet of the proposed district; and
- 4) Utility account addresses as shown in the City utility records on the date of the filing of the application that are located:
  - a) Within the proposed district; and
  - b) Within 500 feet of the proposed district

- (B) The director shall give notice of a public hearing before the council by mailing notice not later than the 16<sup>th</sup> day before the date of the hearing to the:

- 1) Applicant
- 2) Notice owner of real property located:
  - a) Within the proposed district; and
  - b) Within 500 feet of the proposed district
- 3) A registered neighborhood organization whose declared boundaries are within 1500 feet of the proposed district; and
- 4) Utility account addresses as shown in the City utility records on the date of the filing of the application that are located:
  - a) Within the proposed district; and
  - b) Within 500 feet of the proposed district

- (C) Notice provided under this section must:

- 1) Generally describe the subject matter of the public hearing;
- 2) Identify the application and the boundaries of the proposed district;
- 3) Identify the body holding the public hearing and the date, time, and place of the public hearing; and
- 4) Include the address and telephone number of the city office from which additional information may be obtained.

**12-6-9 PROCEDURES AND REQUIREMENTS FOR NOTICE.**

- (A) Mailed notice is effective on the date a letter is deposited in a depository of the U.S. Post Office, first class, postage paid, and addressed:

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- 1) To an applicant, by mailing notice to the address shown on the application or on a written change of address form filed with the responsible director;
  - 2) To a notice owner of real property, by mailing notice to the owner shown on the records of the county tax appraisal district;
  - 3) To a neighborhood organization, by mailing notice to the agent or officer of the organization at the mailing address specified in the City registration information.
- (B) Notice by hand delivery may be substituted for notice by mail if the addressee provides a receipt of delivery.
- (C) When mailed notice to an owner is required, the director shall prepare the list of notice owners.
- (D) When possible, the director shall send the notice for public hearings before the Urban Transportation Commission and the City Council in one notice.

**PART 2.** This ordinance takes effect on October 17, 2011.

**PASSED AND APPROVED<sup>1</sup>**

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<sup>1</sup> <http://austintexas.gov/sites/default/files/files/Transportation/pbd-ordinance.pdf>

## **APPENDIX B**

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### **Sample Shared Parking Operating & Liability Agreements**



## CITY OF SAN DIEGO, CA<sup>1</sup>

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<sup>1</sup>City of San Diego <http://puff.lbl.gov/transportation/transportation/pdf/sandiego-shared-parking.pdf>





**THE CITY OF SAN DIEGO**

RECORDING REQUESTED BY:  
**THE CITY OF SAN DIEGO**  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(THIS SPACE IS FOR RECORDER'S USE ONLY)

**SHARED PARKING AGREEMENT**

This SHARED PARKING AGREEMENT ("Agreement") is entered into and effective \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, \_\_\_\_\_ and the City of San Diego.

**RECITALS**

WHEREAS, pursuant to sections 142.0535 and 142.0545 of the Land Development Code, the City of San Diego specifies criteria which must be met in order to utilize off-site shared parking agreements to satisfy on-site parking requirements.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties as herein expressed, \_\_\_\_\_, \_\_\_\_\_ and the City of San Diego agree as follows:

1. \_\_\_\_\_ the owner of the property located at \_\_\_\_\_, agrees to provide \_\_\_\_\_ the owner of the property located at \_\_\_\_\_ with the right to the use of (\_\_\_\_) parking spaces \_\_\_\_\_ from \_\_\_\_\_ as shown on Exhibit A to this Agreement on property located at \_\_\_\_\_.

1.1 Applicant: \_\_\_\_\_ Co-Applicant: \_\_\_\_\_  
Assessor Parcel No: \_\_\_\_\_ Assessor Parcel No: \_\_\_\_\_  
Legal Description: \_\_\_\_\_ Legal Description: \_\_\_\_\_  
\_\_\_\_\_

- 2. The parking spaces referred to in this Agreement have been determined to conform to current City of San Diego standards for parking spaces, and the parties agree to maintain the parking spaces to meet those standards.
- 3. The Parties understand and agree that if for any reason the off-site parking spaces are no longer available for use by \_\_\_\_\_, \_\_\_\_\_ will be in violation of the City of San Diego Land Development Code requirements. If the off-site parking spaces are no longer available, Applicant will be required to reduce or cease operation and use of the property at Applicant's address to an intensity approved by the City in order to bring the property into conformance with the Land Development Code requirements for required change for required parking. Applicant agrees to waive any right to contest enforcement of the City's Land Development Code in this manner should this circumstance arise.

Although the Applicant may have recourse against the Party supplying off-site parking spaces for breach of this Agreement, in no circumstance shall the City be obligated by this agreement to remedy such breach. The Parties acknowledge that the sole recourse for the City if this Agreement is breached is against the Applicant in a manner as specified in this paragraph, and the City may invoke any remedy provided for in the Land Development Code to enforce such violation against the Applicant.

**Continued on Page 2**

- 4. The provisions and conditions of this Agreement shall run with the land for those properties referenced in paragraph 1 of this document and be enforceable against successors in interest and assigns of the signing parties.
- 5. Title to and the right to use the lots upon which the parking is to be provided will be subservient to the title to the property where the primary use it serves is situated.
- 6. The property or portion thereof on which the parking spaces are located will not be made subject to any other covenant or contract for use which interferes with the parking use, without prior written consent of the City.
- 7. This Agreement is in perpetuity and can only be terminated if replacement parking has been approved by the City's Director of the Development Services Department and written notice of termination of this agreement has been provided to the other party at least sixty (60) days prior to the termination date.
- 8. This Agreement shall be kept on file in the Development Services Department of the City of San Diego in Project Tracking System (PTS) Project Number: \_\_\_\_\_ and shall be recorded on the titles of those properties referenced in paragraph 1 of this document.

In Witness whereof, the undersigned have executed this Agreement.

\_\_\_\_\_  
Applicant

Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy Director

Business and Process Management, Development Services

\_\_\_\_\_  
Party/Parties Supplying Spaces

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BALBOA VILLAGE PARKING BENEFIT DISTRICT & SHARED PARKING IMPLEMENTATION |  
APPENDIX B**

City of Newport Beach

**CITY OF PORTLAND, OR<sup>2</sup>**

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<sup>2</sup> Portland Metro [http://www.mapc.org/sites/default/files/PortlandMetro\\_SharedParkingModelAgreement.pdf](http://www.mapc.org/sites/default/files/PortlandMetro_SharedParkingModelAgreement.pdf)



**Appendix B: Model - Shared Use Agreement for Parking Facilities**  
**Effective: \_\_\_\_\_**

This Shared Use Agreement for Parking Facilities, entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, hereinafter called lessor and \_\_\_\_\_, hereinafter called lessee.

In consideration of the covenants herein, lessor agrees to share with lessee certain parking facilities, as is situated in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_, hereinafter called the facilities, described as:

[Include legal description of location and spaces to be shared here, and as shown on attachment 1.]

The facilities shall be shared commencing with the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending at 11:59 PM on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, for [insert negotiated compensation figures, as appropriate]. [The lessee agrees to pay at [insert payment address] to lessor by the \_\_\_\_ day of each month [or other payment arrangements].]

Lessor hereby represents that it holds legal title to the facilities

**The parties agree:**

1. USE OF FACILITIES

This section should describe the nature of the shared use (exclusive, joint sections, time(s) and day(s) of week of usage.

**-SAMPLE CLAUSE-**

*[Lessee shall have exclusive use of the facilities. The use shall only be between the hours of 5:30 PM Friday through 5:30 AM Monday and between the hours of 5:30 PM and 5:30 AM Monday through Thursday.]*

2. MAINTENANCE

This section should describe responsibility for aspects of maintenance of the facilities. This could include cleaning, striping, seal coating, asphalt repair and more.

**-SAMPLE CLAUSE-**

*[Lessor shall provide, as reasonably necessary asphalt repair work. Lessee and Lessor agree to share striping, seal coating and lot sweeping at a 50%/50% split based upon mutually accepted maintenance contracts with outside vendors. Lessor shall maintain lot and landscaping at or above the current condition, at no additional cost to the lessee.]*

### 3. UTILITIES and TAXES

This section should describe responsibility for utilities and taxes. This could include electrical, water, sewage, and more.

**-SAMPLE CLAUSE-**

*[Lessor shall pay all taxes and utilities associated with the facilities, including maintenance of existing facility lighting as directed by standard safety practices.]*

### 4. SIGNAGE

This section should describe signage allowances and restrictions.

**-SAMPLE CLAUSE-**

*[Lessee may provide signage, meeting with the written approval of lessor, designating usage allowances.]*

### 5. ENFORCEMENT

This section should describe any facility usage enforcement methods.

**-SAMPLE CLAUSE-**

*[Lessee may provide a surveillance officer(s) for parking safety and usage only for the period of its exclusive use. Lessee and lessor reserve the right to tow, at owners expense, vehicles improperly parked or abandoned. All towing shall be with the approval of the lessor.]*

### 6. COOPERATION

This section should describe communication relationship.

**-SAMPLE CLAUSE-**

*[Lessor and lessee agree to cooperate to the best of their abilities to mutually use the facilities without disrupting the other party. The parties agree to meet on occasion to work out any problems that may arise to the shared use.]*

### 7. INSURANCE

This section should describe insurance requirements for the facilities.

**-SAMPLE CLAUSE-**

*[At their own expense, lessor and lessee agree to maintain liability insurance for the facilities as is standard for their own business usage.]*

### 8. INDEMNIFICATION

This section should describe indemnification as applicable and negotiated. This is a very technical section and legal counsel should be consulted for appropriate language to each and every agreement.

**-NO SAMPLE CLAUSE PROVIDED-**

9. TERMINATION

This section should describe how to or if this agreement can be terminated and post termination responsibilities.

**-SAMPLE CLAUSE-**

*[If lessor transfers ownership, or if part of all of the facilities are condemned, or access to the facilities is changed or limited, lessee may, in its sole discretion terminate this agreement without further liability by giving Lessor not less than 60 days prior written notice.*

*Upon termination of this agreement, Lessee agrees to remove all signage and repair damage due to excessive use or abuse. Lessor agrees to give lessee the right of first refusal on subsequent renewal of this agreement.]*

10. SUPPLEMENTAL COVENANTS

This section should contain any additional covenants, rights, responsibilities and/or agreements.

**-NO SAMPLE CLAUSE PROVIDED-**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date Set forth at the outset hereof.

[Signature and notarization as appropriate to a legal document and as appropriate to recording process negotiated between parties.]

**BALBOA VILLAGE PARKING BENEFIT DISTRICT & SHARED PARKING IMPLEMENTATION |  
APPENDIX B**

City of Newport Beach

**SACRAMENTO, CA<sup>3</sup>**

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<sup>3</sup> City of Sacramento



**PARKING OPERATIONS MANAGEMENT AGREEMENT**

This Parking Operations Management Agreement ("Agreement") is made and entered into this *26<sup>th</sup>* day of *June*, 2007 ("Effective Date"), by and between S Thomas Enterprises of Sacramento, LLC ("Owner") and the City of Sacramento ("Manager").

1. SITE

The term "Site" shall refer to the land and any improvements and facilities located thereon at Sacramento, County of Sacramento, State of California, as identified in the map attached hereto as Exhibit A.

2. TERM

This Agreement shall be for a term of three (3) years from Effective Date hereof. Manager may extend the term for one additional three (3) year period, by providing a written notice of extension to Owner not less than 180 days prior to the expiration of the initial three (3) year term.

3. PURPOSE

The Site shall be used solely and exclusively for improvement and operation of parking lots (Lots). Manager shall not use the Site nor any portion thereof for any use other than for improvement and operation of parking lots, and shall not make any alternations, improvements or additions thereto except as provided for in this Agreement.

4. COMPENSATION AND MANAGEMENT FEE

(a) Beginning on the Effective Date of this Agreement, all "Revenue", which term as used herein shall be all amounts collected in connection with the

CITY AGREEMENT NO. 2007-0657

operation of the Lots, collected by Manager will be used to offset Operating Expenses (as defined below). Monthly Net Revenue shall be "Monthly Revenue" (as defined below) minus "Monthly Operating Expenses" (as defined below).

(a) (i) For purposes of this Agreement "Monthly Revenue" means the total amount of cash receipts generated from all business operations conducted upon or from the Lots, whether operated by Manager or nominees, during any one month this Agreement is in effect, without any type of deduction whatsoever.

(a)(ii) For purposes of this Agreement "Operating Expenses" means all reasonable expenses incurred in connection with the operation and maintenance of the Lots (see Exhibit C for description of estimated Operating Expenses for FY 2008).

(a)(iii) "Monthly Operating Expenses" as used herein shall mean Operating Expenses incurred or attributed for any particular calendar month.

(b) The Manager shall be responsible for collecting all Revenue, performing billings and collecting accounts receivable in relation to Manager's operation of the Lot. All Revenue will be deposited in the Manager's account, which shall be a segregated account used solely for Revenue. Manager will keep full and accurate records of billed and collected Revenue.

(c) Each month, Manager will calculate the Monthly Net Revenue and the "Monthly Owner Proceeds", which term as used herein shall be the Monthly Net Revenue minus the Management Fee (as defined below), for the immediately preceding month. Manager shall pay the Monthly Owner Proceeds

to Owner within forty-five (45) days of the first day of each calendar month in arrears. Manager shall provide brief details of the income sources in a form reasonably acceptable by Owner.

(d) On or before July 1 of each year during the Term, Manager shall prepare and submit to Owner, for Owner's review and approval, an operating budget for the next successive calendar year (the "Operating Budget"), which shall include a projection of Revenue and Operating Expenses for the ensuing year.

(e) Owner shall pay Manager a fixed fee of Five Thousand (\$5,000) per month ("Monthly Management Fee"). Such fee will first be paid from the Monthly Net Revenue, if any. If Monthly Net Revenue is not available or is not sufficient to pay the Monthly Management Fee, Manager shall notify Owner of the amount of the deficiency as provided for in this Agreement and Owner shall pay Manager the amount of the deficiency within forty-five (45) days after notice is sent to Owner by Manager.

#### 5. OWNER'S RIGHT TO AUDIT

Owner reserves the right for Owner's employees or appointees to conduct examinations, without notification, of the financial reports, files, books and records maintained for Owner by Manager no matter where such financial reports, files, books and records are located. Owner also reserves the right to perform any and all additional audit tests relating to Manager's activities, duties, and obligations hereunder, either at the Site or at any office of Manager.

## 6. INDEMNITY AND INSURANCE

Manager shall defend, indemnify and hold harmless Owner, its members, managers, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Manager, its officers, directors, agents, employees, volunteers or contractors. Likewise, Owner shall defend, indemnify and hold harmless Manager, its Council, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Owner, its officers, directors, agents, employees, volunteers or contractors.

It is the intention of Manager and Owner that the provisions of the aforementioned paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, and contractors. It is also the intention of Manager and Owner that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, and contractors.

While this Agreement is in effect, Manager, at Manager's expense, shall maintain and furnish Owner evidence of insurance set forth in Owner's "General Insurance Requirements" form attached hereto as Exhibit "B" and made a part hereof. Owner acknowledges that Manager is self-insured and agrees that Manager's program of self-insurance fulfills any and all insurance requirements provided for in Exhibit B.

## 7. IMPROVEMENTS

Subject to Owner's written consent as provided for in this Agreement, and subject to Manager obtaining any requisite governmental permits for the construction and operation of a surface commercial parking lot on the Site, Manager shall make such improvements ("Improvements") to the Site as Manager shall deem necessary for use of the Site as a commercial surface parking lot for automobiles, including, but not limited to, generally the following:

- (i) Redesign the parking layout and traffic flow patterns for the managed Site;
- (ii) Grade and pave or repave the Site for use as a parking lot;
- (iii) Construct additional drive aisles and furnish and install fencing and additional lighting standards and fixtures, including necessary wiring;
- (iv) Furnish and install cashier terminals, booths, signage and other parking control equipment; and
- (v) Such other items as Manager deems appropriate or necessary to the proper operation of the parking facility.

All such costs for Improvements shall be the sole responsibility of Owner. Any construction, reconstruction or altering of Improvements shall, at Owner's expense, be installed, constructed and maintained in accordance with applicable building and other codes, in a good and workmanlike manner to the satisfaction of Owner, and in accordance with all requirements of all departments, boards, bureaus, officials and authorities having jurisdiction in the matter. All necessary permits for such construction (including any permits required to cross public streets) shall be obtained by Manager.

#### 8. AFFECT ON INSURANCE

Manager and its agents shall not do or permit anything to be done in or about the Site nor bring nor keep anything to be done in or about the Site which will in any way increase the existing rate or affect any insurance upon the Site, or cause a cancellation of any insurance policy covering the Site or any part thereof, nor shall Manager or its agents keep, use or sell or permit to be kept, used or sold in or about the Site any articles which may be prohibited by a standard form policy of fire insurance.

#### 9. HAZARDOUS MATERIALS

Manager shall not use, generate, manufacture, produce, store, release, discharge, or dispose of , on, under or about the Site, or transport to or from the Site, any Hazardous Materials (defined below) or allow its agents or any other person or entity to do so. The term "Hazardous Materials" shall mean (i) those substances included within the definition of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq., and the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 et seq., and in the regulations promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or designated by the Environmental Protection Agency (or any successor agency) as Hazardous Substances; (iii) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations, and (iv) any material, waste or substance which is (a) petroleum, (b) asbestos, (c) polychlorinated biphenyls, (d) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act of 1977, 33 U.S.C. sections 1251 et seq., (33 U.S.C. section 1321) or listed pursuant to section 307 of the Clean Water Act of 1977 (33 U.S.C. section 1317).

#### 10. THIRD PARTIES

Manager and its agents shall not do or permit anything to be done in or about the Site which will in any way obstruct or interfere with the rights of any third parties or injure or annoy such parties or cause structural injury to the Site. Manager shall not use or allow the Site to be used for any unlawful, immoral, hazardous or objectionable purpose, nor shall Manager cause, maintain or permit

any nuisance in, on, or about the Site. Manager and its agents shall not commit or suffer to be committed any waste in or upon the Site.

#### 11. COMPLIANCE WITH LEGAL REQUIREMENTS

(a) Manager and its agents shall not use the Site or permit anything to be done in or about the Site which will in any way violate any law, statute, ordinance, order, rule, regulation or requirement of duly constituted public authorities or quasi-public authorities now in force or which may hereafter be enacted or promulgated (collectively, "Laws"). Manager shall obtain, prior to taking possession of the Site, any permits, licenses or other authorizations required for the lawful operation of its business at the Site.

(b) Site Lien-Free. Manager shall indemnify and hold Owner harmless from and keep the Site free from any liens, claims, demands, encumbrances or judgments, including all costs, liabilities and attorneys' fees with respect thereto, created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Manager or its agents with respect to the Site. The foregoing obligation of Manager shall survive the termination of this Agreement; Owner shall have the right, at all times, to post and keep posted on the Site any notices permitted or required by law, or which Owner may deem proper, for the protection of Owner and the Site, and any other party having an interest therein, from mechanics' and materialmen's liens including, without limitation, a notice of non-responsibility. In the event Manager is required to post an improvement bond with a public agency in connection with any work performed by Manager on or to the Site, Manager shall include owner as an additional obligee.

(c) Notice of Lien: Bond. Should any liens be filed against, or any action be commenced affecting, the Site or Manager's interest in the Site, if any, Manager shall give Owner notice of such lien or action within three (3) days after Manager receives notice of the filing of the lien or the commencement of the action. In the event that Manager shall not, within twenty (20) days following the imposition of such lien, cause such lien to be released of record by payment or posting of a proper bond, Owner shall have, in addition to all of the remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Owner shall deem proper, including payment of the claim giving rise to such lien or posting of a proper bond. All such sums paid by Owner and all expenses incurred by Owner in connection therewith, including attorneys' fees and costs, shall be payable to Owner by Manager on demand by Owner.

## 12. IMPOSITION OF CONDITIONS

Should any governmental body seek to impose any condition on approval of Manager's use of the Site or the zoning thereof, or for the issuance of any map, license, or permit, Manager covenants to notify Owner accordingly; and if such condition is unacceptable to Owner for any reason, Owner may terminate this Agreement.

## 13. CONDITION OF SITE

Manager acknowledges that neither Owner nor any agent of Owner has made any representation or warranty with respect to the condition of the Site or with respect to the suitability of the same for the conduct of Manager's business,

nor has Owner or any agent of Owner agreed to undertake any modification, alteration or improvement to the Site. Manager further acknowledges that manager has independently investigated the Site and is satisfied that the Site is suitable for manager's intended use. By taking possession of the Site, Manager shall be deemed to have accepted the Site as being in satisfactory condition and repair and to have accepted the Site in their condition existing as of the date of such possession, subject to all applicable laws, covenants, conditions, restrictions, easements and other matters of public record and any rules and regulations from time to time promulgated by Owner governing the use of the Site.

#### 14. SUBTERRANEAN FACILITIES

The absence of markers, monuments or maps indicating the presence of subterranean facilities within the Site, whether belonging to Owner or otherwise, does not constitute a warranty or representation by Owner or its agents that none exist. Manager accepts this Agreement with full cognizance of the potential presence of such facilities within the Site, acknowledging that the costs of Manager's use of the Site may increase by reason thereof, and acknowledging that the owner or owners thereof may have acquired the right to continue to maintain such facilities by the passage of time.

#### 15. NOISE LEVELS NEAR RAILROAD TRACKS

Manager hereby recognizes and acknowledge that railroad tracks are located on or adjacent to the Site (the "Tracks"). Manager recognizes that the operation of trains over the Tracks is likely to produce noise levels which may be

considered objectionable by Manager and its agents. Manager hereby waives any claim for damages for any injury or inconvenience to or interference with Manager's business, any loss of occupancy or quiet enjoyment of the Site, and any other loss occasioned by the noise produced by the operation of trains over the Tracks. Manager agrees to indemnify, defend and hold Owner and its agents harmless from and against any loss, damage, liability or expense incurred by Owner or its agents as a result of any action or complaint of any kind whatsoever initiated against Owner or its agents from Manager's agents.

#### 16. PRIOR APPROVAL OF WORK

Manager shall not, without Owner's prior written consent, make any further alterations, further improvements, or additions of any kind in, on or about the Site costing in excess of \$5,000 without the prior written consent of Owner. Any alterations, improvements or additions in, on or about the Site that Manager shall desire to make in excess of \$5,000 shall be presented to Owner in written form, with proposed detailed plans and such other information as Owner may request. If Owner shall give its written consent, the consent shall be deemed conditioned upon Manager's acquiring a permit for constructing such improvement from the appropriate governmental agencies, the furnishing of a copy thereof to Owner upon request prior to the commence of the work, and compliance by manager with all conditions of said permit in a prompt and expeditious manner.

#### 17. MAINTENANCE AND REPAIR

Manager shall keep and maintain the Site and all improvements thereon in good repair and in a neat and satisfactory condition, and shall promptly make all

repairs and replacements, subject to the provisions of paragraph 16, that may become necessary to the Site or improvements thereon, whether structural or nonstructural, ordinary or extraordinary. All notices and signs upon the Site shall be neat and properly maintained. Owner shall have the right to enter the Site at all reasonable times to inspect the same.

#### 18. UTILITIES AND SERVICES

All charges for water, gas, light, heat, power, electricity, telephone or other communication service, janitorial service, trash pick-up, sewer and all other services supplied to or consumed on the Site (collectively, "Services") directly related to this parking operation, and all taxes, levies, fees or surcharges therefore shall be the sole responsibility of Owner as an Operating Expense pursuant to Section 4 above. Manager shall be solely responsible for arranging for services to be supplied to the Site and shall contract for all of the Services in Manager's name prior to the Effective Date. The Effective Date shall not be delayed by reason of any failure by Manager to so contract for Services. The lack or shortage of Services due to any cause whatsoever shall not affect any obligation of Manager under this Agreement, and Manager shall faithfully keep and observe all the terms, conditions and covenants of this Agreement and pay all Fees due hereunder, all without diminution, credit or deduction.

#### 19. SURRENDER OF SITE

Upon termination of this Agreement, Manager, without further notice, shall deliver up to Owner possession of the Site. In the event of such failure or refusal of Manager to surrender possession of the Site, Owner shall have the right to

reenter the Site and remove therefrom Manager or any other person, firm, or corporation claiming by, through, or under Manager. Manager will have thirty (30) days after termination of this Agreement to remove any personal property and improvements from the Site.

## 20. NOTICES

All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail, registered or certified, postage prepaid, or delivered by overnight courier, and addressed to the party to whom the notice is directed at the address set forth below. Either party may change the address for notices or Owner may change the address for payments by giving the other party written notice to that effect.

### ADDRESS FOR NOTICES

To Owner:

S. Thomas Enterprises of Sacramento, LLC  
431 I Street  
Suite 202  
Sacramento, California 95814  
Attention: Mr. Suheil J. Totah

With a copy to:

Cushing, Morris, Armbruster & Montgomery, LLP  
229 Peachtree Street, N.E., Suite 2110  
Atlanta, Georgia 30303  
Attention: Jeffrey F. Montgomery, Esq.  
Phone No.: (404) 521-2323  
Fax No.: (404) 658-9865  
E-Mail: [jfm@cmamlaw.com](mailto:jfm@cmamlaw.com)

And a copy to Manager:

Parking Services Manager  
921 10th Street, 1st Floor  
Sacramento, CA 95814

**ADDRESS FOR PAYMENTS TO OWNER**

S. Thomas Enterprises of Sacramento, LLC  
431 I Street  
Suite 202  
Sacramento, California 95814  
Attention: Mr. Suheil J. Totah

**21. ATTORNEYS' FEES**

In the event any party hereto shall bring any action or legal proceeding for damages for an alleged breach of any provision of this Agreement, to recover Fees, to enforce an indemnity obligation, to terminate the tenancy of the Site, or to enforce, protect, interpret or establish any term, condition, or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' and costs for appeal, as may be fixed by the court or jury.

**22. RECORDATION OF AGREEMENT**

Neither party hereto shall record this Agreement.

**23. OWNER'S RIGHT-OF-ENTRY**

Manager shall permit Owner and the agents of Owner to enter into and upon the Site at all reasonable times for the purpose of inspecting the Site, posting notices of nonresponsibility, "for lease" or "for sale" signs, exhibit the Site to prospective tenants, buyers, or lenders, protecting the Site in the event of an emergency, altering or improving the Site, conducting environmental audits, and

exercising any rights reserved by Owner pursuant to this Agreement, all without abatement of any Fees due hereunder. Manager hereby waives any claim for damages for any injury or inconvenience to or interference with Manager's business, any loss of occupancy or quiet enjoyment of the Site, and any other loss occasioned by any entry into the Site in accordance with this Section 23 or any other provision of this Agreement. Owner shall have the right to use any and all means which Owner may deem proper to open the doors and gates in an emergency, in order to obtain entry to the Site. Any entry to the Site by Owner as permitted by this Agreement shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or detainer of, the Site, or any portion thereof.

**24. TIME OF ESSENCE**

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

**25. TERMINATION OF AGREEMENT**

Owner and Manager may unconditionally terminate this Agreement by providing the other party written notice no less than ninety (90) days prior to the date of termination.

Termination or expiration of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration.

**26. SEVERABILITY**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**27. RELATIONSHIP OF PARTIES**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person or court to create the relationship of partnership or of joint venture between Owner and Manager, and neither the method of computation of fee nor any other provisions contained in this Agreement nor any acts of the parties shall be deemed to create any relationship of owner of real property and holder of a limited agreement to use the same for the purposes set forth herein.

**28. SUCCESSORS**

The covenants, conditions and agreements contained in this Agreement shall be binding on the parties hereto and on their respective heirs, successors, assigns and legal representatives.

**29. EXHIBITS**

All exhibits attached to this Agreement shall be deemed to be incorporated herein by the individual reference to each such exhibit, and all such exhibits shall be deemed to be a part of this Agreement as though set forth in full in the body of this Agreement.

### 30. OWNER AND AGENT

The term "Owner" as used in this Agreement, so far as the covenants or obligations on the part of Owner are concerned, shall be limited to mean and include only the owner at the time in question of fee title or right to control the Site. In the event of any transfer(s) of such interest, the Owner herein named (and in the case of any subsequent transfers or conveyances, the grantor) shall have no further liability under this Agreement to Manager except as to matters of liability which have accrued and are unsatisfied as of the date of such transfer, it being intended that the covenants and obligations contained in this Agreement on the part of Owner shall be binding on Owner and its successors and assigns only during and in respect of their respective period of ownership of the fee; provided that any funds in possession of Owner or the then grantor and as to which Manager has an interest, less any deductions permitted by law or this Agreement, shall be turned over to the grantee. The covenants and obligations of Owner as contained in this Agreement shall, subject to the provisions of this Section 30, be binding upon each Owner and such Owner's heirs, personal representatives, successors and assigns only during its respective period of ownership. Except as provided in this Section 30, this Agreement shall not be affected by any transfer of Owner's interest in the Site, and Manager shall attorn to any transferee of Owner.

31. AUTHORITY

The undersigned parties hereby warrant that they have proper authority and are empowered to execute this Agreement on behalf of Owner and Manager, respectively.

32. CAPTIONS

The Captions contained in this Agreement are for purposes of convenience only and are not to be used to interpret or construe this Agreement.

33. MANAGER'S ESTOPPEL.

Manager shall, from time to time, upon not less than ten (10) days prior written request by Owner, execute, acknowledge and deliver to Owner a written statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Fees have been paid, that Manager has no offsets or defenses against Owner under this Agreement, and whether or not to the best of Manager's knowledge Owner is in default hereunder (and if so, specifying the nature of the default), it being intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Owner's interest or by a mortgagee of Owner's interest or assignee of any security deed upon Owner's interest in the Site.

**34. COUNTERPARTS**

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which, when taken together, shall be one and the same agreement.

**35. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement sets forth the entire agreement between the parties with respect to the use of the Site and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. No addition to, or modification of, any term or provision of this Agreement shall be effective until and unless such addition or modification is set forth in written instrument signed by both Owner and Manager.

[Signatures on following page]

DATED: 6-13-07

OWNER:  
S Thomas Enterprises of Sacramento, LLC

BY: [Signature]

Its: VICE PRESIDENT

DATED: 6/26/07

MANAGER:  
CITY OF SACRAMENTO,  
a Municipal Corporation

BY: [Signature]

By: Marty Hanneman, Asst. City Manager  
For: Ray Kerridge, City Manager

APPROVED AS TO FORM:

BY: [Signature]  
DEPUTY CITY 6-13-07  
ATTORNEY

ATTEST:

BY: [Signature]  
CITY CLERK  
ant 6-27-07

CITY  
AGREEMENT NO. 2007-0657

CITY  
AGREEMENT NO. 2007-0657



**EXHIBIT B**  
**GENERAL INSURANCE REQUIREMENTS**  
**("GIR")**

Owner shall be furnished evidence of insurance in connection with the foregoing Agreement. Such insurance shall be written by an insurance company having a Best's rating of B+13 or better and licensed to do business in the state where the Site is located, meeting the requirements stated below in form satisfactory to Owner, for each of the following types of insurance in amounts not less than the amounts herein specified.

**Liability Insurance Requirements**

1. **COMPREHENSIVE GENERAL LIABILITY INSURANCE OR COMMERCIAL GENERAL LIABILITY INSURANCE ON AN OCCURRENCE BASIS shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:**
  - a) such insurance is primary, without right of contribution from other insurance which may be in effect.
  - b) such insurance shall not be invalidated by the acts or omissions of other insureds.
  - c) Such insurance shall be materially modifiable or cancelable without thirty (30) days' prior written notice to Owner (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Owner). This provision is referred to below as "Notice of Modification or Cancellation."
  - d) Owner shall be named as additional insured.
  - e) Contractual liability with deletion of the exclusion for operations within fifty (50) feet of railroad, track and deletion of the exclusion of explosion, collapse, or underground hazard, if applicable. (NOTE: For any license or permit involving property within fifty (50) feet of track, the exclusion for operations within fifty (50) feet of track will apply unless eliminated by endorsement).
  - f) Site, products/completed operations, and personal injury coverage.
  - g) Severability-of-interest clause.
  - h) In the case of commercial general liability insurance, the policy must also provide for aggregate coverage at each location and for reinstatement of the aggregate in the event the limits of the policy are exhausted.
  - i) If the proposed use of the Site involves a hazard which poses particular risk to the environment, the policy must cover sudden and accidental pollution on a named-peril basis to address the hazard.
  
2. **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:**
  - a) Such insurance is primary, without right of contribution from other insurance which may be in effect.
  - b) Such insurance shall not be invalidated by the acts or omissions of other insureds.
  - c) Notice of Modification or Cancellation. d) Severability-of-interest-clause.

3. **WORKERS' COMPENSATION INSURANCE** shall have limits not less than those required by statute, shall cover all persons employed by Owner in the conduct of its operations on the Site and shall provide for the following:
  - a) Waiver of subrogation against Owner.
  - b) Notice of modification or Cancellation
  - c) All states endorsements.
  - d) Coverage for Longshore and Harbor Workers Act, if applicable.
  
4. **EMPLOYERS' LIABILITY INSURANCE** shall have a limit of not less than \$1,000,000 and shall be endorsed to provide for (a) Notice of modification or Cancellation and (b) waiver of subrogation against Owner.
  
5. **UMBRELLA OR EXCESS LIABILITY INSURANCE** will provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance, and will provide for Notice of Modification or Cancellation.

**Thomas Enterprises - Sacramento Valley Station Overflow Parking Lots  
Estimated FY2008 Budget ( July 07 - June 08)**

<b>Revenue</b>	July	August	September	October	November	December	January	February	March	April	May	June	Total
Monthly Contracts	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	564,000
Daily Parkers	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	252,000
<b>Total Revenue</b>	<b>68,000</b>	<b>816,000</b>											
<b>Expenses</b>													
<b>Labor</b>													
Attendant	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
Maintenance	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Collections	600	600	600	600	600	600	600	600	600	600	600	600	7,200
Payroll Tax & Burden	714	714	714	714	714	714	714	714	714	714	714	714	8,568
<b>Sub-total</b>	<b>2,814</b>	<b>33,768</b>											
Insurance	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	35,280
Bank Fee	315	315	315	315	315	315	315	315	315	315	315	315	3,780
Power Sweeping	350	350	350	350	350	350	350	350	350	350	350	350	4,200
Supplies	350	350	350	350	350	350	350	350	350	350	350	350	4,200
Phone	75	75	75	75	75	75	75	75	75	75	75	75	900
Printing	250	250	250	250	250	250	250	250	250	250	250	250	3,000
Security	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Uniforms	75	75	75	75	75	75	75	75	75	75	75	75	900
Utilities	500	500	500	500	500	500	500	500	500	500	500	500	6,000
<b>Sub-total</b>	<b>5,855</b>	<b>70,260</b>											
Administrative Overhead	586	586	586	586	586	586	586	586	586	586	586	586	7,026
Management Fee	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
<b>Total Expenses</b>	<b>14,255</b>	<b>171,054</b>											
Net Receipts	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	644,946

## **RESOLUTION NO. 2007-435**

Adopted by the Sacramento City Council

June 26, 2007

### **PARKING OPERATIONS MANAGEMENT AGREEMENT WITH S. THOMAS ENTERPRISES OF SACRAMENTO, LLC.**

#### **BACKGROUND**

- A. On December 28, 2006 the City entered into a Parking Operations Management Agreement with S. Thomas Enterprises of Sacramento, LLC. ("Thomas") whereby the City would manage surface parking lots on property owned by Thomas. These lots, containing 588 parking spaces, are located at 6<sup>th</sup> & H Streets and 7<sup>th</sup> & G Streets, adjacent to the downtown rail yards. The agreement expired March 28, 2007.
- B. To continue providing convenient parking to patrons of the Sacramento Valley Station and to surrounding businesses, the City would like to enter into a new 3-year agreement with a 3-year option.
- C. Each month, the City will calculate the amount of revenue collected from its operation of the lots during the prior month. From this amount, the City will pay Thomas an amount equal to total revenue less operating expenses and a City management fee of \$5,000.
- D. For the time period between the expiration of the prior agreement on March 27, 2007 and the commencement date of the new agreement, Thomas will compensate the City a management fee of \$5,000 per month.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager is authorized to execute an agreement with S. Thomas Enterprises of Sacramento, LLC authorizing the City to manage parking lots located at 6<sup>th</sup> & H Streets and 7<sup>th</sup> & G Streets, adjacent to the Sacramento Valley Station owned by Thomas for a term of three years with one option to extend for an additional three years and providing a \$5,000.00 monthly management fee to be paid to the City.
- Section 2. The City's management of the Thomas parking lots following the expiration of the prior parking operations management agreement on March 27, 2007 through commencement of the new parking agreement on the terms and conditions of the new parking agreement including the \$5,000 monthly management fee and release of parking revenue collected by the City and due to Thomas is authorized.

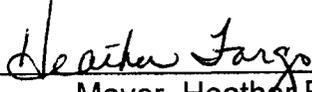
Adopted by the City of Sacramento City Council on June 26, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy,  
Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

  
\_\_\_\_\_  
Mayor, Heather Fargo

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk



# City of Sacramento Contract Cover and Routing Form

Requires Council Approval:  No  YES Meeting: 06/26/07

## General Information

Type: Other

CHANGE: None CH #:   
Original Contract #:

\$ Not to Exceed: \$ N/A

Contractor: S. Thomas Enterprises

Project Name: Parking Agreement: Thomas Enterprises

Project Number:

Bid Transaction #: E/SBE-DBE-M/WBE: 0%

## Department Information

Department: Transportation

Division: Parking Services

Project Mgr: Paul Sheridan

Supervisor: Sharon Liu

Contract Services:

Section Manager: NA

Phone Number: 808-6817

Division Manager: Howard Chan

Comment:

Org Number: 3461

## Review and Signature Routing

Department	Signature or Initial	Date
Contract Services:	N/A	
Project Mgr:	<i>Paul Sheridan</i>	6/13/07
Supervisor:	<i>Sharon Liu</i>	6-13-07
Section Manager:	N/A	
Division Manager:	<i>Howard Chan</i>	6-13-07

City Attorney	Signature or Initial	Date
City Attorney:	<i>Paul D. ...</i>	6-13-07

Send Interoffice Mail  Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director, Jerry Way	<i>Jerry Way</i>	6-13-07
Concurrence here only:	<i>[Signature]</i>	6-13-07
City Manager:	<i>[Signature]</i>	6-18-07

**For City Clerk Processing Finalized:**

Initial: *DRB* Date: *6-27-07*

Imaged: Initial: *CT* Date: *6-29-07*

**Resolution No:** (If Applicable)

2007-0435

**Contract No:**

2007-0657

**Received:** (City Clerk Stamp Here)

RECEIVED  
 CITY OF SACRAMENTO  
 BUDGET & POLICE DIVISION  
 JUN 14 11:11 AM '07

**This coversheet is to remain with the original signed Contract.**

**Responsibility**

**General Information:** May be completed by Project Manager or Contract Services.

**Department Information:** May be completed by Project Manager or Contract Services.

**Review and Signature Routing:**

**Department**

Project Manager: Verification of Technical Specs.

Accounting: Verification of Funding Sources.

Contract Services: BOT Number, Insurance, Bonds, Solicitation (BID, RFP, RFQ, RFI, Quote, Sole Source, or Emergency), Contractor Signatures, E/SBE, DBE or M/WBE Project Participation.

**City Attorney**

Approval of Contract Form and Bonds (if applicable)

Verification that Insurance Documents are Included (if required for contract approval)

**Authorization**

Department Director: Review All Contracts; Signing Authority <\$100,000

City Manager: Signing Authority delegated for < \$100,000

Signing Authority delegated to Assistant City Manager for = or > \$100,000

**AFTER** Council Authorization

**Types of Contracts**

Type	City Code	Type	City Code
Commodity	<b>3.56</b>	Reimbursement/Credit	
Development	<b>18.16</b>	Settlement	
Grant		Supplies	<b>3.56</b>
Hold Harmless			
Individual Participation			
Master Services			
Memorandum			
Non-Professional Services	<b>3.56</b>		
Owner Participation		<b>Received City Clerk (2<sup>nd</sup> Receipt)</b>	
Professional Services	<b>3.64</b>		
Public Project	<b>3.60</b>		
Real Property Lease City Owned	<b>3.68</b>		
Real Property Sale City Owned	<b>3.88</b>		
Real Property Non-City Owned (NCO)			



Requires Council Approval:  No  YES Meeting:

Real Estate  Other Party Signature Needed  Recording Requested

General Information

Form with fields: Type: Other, PO Type: Select PO Type, Attachment: Original No., \$ Not to Exceed: N/A, Original Doc Number, Other Party: DBP Realty Partners, L.P., Certified Copies of Document, Project Name: 701 L Street Parking Agreement, Deed: None/Included/Separate, Project Number, Bid Transaction #, E/SBE-DBE-M/WBE.

Department Information

Department: Public Works, Division: Parking Services, Project Mgr: Matt Eierman, Supervisor, Contract Services, Date, Section Manager, Phone Number: 808-5849, Division Manager: Howard Chan, Comment, Org Number.

Review and Signature Routing

Table with columns: Department, Signature or Initial, Date. Rows for Contract Services, Project Manager, Supervisor, Section Manager, Division Manager.

City Attorney Signature or Initial Date, City Attorney (MC: 09300), Send Interoffice Mail, Notify for Pick Up

Authorization Signature or Initial Date, Department Director, Jerry Way, Concurrence Here and Sign inside, City Manager (MC 09200), Yes No, City Clerk (MC: 09400)

For City Clerk Processing Finalized: Initial: RCB, Date: 7-23-12, Imaged: Initial: VE, Date: 7/24/12, Received: (City Clerk Stamp Here), Title: Parking-701 L St., Other Party: DBP Realty Partners, 2012-0600, RECEIVED CITY CLERK'S OFFICE CITY OF SACRAMENTO 2012 JUL 23 P 1:25

## PARKING OPERATIONS MANAGEMENT AGREEMENT

This Parking Operations Management Agreement ("Agreement") is made and entered into this 15th day of August, 2012 ("Effective Date"), by and between DBP Realty Partners, L.P. ("Owner") and the City of Sacramento ("City").

### 1. LOT

The term "Lot" shall refer to the land and any improvements located thereon at 701 L Street, as identified in the map attached as Exhibit A.

### 2. TERM

This Agreement shall be for a term of five (5) years from Effective Date subject to the termination provisions of Section 13.

### 3. PURPOSE

The Lot shall be used solely and exclusively for the operation of a parking lot. Any change in use to all or a portion of the Lot shall be mutually agreed upon in writing by both parties.

### 4. COMPENSATION AND MANAGEMENT FEE

A. Beginning on the Effective Date of this Agreement, all amounts collected in connection with the operation of the Lot ("Revenue"), shall be used to offset Operating Expenses (as defined below). "Monthly Net Revenue" shall be "Monthly Revenue" (as defined below) minus "Monthly Operating Expenses" (as defined below).

- (i) For purposes of this Agreement "Monthly Revenue" means the total amount of cash receipts generated from all business operations conducted upon or from the Lot, during any one month this Agreement is in effect, without any type of deduction. Revenue collected from the issuance of parking citations and further described in Section 5 is not included in the calculation of "Monthly Revenue."
- (ii) For purposes of this Agreement "Operating Expenses" means all expenses incurred in connection with the operation and maintenance of the Lot.
- (iii) "Monthly Operating Expenses" as used herein shall mean Operating Expenses incurred or attributed for any particular calendar month.

B The City shall be responsible for collecting all Revenue, performing billings and collecting accounts receivable in relation to City's operation of the Lot. All



Revenue will be deposited in a City account and City will keep full and accurate accounting records.

- (i) Each month, City will calculate the Monthly Net Revenue and the "Monthly Owner Proceeds," which term means Monthly Net Revenue minus the Monthly Management Fee (as defined below), for the immediately preceding month. City shall pay the Monthly Owner Proceeds to Owner within sixty (60) days of the first day of each calendar month in arrears. City shall provide brief details of the income sources in a form reasonably acceptable by Owner.
- (ii) On or before July 1st of each year during the Term, City shall prepare and submit to Owner, for Owner's review and approval, an operating budget for the next successive year (the "Operating Budget"), which shall include a projection of Revenue and Operating Expenses for the ensuing year.
- (iii) Owner shall pay City a fixed fee of five hundred dollars (\$500) per month ("Monthly Management Fee"). Such fee will be paid from the Monthly Net Revenue, if any. If Monthly Net Revenue is not available or is not sufficient to pay the Monthly Management Fee and/or monthly expenses, City shall notify Owner of the amount of the deficiency as provided for in this Agreement and Owner shall pay City the amount of the deficiency within forty-five (45) days after notice is sent to Owner by City.

## 5. PARKING CITATIONS

The City at its own expense will add the Lot to its regular patrol coverage and retain all revenue from citations issued to vehicles parked in the Lot.

## 6. INDEMNITY

City shall defend, indemnify and hold harmless Owner, its members, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of City, its officers, directors, agents, employees, volunteers or contractors. Likewise, Owner shall defend, indemnify and hold harmless City, its Council, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Owner, its officers, directors, agents, employees, volunteers or contractors.

It is the intention of City and Owner that the provisions of the aforementioned paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, and contractors. It is also the intention of City and Owner that, where comparative fault is

determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, and contractors.

## 7. INSURANCE

During the entire term of this agreement, Owner shall maintain the insurance coverage described in this Section.

It is understood and agreed by the Owner that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Owner in connection with this Agreement.

### A. Minimum Scope & Limits of Insurance Coverage

- (i) General Liability Insurance, providing coverage at least as broad as ISO Commercial General Liability Form 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy. Garage liability coverage will be accepted if it meets the coverage requirements for general liability.

### B. Additional Insured Coverage

- (i) General Liability Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects liability arising out of activities performed by or on behalf of Owner, products and completed operations of Owner, and premises owned, leased or used by Owner.

### C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (i) Owner's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Owner's insurance and shall not contribute with it.
- (ii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (iii) Coverage shall state that Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (iv) City will be provided with thirty (30) days written notice of cancellation or

material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section must be declared to and approved by the City Risk Management Division in writing.

E. Verification of Coverage

- (i) Owner shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (ii) The City may cancel this Agreement if the certificates of insurance and endorsements required have not been provided, if the insurance is canceled or Owner otherwise ceases to be insured as required herein.

Owner acknowledges that the City of Sacramento is a self-insured public entity and agrees that City's program of self-insurance fulfills any and all insurance requirements. The City of Sacramento shall provide a letter of self-insurance stating that the City of Sacramento's self-insurance program adequately protects against liabilities and claims arising out of the performance of this agreement.

## 8. IMPROVEMENTS

Subject to Owner's written consent as provided for in this Agreement, and subject to City obtaining any requisite governmental permits for the construction and operation of a commercial parking garage, City shall make such improvements ("Improvements") to the Lot as City shall deem necessary for use of the Lot as a commercial parking garage for automobiles, including, but not limited to, generally the following: The City may install additional signs, posts and chains, etc for the purpose of allocating or controlling space usage or traffic flow.

All such costs for Improvements shall be the sole responsibility of Owner. Any construction, reconstruction or altering of Improvements shall, at Owner's expense, be installed, constructed and maintained in accordance with applicable building and other codes, in a good and workmanlike manner to the satisfaction of Owner, and in accordance with all requirements of all departments, boards, bureaus, officials and authorities having jurisdiction in the matter. All necessary permits for such construction (including any permits required to cross public streets) shall be obtained by City.

City, at Owner's expense, shall install and maintain parking pay stations on the Lot.

9. MAINTENANCE AND REPAIR

City shall keep and maintain the Lot and all improvements thereon in good repair and in a neat and satisfactory condition, and shall make all repairs and replacements that may become necessary to the Lot, whether structural or nonstructural, ordinary or extraordinary subject to Owner written approval. All notices and signs upon the Lot shall be neat and properly maintained. Owner shall have the right to enter the Lot at all reasonable times to inspect the same.

10. UTILITIES AND SERVICES

All charges for water, gas, light, heat, power, electricity, telephone or other communication service, janitorial service, trash pick-up, sewer and all other services supplied to or consumed on the Lot (collectively, "Services") directly related to this parking operation, and all taxes, levies, fees or surcharges therefore shall be the sole responsibility of Owner.

11. SURRENDER OF LOT

Upon termination of this Agreement, City, without further notice, shall deliver up to Owner possession of the Lot. City will have thirty (30) days after termination of this Agreement to remove any personal property from the Lot. All improvements paid for by the Owner shall remain the property of the Owner.

12. NOTICES

All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail, registered or certified, postage prepaid, or delivered by overnight courier, and addressed to the party to whom the notice is directed at the address set forth below. Either party may change the address for notices or Owner may change the address for payments by giving the other party written notice to that effect.

ADDRESS FOR NOTICES

To Owner:

DBP Realty Partners, L.P.  
C/O Tower Development  
Attn: Property Manager  
4378 Auburn Blvd., Suite 300  
Sacramento, CA 95841

To City:

Parking Services Division  
Attn: Parking Services Manager  
300 Richards Blvd., 2nd Floor  
Sacramento, CA 95811

### 13. TERMINATION OF AGREEMENT

Owner and City may unconditionally terminate this Agreement, at any time, by providing the other party written notice no less than sixty (60) days prior to the selected date of termination.

Termination or expiration of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration.

### 14. RELATIONSHIP OF PARTIES

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person or court to create the relationship of partnership or of joint venture between Owner and City, and neither the method of computation of fee nor any other provisions contained in this Agreement nor any acts of the parties shall be deemed to create any relationship of owner of real property and holder of a limited agreement to use the same for the purposes set forth herein.

### 15. SUCCESSORS

The covenants, conditions and agreements contained in this Agreement shall be binding on the parties hereto and on their respective heirs, successors, assigns and legal representatives.

### 16. EXHIBITS

All exhibits attached to this Agreement shall be deemed to be incorporated herein by the individual reference to each such exhibit, and all such exhibits shall be deemed to be a part of this Agreement as though set forth in full in the body of this Agreement.

### 17. AUTHORITY

The undersigned parties hereby warrant that they have proper authority and are empowered to execute this Agreement on behalf of Owner.

### 18. CAPTIONS

The Captions contained in this Agreement are for purposes of convenience only and are not to be used to interpret or construe this Agreement.

[Signatures on following page]

DATED: 7.19.12

DATED: \_\_\_\_\_

OWNER:

DBP Realty Partners, L.P.,  
a California limited partnership  
By: Tower Development Corp.,  
a California corporation

CITY:

CITY OF SACRAMENTO,  
a Municipal Corporation

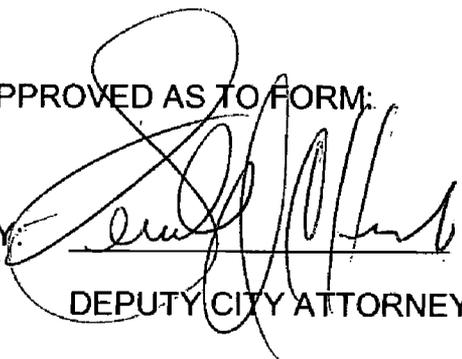
BY: 

Timothy W. Lee

Its: Vice President

BY:   
CITY

APPROVED AS TO FORM:

BY:   
DEPUTY CITY ATTORNEY

ATTEST:

BY:   
CITY CLERK 7-23-12





## **APPENDIX C**

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### **Sample Shared Parking Ordinance**



## SAN BUENAVENTURA, CA<sup>1</sup>

### Chapter 24.345 Downtown Parking (DP) Overlay Zone

#### Sec. 24.345.010. Chapter description.

Chapter 24.345 establishes the Downtown Parking ("DP") Overlay Zone. This chapter also describes how required offstreet parking within the Downtown Area may be provided through the authorization and issuance of parking approvals and the procedures and required findings therefor. These provisions are intended:

1. To recognize that the Downtown Area is unique in the city and that it has opportunities to address offstreet parking problems by specialized means not applicable to other areas of the city;
2. To define a specific area in the Downtown which may be evaluated, relative to offstreet parking requirements for non-residential uses, in a separate manner from the remaining area of the city;
3. To allow both public and private non-residential uses located within the Downtown Area to provide for required offstreet parking by a variety of methods that will maximize the overall total number of parking spaces provided, as well as maximize the use of those spaces;
4. To encourage development of additional offstreet parking in the Downtown Area;
5. To encourage redevelopment and revitalization of the Downtown Area utilizing specialized methods of providing offstreet parking; and
6. To provide an effective and definitive method for review and processing for non-residential uses located within the Downtown Area relative to the provision of offstreet parking.

#### Sec. 24.345.020. Applicability.

The provisions of this chapter shall apply to all non-residential uses within the Downtown Area. The Downtown Area may be designated as the DP Overlay Zone by the initials "DP" on the official zoning district map. The provisions of this chapter shall apply and be deemed enacted and effective as of July 4, 1985.

Within the Downtown Area, repairs not involving structural alterations may be carried out on buildings occupied, or otherwise used, by a non-residential use that is nonconforming as to the offstreet parking requirements of chapter 24.415 without providing for any more offstreet parking spaces than were provided for at the time such repairs are commenced.

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<sup>1</sup> Chapter 24.345 <http://library.municode.com/index.aspx?clientId=10135&stateId=5&stateName=California>

Within the Downtown Area, in any instance where a new use occupies a vacant building or portion thereof that had previously been occupied by a use with the same or greater parking requirements pursuant to chapter 24.415, that new use may, notwithstanding any provision of chapter 24.415, to the contrary, be initiated without providing any more offstreet parking spaces than were provided at the time the previous use occupied the same building or same portion thereof.

However, when a non-residential use is initiated in conjunction with, or carries out, or proposes to carry out, any structural alterations or other development described in sections 24.345.030, 24.345.040, 24.345.050, the total number of offstreet parking spaces that shall be provided for that use shall be the cumulative total required by each and all of those three sections that apply.

### **Sec. 24.345.060. Parking approval.**

In instances where it is not practicable to provide all required offstreet parking spaces on the subject site pursuant to chapter 24.415, all required parking may be provided through one or more of the following methods, provided that a parking approval is first approved in accordance with chapter 24.510:

7. Private onsite parking.
8. Private offsite parking, provided that:
  - a. The boundaries of the other site containing available parking are located within 500 feet of the boundaries of the site containing the subject land use;
  - b. The parking spaces available on the other site are not required for another use; and
  - c. The applicant's right to use the offsite parking spaces is guaranteed in a manner satisfactory to the director and the city attorney through a recorded instrument which is irrevocable without notification to the city for the duration of the approval specified in this section.
9. Shared onsite parking based on hours of operation, provided the uses sharing parking either do not have overlapping hours of operation or overlap only when the same is found to be consistent with and permitted pursuant to the guidelines for shared parking approved by the city council as such guidelines may exist at the time of permit issuance.
10. Shared private offsite parking based on hours of operation, provided that:
  - a. The uses sharing parking do not have overlapping hours of operation or overlap only when the same is found to be consistent with and permitted pursuant to the guidelines for shared parking approved by the city council as such guidelines may exist at the time of permit issuance; and
  - b. The offsite parking is guaranteed in a manner satisfactory to the director and the city attorney through a recorded instrument which is irrevocable without notification to the city for the duration of the approval specified in this section.
11. Payment of an in-lieu parking fee for any required parking spaces not otherwise provided pursuant to this section, which fee shall be paid prior to the issuance of any required building permits or zoning clearance in accordance with the in-lieu parking fee program established by the city council within the geographic boundaries of Downtown Parking District Nos. 1 and 2 as those boundaries may be amended from time to time. Payment of such an in-lieu fee to meet offstreet parking space requirements may be allowed only if the decision-making authority finds, in addition to the findings required by Chapter 24.510, that each of the following circumstances does or will exist:

**BALBOA VILLAGE PARKING BENEFIT DISTRICT & SHARED PARKING IMPLEMENTATION |  
APPENDIX C**

City of Newport Beach

- a. Provision of private onsite parking is infeasible due to existing development patterns at the site; and
  - b. Provision of private shared parking is infeasible due to the applicant's proposed hours of operation or the distance from available offsite parking, (i.e., greater than 500 feet)
12. Provision of required parking based on an allocation program which has been set up through a property-owner-initiated assessment district.

