

Meet the M/WBE good faith goals provided for in this Agreement; and

WHEREAS, City advertised for and received competitive proposals for the right to manage and operate designated parking Facilities and shuttle bus services at the Airports; and

WHEREAS, City has determined that the proposal submitted by the Parking Operator is the best and most advantageous or the City

NOW, THEREFORE, for and in consideration of the premises, benefits, and mutual covenants contained herein, City and Parking Operator hereby agree as follows:

ARTICLE 1 – PARTIES

1.1 ADDRESSES

1.1.1 The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

<u>City</u>	<u>Parking Operator</u>
Director of Aviation	
City of Houston	
PO Box 60106	
Houston, TX 77205-0106	
<u>Copy to</u>	<u>Copy to</u>
City Attorney	
City of Houston	
900 Bagby Street, 4th Floor	
Houston, TX 77002	

1.2 TABLE OF CONTENTS

1.2.1 The City and Parking Operator hereby agree to the terms and conditions of this Agreement. This Agreement consists of the following sections:

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1.3 PARTS INCORPORATED

1.3.1 All of the above described articles and exhibits are hereby incorporated into this Agreement by this reference for all purposes.

1.4 CONTROLLING PARTS

1.4.1 In the event of any conflict or inconsistency between or among the provisions of such articles or exhibits, it is agreed that the provisions of the articles shall control over the provisions of the exhibits.

[SIGNATURE PAGE FOLLOWS]

1.5 SIGNATURES

1.5.1 The City and Parking Operator have made and executed this Agreement in multiple copies, each of which shall be deemed an original.

PARKING OPERATOR:

CITY:

[NAME OF PARKING OPERATOR]

CITY OF HOUSTON, TEXAS

By: _____

By: _____

Name:

Mayor

Title:

ATTEST/SEAL: (if a corporation)

ATTEST/SEAL:

WITNESS: (if not a corporation)

Signed by:

City Secretary

Tax ID Number:_____

APPROVED:

Director, Department of the
Houston Airport System

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

("Effective Date")

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No.

ARTICLE 2 – DEFINED TERMS

- 2.1 DEFINITIONS.** As used in this agreement, the following words and phrases shall have the meanings set out below.
- 2.1.1 “*Agreement*” means this contract between the parties, including all exhibits and written amendments authorized by City Council and Parking Operator.
- 2.1.2 “*Airports*” means George Bush Intercontinental Airport/Houston, William P. Hobby Airport, and Ellington Airport.
- 2.1.3 “*Business Day(s)*” whether capitalized or not means any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
- 2.1.4 “*City*” is defined in the preamble hereof.
- 2.1.5 “*City Attorney*” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.6 “*City Holiday*” means any day designated as a holiday in the SOP, as updated from time to time. For purposes of this Agreement, “*City Holiday*” may be different than the official holiday schedule approved by City Council.
- 2.1.7 “*Contract Year*” and “*Partial Contract Year*”.
- 2.1.7.1 “*Contract Year*” means a period of one year commencing on July 1, and ending on June 30, and for every year thereafter.
- 2.1.7.2 “*Partial Contract Year*” means the period commencing as of the Effective Date through June 30, 2017 or the period commencing July 1, 2026 to February 28, 2027, as applicable.
- 2.1.8 “*Day(s)*” whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and City holidays. In the case of plural ‘days’, those days will be consecutive.
- 2.1.9 “*Director*” means the Director of the Houston Airport System (“HAS”) or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.10 “*Effective Date*” means the date this Agreement is countersigned by the City Controller.

- 2.1.11 “*Facility*” or “*Facilities*” means a location or locations at the Airports that are identified in **Exhibit “A”** and **Exhibit “B”** for providing Parking Operator’s services, as may be modified from time to time throughout the Term.
- 2.1.12 “*Governmental Authority*” means any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director.
- 2.1.13 “*HAS*” means the Houston Airport System, the City of Houston’s Department of Aviation.
- 2.1.14 “*HOU*” means William P. Hobby Airport.
- 2.1.15 “*IAH*” means George Bush Intercontinental Airport/Houston.
- 2.1.16 “*Parking Operator*” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.17 “*Removable Fixtures*” means all furnishings, fixtures and equipment owned or leased by Parking Operator, that are not permanently affixed to any wall, floor, or ceiling in the Facilities and which may be removed without any damage to the Facilities.
- 2.1.18 “*SOP*” means Standard Operations and Procedures Manual as updated from time to time.
- 2.1.19 “*Start Date*” is March 1, 2017, or as otherwise determined by the Director.
- 2.1.20 “*Term*” means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.21 “*Writing*” or “*written*” shall mean a written communication from one party to the other, including an electronic communication or e-mail.
- 2.2 REFERENCES TO HERETO.** The terms “hereto,” “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.
- 2.3 REFERENCES TO INCLUDING.** The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

- 2.4 REFERENCES TO STATUTES.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
- 2.5 REFERENCES TO GOVERNMENTAL AUTHORITIES.** Each reference to the City or a Governmental Authority is deemed to include a reference to any successor to the City or such Governmental Authority or any organization or entity which has taken over the functions or responsibilities of the City or such Governmental Authority. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.
- 2.6 REFERENCES TO DOCUMENTS AND STANDARDS.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
- 2.7 REFERENCES TO VERBS.** When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.
- 2.8 REFERENCES TO SHALL.** The word “shall” is always mandatory and not merely permissive.

ARTICLE 3 – FACILITIES AND EQUIPMENT

- 3.1** Parking Operator is hereby assigned, without charge, and in “as is” condition, the following locations (collectively the “Premises”) for its use during the Term: IAH Terminal A/B Garage, IAH Terminal C Garages (C1, C2, C3), IAH Terminal D/E Garage, IAH ecopark (JFK), IAH ecopark2 (WC), IAH Terminal A Employee Contract (including A-1 West), IAH Terminal B Employee Contract, IAH PL6 Employee Contract, HOU Red Garage, HOU Blue Garage, and HOU ecopark. The Premises in place as of the Effective Date are described in **Exhibit “A”**. Parking Operator is assigned the office and storage space described in **Exhibit “B”**, which may be changed or relocated at the Director’s discretion. Additional office and storage space may be available to Parking Operator at the then existing rental rates being charged for such space. The City makes no representation that the Premises are suitable for Parking Operator’s requirements herein.
- 3.1.1** The Director reserves the right, in his sole discretion, at any time throughout the Term to delete or add to Facilities on an interim, temporary, or permanent basis, to increase or decrease the total number of parking spaces (including those parking spaces in existing Facilities), and to relocate Facilities or portions thereof.

The foregoing shall not be construed as giving Parking Operator the right to use or occupy any interim or temporary location for a period beyond that specified by the Director, in his sole discretion.

3.2 Parking Operator is also assigned, during the Term, the Parking Revenue Control Systems (“PRCS”) for valet and self-parking operations, Advanced Parking Guidance System (“APGS”), and certain other parking-related equipment to be used in performance of the services described in this Agreement. Said equipment is listed in the asset list in **Exhibit “C”**.

3.2.1 All equipment assigned to Parking Operator by the City is, and shall remain, the property of the City. All such equipment is subject to the City’s inventory control system. An inventory check will be conducted on the Start Date, when such assets are turned over to the control of Parking Operator, and from time to time throughout the Term. In addition, the Director may authorize or direct Parking Operator to purchase additional replacement equipment for the City as a Reimbursable Expense. Title to such equipment shall vest in the City immediately upon purchase. Parking Operator shall keep all equipment in good working order, normal wear and tear excepted.

3.2.2 All revenue control equipment now in use, including, but not limited to, all cashier booths, ticket issuing machines, cashier terminals, patron fee displays, automatic gates, Automatic Vehicle Identification (AVI) equipment, CCTV and intercom systems, safes, signs, computers and printers, computer software, and related operational equipment is the property of the City and will be assigned without charge to Parking Operator for its use under the Agreement. Future equipment, whether purchased by Parking Operator on behalf of the City or directly by the City, shall be property of the City and may be assigned, with or without charge, to Parking Operator for its use under this Agreement.

3.3 The term “Facilities” as used in this Agreement refers collectively to the Premises and equipment described herein. From time to time during the Term, the Director may authorize additions or deletions or modifications to the Facilities and the modifications do not result in an increase in the compensation paid to the Parking Operator. It shall not be necessary to amend the Agreement to reflect these additions, deletions, or modifications, provided that the Director's approval of the additions, deletions, and modifications is issued in writing. Upon the Director’s written approval, updated **Exhibits “A”** and **“B”** reflecting the approved changes shall become part of this Agreement for all purposes. An equipment inventory list shall be detailed in Parking Operator's SOP and shall be updated by Parking Operator as necessary to reflect equipment acquisitions and dispositions authorized by the Director.

3.4 Parking Operator acknowledges that it has carefully examined the Facilities and is familiar with all the equipment, including the PRCS, APGS, and shuttle buses, courtesy

carts, and service vehicles, and Parking Operator hereby accepts the same as it exists on the commencement date of the Term.

3.5 Title to all Facilities purchased by Parking Operator for and at the expense of the City shall vest in the City upon purchase unless otherwise agreed to by the Director in writing.

3.6 USE OF THE FACILITIES

3.6.1 Parking Operator's use of the Facilities described above shall in no way be deemed to be a lease.

3.6.2 Parking Operator shall not, at any time during the Term, abandon any of the Facilities without the Director's prior written approval.

3.6.3 Parking Operator shall use the Facilities only for purposes consistent with and in furtherance of its duties under the Agreement and for no other purpose whatsoever.

3.7 RIGHT OF ACCESS. Parking Operator, its subcontractors and joint venture partners, as well as its agents, employees, contractors, suppliers, and invitees are hereby granted, subject to the other terms and conditions of this Agreement, the right of ingress and egress over and across walkways, passageways, and other public areas of the Airports for the purposes contemplated under this Agreement. This right of access shall be limited to the Facilities and shall not include a right of access to other areas of the Airports unless approved in writing in advance by Director.

3.8 RIGHT OF INSPECTION OF FACILITIES BY THE CITY. Parking Operator shall permit the City, its agents, and employees to enter and view all the Facilities occupied by or assigned to Parking Operator at any time for inspecting, testing, or maintaining such Facilities or for doing any other act that may be necessary or desirable for the proper operation of the Airports.

3.9 CONSTRUCTION DISRUPTION. Throughout the Term of this Agreement there will be substantial disruption in portions of the Facilities resulting from construction activity conducted by and on behalf of the City. Parking Operator acknowledges that such disruption will occur and agrees that it will cooperate with the City and any of its contractors or subcontractors to manage and minimize the disruption in the Facilities. Parking Operator agrees that it shall not be entitled to any additional fees herein due to such construction disruption and its cooperative efforts in managing and minimizing such disruption.

ARTICLE 4 – DUTIES OF PARKING OPERATOR

4.1 SCOPE OF OPERATIONS

4.1.1 *Services.* Parking Operator shall provide comprehensive management services (the “Services”) twenty-four (24) hours per day, seven (7) days per week for parking, valet, and shuttle services, which include shuttle bus and courtesy cart operations, at the Airports in accordance with the requirements of the Agreement, the approved SOP, and as directed in writing by the Director. Parking Operator shall provide prompt, courteous, and high-quality service to the Airports patrons at all times. Parking Operator shall ensure that the operation is managed in a manner acceptable to the Director and that clean, safe, efficient, attractive, and high-quality Facilities and services are provided to the Airports patrons.

4.1.2 *Additional Facilities/Services.* The City hereby reserves the right to establish, at any time, additional parking, valet, and shuttle bus related services that may benefit the Airports. Adjustments to the Management Fee shall be in accordance with **Section 4.5**.

4.1.3 *Facilities and Rights Not Exclusive.* The rights granted under the Agreement are not exclusive and the City reserves the right to contract with others for parking, valet, and shuttle bus services at the Airport without obligation to engage Parking Operator to staff or manage those additional operations, to change Parking Operator's Management Fee, or any other obligation whatsoever.

4.2 OPERATION OF PARKING FACILITIES. Parking Operator shall operate parking twenty-four (24) hours per day, seven (7) days per week, performing the following functions in accordance with the Agreement:

4.2.1 *Parking Revenue Control System (PRCS).* Parking Operator shall operate the existing, comprehensive PRCS at the Airports. Parking Operator is responsible for first-level maintenance activities associated with the PRCS which includes correction of minor repairs such as broken gate arms and ticket jams. Parking Operator affirms that it understands and is capable of efficiently operating the PRCS to the full capability of the PRCS, including license plate recognition, license plate inventory, space control, and other subsystems not specifically identified herein. Parking Operator will train its employees in the proper use of the PRCS. Parking Operator shall provide system status monitoring; reporting and correction; and data backup and management for the development of manual and computer-generated reports outlined in the SOP. The PRCS includes software developed at City's expense for use in Parking Operator's operations and such software is proprietary to HAS. Parking Operator shall not copy, assign, sell, or use the software for purposes not authorized by the Agreement except with the advanced written approval of the Director.

- 4.2.1.1 *PRCS Equipment.* All PRCS and related equipment now in use, including, but not limited to, all ticket dispensers, cashier terminals, fee displays, automatic gates, pay-in-lane machines, automatic vehicle identification (AVI) equipment, video and intercom systems, safes, signs, computers and printers, computer software, and related equipment, is the property of the City and will be assigned without charge to Parking Operator for its use under the Agreement. Future PRCS equipment, whether purchased directly by HAS, or by Parking Operator on behalf of the City as a Reimbursable Expense, shall be the property of the City and may be assigned, without charge, to Parking Operator for its use under the Agreement.
- 4.2.1.2 *PRCS Maintenance.* The Parking Operator shall secure PRCS system maintenance services (as a Reimbursable Expense) from a qualified service firm subject to approval by the Director. Parking operator will provide a system for tracking PRCS repairs and maintenance by lane.
- 4.2.1.3 *PRCS Training.* Parking Operator shall fully train all personnel operating the PRCS in the proper operation and procedures for the use of the equipment prior to the start of their assignments. All training shall conform to the standards and requirements set forth in the SOP.

4.2.2 *Ticketing and Cashier Functions.*

- 4.2.2.1 *General.* Parking Operator shall monitor and operate all entries and exits to the Facilities and shall perform the cashier functions in accordance with the SOP and direction from the Director. All public parking Facilities shall be open for public entry and exit except when full or as may be otherwise approved by the Director in writing.
- 4.2.2.2 *Remote Assistance.* When supported, Parking Operator shall assist patrons in lane with processing transactions remotely at these facilities, through its remote monitoring and communications. Personnel shall be dispatched, as necessary.
- 4.2.2.3 *Parking Ticket.* The parking ticket shall list the parking terms and conditions, including a disclaimer, approved by the Director. Parking Operator shall procure the ticket stock and stock the ticket dispensers.
- 4.2.2.4 *Entrance Sign.* Parking Operator shall erect signage at Facility entrances that shall list the parking terms and conditions, including a disclaimer, approved by the Director.
- 4.2.2.5 *Non-Revenue Transactions.* Parking Operator shall permit City-owned and operated vehicles, and other categories of vehicles and groups of

individuals as approved by the Director to park in designated parking lots and garages at no charge.

- 4.2.2.6 *Change Fund.* Parking Operator shall establish the necessary change fund (approved and funded by the City) for daily parking operations and shall collect and hold in trust for the City, until deposited in a bank approved by the Director upon termination of the Agreement.
- 4.2.2.7 *Cash Drop.* Parking Operator shall develop procedures for ensuring the chain of custody of all cash. This includes cash pick-ups/drops during shifts, consolidation of funds, and other steps taken in collecting and depositing cash, and the counting of money.
- 4.2.2.8 *Armored Car Services.* Parking Operator shall provide armored car services for the secure transfer of revenue receipts to the Director's designated bank account. The Parking Operator is charged with safeguarding and ensuring that all revenue receipts are accounted for and handled securely from cashiers, pay in lane stations, and other areas and depositing to the Director's designated bank account.
- 4.2.2.9 *Exit Standards.* Parking Operator shall staff all Facilities so that there will not be exiting delays of more than a sustained period of five minutes and provide documentation of any system failures, which results in exit delays exceeding the performance standard. Parking Operator shall ensure that the average processing time at the cashier booth does not exceed thirty (30) seconds for cash transactions and forty-five (45) seconds for credit card transactions per vehicle. This includes the responsibility to monitor late flights or other unusual conditions and provide sufficient staffing to maintain the service level at all times.

4.2.3 *Traffic Management/Signage.*

- 4.2.3.1 *Traffic Management.* Parking Operator shall monitor and manage all traffic as required in the parking Facilities by directing traffic, setting up and taking down cones or barricades, and erecting or replacing delineators.
- 4.2.3.2 *Signage and Information.* Parking Operator shall provide clear, visible signage for parking patrons showing parking Facility names and rates, and directing them to available parking areas. Parking Operator shall provide parking information for the Airport website and dynamic signage in accordance with established messages, which must be approved by Director.

4.2.3.3 *APGS*. Parking Operator shall operate and maintain the APGS system(s) assisting patrons with finding available parking spaces in the parking Facilities.

4.2.4 *Inclement Weather Conditions.*

4.2.4.1 *Flood/Hurricane*. Parking Operator must ensure it prepares for inclement weather conditions and appropriate steps are to be taken as determined in the SOP. Parking Operator shall develop a flood/hurricane plan which shall be included in the SOP upon the Director's approval. The flood/hurricane plan will address staffing, stay in-place procedures, securing equipment, acquiring supplies, checking backup generators, and other preparations and procedures.

4.2.4.2 *Snow/Ice*. Parking Operator shall develop a snow/ice plan which shall be included in the SOP upon the Director's approval. The snow/ice plan will address the equipment, abrasives, anti-icing, deicing methods and chemicals. The type of ice-melting agent must be approved by the Director prior to use. Sand may not be used inside the parking areas of the parking structures, but may be used on any exposed exterior stairways.

4.2.5 *Emergency/Information Callboxes*. Parking Operator shall receive calls and dispatch assistance as needed, and coordinate any concerns, as required, with HAS or its representatives.

4.2.6 *Disabled Parking Spaces.*

4.2.6.1 Parking Operator shall not remove or take out designated Handicap parking spaces without the Director's prior written approval.

4.2.6.2 Parking Operator shall notify the Director of apparent violation of Texas Department of Licensing and Regulation ("TDLR") regarding the required number of spaces by facility.

4.2.6.3 Parking Operator shall notify the appropriate City department when Disabled Parking Spaces are being used by vehicles not identified as being operated by persons with disabilities.

4.2.7 *Towing and Impoundment of Vehicles.*

4.2.7.1 Parking Operator will have full responsibility for managing a vehicle towing service to:

4.2.7.1.1 Remove stolen or abandoned vehicles from the Facilities to a designated lot in conformance with Chapter 683 of the Texas

Transportation Code. Parking Operator will not be entitled to any revenues or fees collected by the City for the disposition or sale of any abandoned vehicles, which may be towed under the Agreement.

4.2.7.1.2 Move parked vehicles that: (1) impede traffic or operations, (2) are parked in unauthorized areas, (3) obstruct maintenance or construction, and (4) to clear the Facilities during an emergency or heightened security alert. Parking Operator may charge the towing fee, without markup, to a customer whose vehicle is towed only in those situations where the vehicle must be towed because it is illegally parked and not under circumstances where it must be moved because of an emergency or heightened security alert (after the fact of parking).

4.2.7.1.3 If requested in writing by the Director, Parking Operator shall procure tow trucks and operate the towing service with its own personnel. Parking Operator shall also, if so directed by Director, manage the public auction and sale of abandoned and impounded vehicles in accordance with applicable laws, rules, and regulations.

4.2.8 *Meetings and Coordination with Airports.* Parking Operator shall meet as required with the HAS staff and report on all activities as directed by the Director. Parking Operator shall participate in construction activity coordination meetings, safety meetings, meetings with the TSA, and audit and risk management meetings.

4.2.9 *Planning Assistance.* Parking Operator, through its General Manager and management staff, shall provide assistance to the City in the planning process for Facility expansions, Facility replacement projects, and changes in services within its reasonable ability and expertise as a professional parking management firm. This may include, but is not limited to, revenue forecasting, operational plans for new Facilities and services, potential changes in technology applications related to parking and shuttle services, and marketing efforts related to any existing operations for which the Parking Operator is responsible, or future operations that would be considered reasonable extensions of the existing scope of services.

4.3 SHUTTLE BUS SERVICES AND MANAGEMENT. In connection with its provision of shuttle bus services and management of the Facilities related to the shuttle bus operation, Parking Operator shall, at a minimum, perform the following functions:

4.3.1 *Shuttle Bus Service.* Parking Operator shall operate a trunk-to-trunk shuttle bus service as part of the IAH ecopark operations. The shuttle bus service shall provide transport of customers between the IAH ecopark Facilities and all

passenger terminals at IAH or as may be directed by the Director. Parking Operator's buses, not in use, may be parked at the IAH ecopark Facilities, or as may be directed by the Director. Parking Operator shall monitor and assess the shuttle bus usage and recommend to the Director when the number of buses should be increased or decreased. The Director may, in his sole discretion, add, reduce, alter, eliminate, and relocate shuttle bus routes and stops. Parking Operator shall make shuttle buses available for irregular operations (terminal train service disruptions, hard stand parking of aircraft, etc.) and miscellaneous city-wide tours as directed by the Director.

4.3.2 *Performance Standards.* Parking Operator shall ensure that:

4.3.2.1 No patron waits more than three (3) minutes on the lot before pick up.

4.3.2.2 No patron waits more than ten (10) minutes to depart the lot once boarded.

4.3.2.3 No patron waits more than five (5) minutes for pick-up at the terminal pick-up point between the hours of 6:00 am and 12:00 pm, no more than ten (10) minutes between the hours of 12:00 am and 2:00 am, and no more than fifteen (15) minutes between the hours of 2:00 am and 6:00 am. This includes the responsibility to monitor flight conditions and to provide additional coverage beyond the normal schedule to maintain the stated service levels at all times, including those periods of abnormal activity patterns.

4.3.3 *Shuttle Bus Specifications.* All existing shuttle buses and related equipment, such as the GPS tracking system, two-way radios, and radio dispatch system, must be transferred or acquired from the current Parking Operator, according to terms set forth under **Section 5.3.4**. Future shuttle buses and related equipment shall be purchased or leased by the Parking Operator. The cost of such equipment is to be recovered through the Shuttle Bus Hourly Rate. New buses shall be Glaval Universal, CNG fueled, with automatic transmissions, air conditioning, front entrances and exits, as further specified in **Exhibit "D"**. Buses used for IAH ecopark (JFK) operations must seat approximately twenty (20) passengers and buses used for IAH ecopark2 (WC) operations must seat approximately fourteen (14) passengers. Buses shall have luggage racks inside for passenger convenience. Buses shall be clean and well-maintained inside and out. All necessary inspection stickers, permits, and licenses are to be in place and maintained during the term of the Agreement as required by the State, City, and HAS. Parking Operator shall provide a sufficient number of ADA compliant buses consistent with the requirements of the Department of Transportation (DOT) on-demand bus service.

4.3.4 *Shuttle Bus Transition and Replacement.* The existing shuttle buses at ecopark shall be used by the Parking Operator between the Start Date and July 1, 2017. Accordingly, Parking Operator shall acquire the existing thirty (30) bus fleet

from the existing parking operator for \$2,500 plus sales tax and licensing per bus. Parking Operator shall order new buses for ecopark shortly following the Effective Date of Agreement for delivery by July 1, 2017. Parking Operator shall use these new buses until July 1, 2022, when they shall be replaced. The existing shuttle buses at ecopark2, which opened on May 2, 2016, with new buses, shall be acquired from the existing Parking Operator at their unamortized cost shown in **Exhibit “E”**. Parking Operator shall use these buses until July 1, 2022, when they shall be replaced. At the end of the Agreement Term, title to all the buses in the fleet shall transfer to the City or a new parking operator, as directed by the Director in his sole and reasonable discretion.

4.3.5 *Radio Dispatch.* Parking Operator shall manage, operate, and maintain the shuttle bus dispatching radio system to maintain contact with each vehicle on the road. All buses must be equipped with 2-way radios with the ability to communicate with a compatible 2-way base station radio set. The dispatch radio system shall be registered with the Federal Aviation Authority (“FAA”) and must comply with all Federal, State, and local regulations.

4.3.6 *Bus Markings, Wrapping, and Tracking.*

4.3.6.1 Parking Operator shall provide clear, visible signage on the exterior of the shuttle bus, as directed by the Director, and legible signage on the interior of the shuttle buses indicating the driver’s name, bus number, Parking Operator’s name and telephone number. Non-smoking decals shall also be displayed.

4.3.6.2 Parking Operator shall re-wrap each bus at the mid-point of its replacement cycle (i.e. every 2 ½ to 3 years).

4.3.6.3 Parking Operator shall manage and maintain a GPS or Automatic Vehicle Location (AVL) system for monitoring shuttle bus operations.

4.3.7 *Drivers and Supervisors.* All drivers and supervisors shall be employees of the Parking Operator and must be properly licensed. All drivers and supervisors must be neatly uniformed and courteous to airport patrons at all times. Drivers shall assist customers boarding and disembarking the buses with their luggage. Drivers will also assist customers who are having difficulty boarding and disembarking the buses. Drivers shall not solicit tips but may accept tips as offered.

4.3.8 *Buses.* Shuttle buses must be properly insured.

4.4 EMPLOYEES AND STAFFING

4.4.1 *General Staffing Requirements.* Parking Operator shall recruit, hire, promote, discharge, supervise, and employ all personnel in the operation of the Facilities,

including, as necessary, but not limited to, qualified and trained supervisors, attendants, cashiers, traffic monitors, shuttle drivers, enforcement personnel, cleaners, accounting staff, and other personnel to assure a high standard of service to fulfill its obligations.

4.4.2 *Employee Retention Requirements.* Parking Operator shall offer continued employment to existing non-supervisory personnel working for the current parking operator on February 28, 2017. However, Parking Operator shall not be obligated to retain such existing personnel (on an individual basis) if it demonstrates to the satisfaction of the Director that: (i) an individual employee does not pass background and/or drug testing, (ii) an individual employee does not have the experience to provide the services that Parking Operator requires, or (iii) Parking Operator does not need as many employees as its predecessor required (either in total or in a particular job function and there is no opportunity for the affected employee(s) to be repurposed). Parking Operator shall ensure that all subcontracts, greater than \$1 million annually, to which it is a party, contain the above requirements.

4.4.3 *Staffing Levels.* Parking Operator shall operate the Facilities in accordance with staffing levels, schedules, and budget approved by the Director, as may be modified from time to time. This includes the responsibility to monitor late flight conditions and to provide additional coverage beyond the normal schedule to maintain the stated service levels at all times, including those periods of abnormal activity patterns. Staffing levels and schedules shall be described in the SOP.

4.4.4 *Staffing Quality.*

4.4.4.1 Parking Operator shall make best efforts to attract, hire and retain high-quality personnel, fluent in spoken and written English, and to minimize employee turnover.

4.4.4.2 Parking Operator shall not employ or retain in its service, or permit to remain on the Facilities, any person reasonably and for good cause found by the Director to be objectionable or unfit for employment.

4.4.5 *Overtime.* Overtime premiums shall be reported as a percentage of the total payroll for all employees and shall not exceed three percent (3%) per monthly reconciliation without prior approval from the Director. Parking Operator shall provide supporting documentation for any amount exceeding the established goal.

4.4.6 *General and Departmental Managers.*

4.4.6.1 Parking Operator acknowledges that the identity and commitment of the General Manager identified by the Parking Operator in its proposal was a material factor in the selection of the Parking Operator to perform the services requires under this Agreement. Parking Operator shall use the

General Manager to perform such services unless the General Manager is unavailable for good cause shown. "Good cause shown" shall not include performing services on at other operations for the Parking Operator or any of its affiliates, except for special projects limited in duration approved by the Director in writing, but shall include termination for cause, employee death, disability, retirement, or resignation. In the event of any such permissible unavailability, Parking Operator shall use replace the General Manager with someone of equivalent skill, experience, and reputation acceptable to the Director. Any personnel change shall be proposed to the Director with reasonable advance notice (no less than thirty (30) days, unless extenuating circumstances exist) for the Director's review and approval, which shall not be unreasonably withheld or delayed. The Director may exclude any personnel performing services if the Director, acting reasonably, determines that an unworkable relationship has developed between the City and the individual.

- 4.4.6.2 The General Manager shall be ordinarily available and on-site during regular business hours and, always during his absence, another Director-approved manager shall be in charge on-site and available. The General Manager shall be in complete charge of Parking Operator's operations at the Airports and shall be a qualified and experienced manager vested with full power and authority over Parking Operator's operations hereunder.
- 4.4.7 *Hiring.* Parking Operator shall use reasonable care to employ and retain employees who are qualified, competent, and trustworthy. As a minimum, Parking Operator shall, prior to hiring an applicant, determine the compatibility of the applicant working in a customer service environment, test each applicant for the presence of illegal drugs and the presence of legal drugs in excess of medically approved standards, and examine the applicant's conviction record to determine instances of prior criminal convictions which would disqualify the applicant for a position of public trust. Employee background checks shall comply with all local, state, and Federal employment requirements.
- 4.4.8 *Management and Personnel Training.* Parking Operator shall implement a comprehensive initial and recurrent training program appropriate to each job category.
- 4.4.9 *Employee Uniforms.* Front-line employees who come into contact with customers (e.g., cashiers, supervisors, drivers, customer service agents, etc.) must be uniformed and must always wear their HAS issued security badge while on duty, on break, or arriving for work or leaving work. Parking Operator shall provide a monthly rental program for uniforms to ensure consistent cleaning and quality. The cost of this rental program is a Reimbursable Expense. Uniform standards shall be specifically described in the SOP.

- 4.4.10 *Personnel Records.* Parking Operator shall maintain current, accurate and detailed records on personnel. These records shall include, but not be limited to, name and address, date of hire, salary and benefits paid, training received and performance reviews. Parking Operator shall provide an employee hire and separation report summary of employment activity, or an equivalent summary in a format approved by the Director, concurrently with the Certified Monthly Statement.
- 4.4.11 *Safe and Sanitary Working Conditions.* Parking Operator shall comply with all applicable Federal, state, and local safety and health standards.
- 4.4.12 *Training.* Parking Operator shall fully train all personnel in their respective job functions, including the use of any equipment and all relevant policies and procedures. All training shall conform to the standards and requirements set forth in the SOP.
- 4.4.13 *Labor Relations.* Parking Operator shall maintain harmonious relations with organized labor and, consistent with all Federal, State, and local labor laws, facilitate access to employees in the face of any union organizing drive and establish policies and procedures to enable employees to address any complaint they may have with management regarding wages, hours or other terms and conditions of employment. Parking Operator shall also forward to the City a copy of any collective bargaining agreements and amendments thereto.

4.5 CHANGES IN OPERATIONS AND FACILITIES. The City may, at any time by written notice, make changes such as those listed below as well as other changes to the parking, valet, and shuttle bus services, operations, and Facilities as necessary to fulfill the needs of the traveling public or to accommodate changes in the design or use of the Facilities.

- 4.5.1 *Changes to Operations.* Changes to the operating procedures shall be accomplished through revision to the SOP. Each approved SOP change shall be deemed to be automatically incorporated into the Agreement by reference without need for a contract amendment upon the Director's written approval in accordance with **Section 4.6.4.**
- 4.5.2 *Changes to Facilities.* As directed by and subject to the prior written approval of the Director, during the Term, the Director may, in his sole discretion, with thirty (30) days written notice to Parking Operator, (i) open and close parking lot areas and structures; (ii) assign to Parking Operator new, temporary, and/or permanent Facilities in any existing, expanded, or new facility, including surface lot areas and structures, where Parking Operator shall install appropriate parking equipment, signage, and other necessary operating equipment; (iii) operate and manage the new Facilities or delete existing Facilities; (iv) designate certain areas as employee parking only; (v) re-arrange parking areas including entrance and

exit lanes and provide additional entrance and exit lanes or withdraw the same from use.

4.5.2.1 Parking Operator shall operate any additional, temporary, relocated, or altered Facility, as the case may be, all in accordance with all the terms, provisions, and conditions of the Agreement.

4.5.2.2 Parking Operator shall also operate and manage any other services related to provision of parking and parking support services to the public as determined by the Director.

4.5.3 *Changes to Operating Expense Budget.* Changes shall be incorporated and reflected in the Operating Expense Budget as detailed herein.

4.5.4 *Changes to Maintenance Responsibilities.* The Director may change the “Facility Maintenance and Responsibilities” identified in **Exhibit “F”** without the need of an amendment and all revisions thereto shall be automatically incorporated into and made a part of this Agreement upon the Director’s written approval.

4.5.5 *Changes to Shuttle Bus Routes.* The Director, during the Term, may, at his sole discretion, add, reduce, alter, eliminate, and relocate, shuttle bus routes and stops.

4.6 STANDARD OPERATING AND PROCEDURES MANUAL (“SOP”)

4.6.1 Parking Operator shall develop a Standard Operating and Procedures Manual ("SOP"), which shall provide guidance on policies, practices, and procedures addressing all aspects of the parking operation at the Airports. Parking Operator shall submit the SOP to the Director, within sixty (60) days after the Effective Date, for the Director's review and approval. The failure of Parking Operator to submit the SOP to the Director within sixty (60) days after the Effective Date shall be considered an event of default under this Agreement. The SOP and all revisions thereto, shall be automatically incorporated into and made a part of the Agreement upon the Director’s written approval. Parking Operator's SOP shall be provided to the Director in hard copy and in electronic format compatible with the latest version Microsoft Word or as requested by the Director.

4.6.2 The SOP and the procedures contained therein shall be developed by Parking Operator based upon its best judgment and shall reflect an understanding between Parking Operator and the Director on how the Facilities shall be operated. Parking Operator shall confer with the Director in its preparation of the SOP and shall incorporate all information provided by the Director into the SOP.

4.6.3 Parking Operator shall conduct the services in strict compliance with the approved and current SOP. Failure to do so shall be considered an event of default under this Agreement.

- 4.6.4 *Revisions to the SOP.* The SOP shall be kept current by Parking Operator throughout the Term as follows:
- 4.6.4.1 The information in the SOP shall be reviewed by the Parties at least annually, unless otherwise agreed by the Parties.
 - 4.6.4.2 The Director shall have the right, in his sole discretion, to require modifications to the SOP, both initially and throughout the Term, as he deems appropriate. Parking Operator agrees to abide by such modifications and to incorporate them into the SOP.
 - 4.6.4.3 Parking Operator may propose a revision to the SOP which shall be subject to the approval of the Director.
 - 4.6.4.4 Each revision to the SOP shall have a revision number and date. The SOP and all revisions made thereto must be consistent with the Agreement.

4.7 CUSTOMER SERVICE

- 4.7.1 *Customer Service Plan.* Parking Operator shall train its employees according to the customer service plan approved by the Director and shall require all employees to undergo HAS provided customer service training with the objective of providing high- quality public service which is responsive to public inquiries and needs which minimizes customer complaints
- 4.7.2 *Customer Assistance.* Parking Operator shall provide 24-hour emergency service 365 days per year at "no charge" to: (i) car search assistance, (ii) "jump start" vehicles with dead batteries, (iii) provide air to inflate flat tires or install spares, (iv) fuel assistance by transporting customer with an approved gas can to a fueling station, and (v) Lock out assistance (patrons will be provided with the phone number of a locksmith to unlock doors of cars with keys locked inside.). From the time the Parking Operator is contacted, it shall respond to a customer emergency with fifteen (15) minutes, at least ninety-five percent (95%) of the time.
- 4.7.3 *Parking Location Assistance.* Parking Operator shall maintain a system assisting patrons with locating their parked vehicles. Such system may include, without limitation, ticket-devices with location specific/coded tickets, visual and audio reminders, and other reminders as approved by the Director or designee.
- 4.7.4 *Courtesy Cart Program.* Parking Operator shall operate a courtesy cart program, properly training staff, to assist customers with (i) transportation to/from their cars and terminal elevators or entrances, (ii) locating their vehicles in the Facilities, and (iii) way-finding in the Facilities.

- 4.7.5 *Customer Programs.* Parking Operator shall administer the Frequent Parker program, Corporate Parking Discount program, coupon programs, and such other programs authorized by the Director. Additionally, Parking Operator shall offer various customer services, such as car washing, as directed by the Director.
- 4.7.6 *Customer Correspondence.* Parking Operator shall investigate and respond to all customer correspondence within two (2) business days . Parking Operator shall maintain a computer database of compliments, complaints, and other customer correspondence. The City will be provided access to the customer response database.
- 4.7.7 *Mystery Shopper Service.* The City shall have the right, at any time, without limitation, to monitor and test the quality and effectiveness of Parking Operator’s services, compliance with the terms and conditions of the Agreement, adherence to the operations and procedures described in the SOP, customer service, and credit card/cash-handling procedures through the use of a professional shopping service operator employed by the City and/or subcontractor. In the event such shopping service determines that the level of Parking Operator’s service is below that required by the Agreement, Parking Operator shall take corrective action.
- 4.7.8 *Lost and Found Articles.* The Parking Operator shall keep in a lock-box or safe lost vehicle keys found at any ecopark lot or on any shuttle bus at the parking office for the appropriate ecopark lot. All other lost articles found by Parking Operator, its agents or employees, or which are found by patrons and given to Parking Operator, shall be placed in the HOU or IAH Lost and Found, as described in the SOP. Said articles shall be logged in to a system that is consistent with the City’s procedures to maintain continuity in chain-of-custody.
- 4.7.8.1 Parking Operator, its agents, and employees shall have no right to reclaim said articles. Any employee of Parking Operator who does not comply with the requirements for this **Section 4.7.8** will be immediately removed from performance under this Agreement (to the extent consistent with any applicable laws).

4.8 INFORMATION DISTRIBUTION

- 4.8.1 *Telephone Messages and Directory Advertising.* At the direction of the Director, Parking Operator shall develop a prerecorded telephone message device that contains accurate information regarding the locations, rates, and shuttle bus service for each public parking Facility.
- 4.8.2 *Corporate Identity.* Parking Operator shall not affix or display its corporate logo, name, or otherwise advertise its corporate identity on Facilities, operating equipment, assigned areas, or leased areas on the Airports, without the prior written approval of the Director.

4.8.3 *Media.* All media inquiries shall be directed to the HAS External Affairs Division or its successor division.

4.9 REPORTING ACCIDENTS AND NOTIFICATION OF THEFT OR DAMAGE

4.9.1 *Notification and Reporting.* Parking Operator shall immediately notify the HAS Parking Division, or its successor division, of any report, discovery, or investigation of any theft, robbery, or fraud. In all cases, Parking Operator shall provide a written report within twenty-four (24) hours to the appropriate City department describing: (1) the theft, fraud, or damage, (2) the amount of theft, fraud, or damage as best can be determined, and (3) the action Parking Operator has taken or intends to take. Parking Operator shall immediately notify the HAS Airport Operations Division, or its successor division, of any report, discovery, or investigation of fire or significant damage to the City or private property. Procedures for handling these matters shall be included in the SOP.

4.9.2 *Safety.* Parking Operator shall establish a "Safety Committee" to be a group which evaluates the effectiveness of parking and safety-related measures and devises proactive steps to be taken to ensure an enhanced environment for all employees, tenants, and the public which use the parking, valet, and shuttle bus services of Parking Operator. The City will appoint a representative on the Safety Committee.

4.10 MAINTENANCE RESPONSIBILITIES

4.10.1 *Generally.* Parking Operator shall maintain and keep in a state of good repair the Facilities and provide a high level of cleanliness of the Facilities at the Airport as directed by the Director. Parking Operator shall perform routine, preventative, and emergency maintenance of the Facilities as provided in **Exhibit "F"**. All maintenance activities, schedules, and standards shall be included in the SOP, as updated from time to time.

4.10.2 *Additional Requirements.* Parking Operator shall comply with the following:

4.10.2.1 *Compliance and Warranties.* Maintenance, servicing, and repairs of the Facilities covered by warranties shall be performed according to the terms and conditions of such warranties unless otherwise approved by the Director. Parking Operator shall seek promptly to enforce all applicable warranties as necessary.

4.10.2.2 *Maintenance Records.* Parking Operator shall keep detailed records of all maintenance and repairs to Facilities and make such records available for inspection by the City during normal working hours. The maintenance records shall include, as a minimum, the date, nature, and cost of the maintenance or repair.

- 4.10.2.3 *Locks.* Parking Operator shall use HAS's Best Lock keying system for all doors and entrances to the Facilities and mechanical room entrances assigned to Parking Operator. Parking Operator shall be responsible for the assignment of all keys according to a key control plan, which shall require the approval of the Director.
- 4.10.2.4 *Disposing of Discarded Batteries.* Parking Operator shall be responsible for collecting and disposing of discarded batteries in the public parking lots or garages. Batteries shall be disposed of as hazardous waste or recycled.
- 4.10.2.5 *Handling of Oil Spills and Hazardous Materials.* In case of a spill of oil or hazardous materials on airport property, Parking Operator shall be responsible for completing a spill notification checklist, or equivalent form approved by the Director, and submitting it to the Director within twenty-four (24) hours of the spill. Parking Operator shall be responsible for the cleanup of oil, grease, petroleum-based fluids, antifreeze, and other hazardous materials not specifically mentioned here in the Facilities assigned to Parking Operator. The procedures for dealing with hazardous materials shall adhere to environmental standards and be incorporated into the SOP.

4.10.3 *Shuttle Buses, Courtesy Carts, Service Vehicles, and Other Vehicle Maintenance.*

- 4.10.3.1 Parking Operator shall perform routine, preventive, remedial, and emergency maintenance for all shuttle buses and vehicles used by the Parking Operator, including courtesy carts and service vehicles. Buses and vehicles to be used shall be in “ready” condition during all airport operating hours. All maintenance, repair, damage, and replacement costs shall be borne by the Parking Operator, except Courtesy Carts which are a Reimbursable Expense.
- 4.10.3.2 The Parking Operator may maintain the shuttle buses and other vehicles either in its own maintenance facility or at a third-party facility. It would be operationally desirable for such facilities to be located either on or adjacent to the respective Airport where they are used, if such facilities are available. All maintenance activities, other than adding fluids such as oil and windshield wash, must be performed at the maintenance facility.
- 4.10.3.3 Parking Operator shall develop detailed, regular-maintenance procedures and schedules that shall be included in the SOP. The shuttle buses and other vehicles shall receive preventive maintenance in accordance with the manufacturers’ recommendations, DOT, and environmental safety

requirements. Further, Parking Operator shall comply with the following:

4.10.3.3.1 *Safe and Clean Condition.* All vehicles shall be kept in safe, clean, and good operating condition during the Term.

4.10.3.3.2 *Compliance with Warranties.* Maintenance, servicing, and repairs of the vehicles covered by warranties shall be performed according to the terms and conditions of such warranties.

4.10.3.3.3 *Vehicle Replacement Parts.* Parking Operator shall only use Original Equipment Manufacturer (OEM) parts.

4.10.3.3.4 *Daily Vehicle Inspection for Damage.* Parking Operator shall institute a daily inspection program of the vehicles and shall promptly repair or have repaired any damage, in any case not later than ten (10) calendar days following detection of the same, unless otherwise approved by the Director. Parking Operator shall immediately remove any vehicle from operation and repair any damage or defect that may affect vehicle appearance, safety and/or comfort of drivers or passengers.

4.10.3.3.5 *Vehicle Cleaning.* Parking Operator shall wash the exterior and clean the interior of each vehicle at regular intervals, as established in the SOP.

4.10.3.3.6 *Maintenance Records.* Parking Operator shall keep detailed records of all maintenance and/or repairs to vehicles and make such records available for inspection by the City during normal working hours. The maintenance record shall include, as a minimum, the date, nature, and the cost of the maintenance or repair.

4.10.3.3.7 *Air-Conditioning and Heating Units.* Parking Operator shall maintain the air-conditioning and heating units within the shuttle bus and other vehicles in good operating condition. Air-conditioning and heating units shall be required to be used in the vehicles at all appropriate times to ensure passenger comfort.

4.11 CNG FUELING STATION

- 4.11.1 *CNG Fueling.* Parking Operator shall fuel the CNG buses at HAS's CNG fueling station located adjacent the IAH ecopark lot (JFK), or any future CNG station that may be built on Airport property.
- 4.11.2 *CNG Fuel Contract.* Parking Operator shall be responsible for contracting with a CNG station maintenance and fuel provider to (i) ensure that routine, preventive, remedial, and emergency maintenance service is provided, and (ii) CNG fuel is provided at the lowest commercially available cost. The CNG Fuel contract must be approved in accordance with **Section 16.2**.
- 4.11.3 *CNG Fueling Station Maintenance.* Parking Operator shall ensure that the CNG station is maintained and operated in accordance with all the requirements of this Agreement and the following additional requirements:
- 4.11.3.1 Parking Operator shall ensure that scheduled, routine maintenance service is provided for the Term of this Agreement and shall ensure the repair or replacement, of any defective parts or equipment. Parking Operator shall ensure that other necessary maintenance or repairs, including emergency repairs and remedial repairs, are performed, in order to keep the CNG station operating twenty-four (24) hours per day, seven (7) days a week.
- 4.11.3.2 Parking Operator shall ensure that emergency repair service is available on a 24-hour, 7-day per week basis, and will provide emergency contact telephone numbers to the Director. In the event of an emergency at the CNG station, Parking Operator shall respond to the emergency as soon as is commercially reasonable following notification and will restore the operation of the CNG station as soon as is commercially reasonable.
- 4.11.4 *CNG Training.* Parking Operator shall ensure that reasonable training programs are offered to educate Parking Operator's personnel for the safe and efficient use of the CNG station facility, including, without limitation, procedures relating to safe vehicle fueling, trouble shooting, and appropriate emergency procedures.
- 4.11.5 *CNG Fuel and Fueling Station Costs.* The costs of the CNG fuel and maintenance of the fueling station should be combined into a price per Gasoline Gallon Equivalent ("GGE"), which will be treated as a Reimbursable Expense. Any Volume Excise Tax Credit ("VETC") or other fuel incentive shall be credited to HAS.
- 4.11.6 *Compliance with Laws.* In performing the obligations under this Agreement, Parking Operator shall ensure compliance in all material respects with all applicable federal, state and local laws, regulations, ordinances, and rulings,

including (but not limited to) those pertaining to health, safety, employment and environmental matters relating to the CNG station.

4.12 IMPROVEMENTS

4.12.1 *General Improvements.* Parking Operator shall make all improvements, alterations, and renovations to the Facilities as requested by the Director. These may include, but not be limited to: signage, painting, striping, canopies, pavement repair, lighting installation and replacement, fencing, curb and gutter, and other improvements and renovations.

4.12.2 Construction, Alterations, Additions, and Improvements

4.12.2.1 All construction, alterations, additions or improvements undertaken by the Parking Operator shall be done pursuant to the requirements of HAS' Tenant Improvement Program ("TIP") and in accordance with all applicable rules and regulations, and with the exception of alterations where no building or construction permit or license is required, and routine maintenance and repair, shall have the prior written approval of the Director. The Director may inspect the same in order to ensure that all construction work, workmanship, materials, and installations involved therein or incident thereto are performed with strict compliance with the approved plans and specifications. Alterations, additions, and improvements made by Parking Operator to the Facilities shall immediately be and become a part of the Facilities with title belonging to the City.

4.12.2.2 All such construction or installation may be commenced only after obtaining required building permits, construction licenses, and TIP approval. Notwithstanding anything to the contrary set forth above, the Director's prior written approval is not required for those non-structural improvements or alterations where no building or construction permit or license is required; provided, however, Parking Operator shall provide the Director with "as-built" drawings reflecting any changes or improvements that are made to the Facilities, regardless of whether the Director's prior written approval was not required, in the quantity, format, and medium requested by the Director.

4.12.2.3 With respect to any construction work undertaken by the Parking Operator, the construction contract or contracts shall require that the construction contractor provide payment bond, if the construction value is over \$50,000, and performance bond, if construction value is over \$100,000, in the amount of the applicable construction contract naming Parking Operator and the City as co-obligees on such bonds in accordance with Chapter 2253 of the Texas Government Code. Projects shall not be artificially divided so as to avoid this requirement. It is a

requirement of this Agreement that the Parking Operator confirms the existence of such bonds by the construction contractor and that the Parking Operator ensures such bonds are in full force and effect throughout the duration of the construction of the improvement which is the subject of that construction contract. The construction contract shall provide that the construction contractor shall release and hold the City harmless from all liability arising out of the construction of the improvements to the Facilities. The Parking Operator shall require the construction contractor to carry insurance in an amount satisfactory to the Director (which shall not exceed Parking Operator's required coverage under this Agreement), and Parking Operator shall keep a copy of the certificate of insurance on file. The City shall be an additional insured on each of the policies, and the Director shall receive at least thirty (30) days' notice of cancellation of any of the contractor's insurance policies. The requirements of this paragraph shall also apply to demolition, removal, and remediation contracts and contractors, if any.

4.12.2.4 Parking Operator shall serve as the Director's sole point of contact for all aspects of the design, installation, and construction of any alterations, additions, or improvements. Parking Operator shall ensure contractually that its subcontractors and joint venture partners work directly with Parking Operator rather than the Director.

4.12.2.5 All improvements constructed or placed in the Facilities by Parking Operator (excluding Removable Fixtures) and all alterations, modifications, and enlargements thereof shall become part of the Facilities, with unencumbered title thereto vesting in the City immediately upon completion of any construction or installation of same; subject, however, to Parking Operator's obligation to operate, repair, maintain, and replace, and its right of use during the Term in accordance with the terms and conditions hereof. Within ninety (90) days of the date of beneficial occupancy of each Facility, as determined by the Director in his sole judgment, a list of the Removable Fixtures in such Facility shall be submitted in writing to the Director by the Operator. Parking Operator shall update such list on the anniversary of each year of the Term.

4.12.2.6 Parking Operator shall meet all requirements of the Americans with Disabilities Act of 1990.

4.13 TRANSITION

4.13.1 Within fifteen (15) days of the Effective Date, Parking Operator shall submit a written Transition Plan to the Director for his review and written approval which describes in detail the Parking Operator's preparations to start managing and

operating the Facilities on the Start Date. Parking Operator agrees to make all changes to the Transition Plan and any subsequent modifications thereto, reasonably required by the Director. Upon final approval of the Transition Plan by the Director, Parking Operator agrees to implement the Transition Plan, at its sole cost, in accordance with the time schedule set forth therein, with the goal of providing quality, uninterrupted parking services to the traveling public from all Facilities and shuttle bus services at IAH during the Term. Failure of Parking Operator to fulfill the requirements of the approved Transition Plan shall be an event of default, which may cause termination of this Agreement under **Article 14**.

4.13.2 Parking Operator shall provide sufficient supervisory personnel, training staff, and other employees as necessary on-site in accordance with Transition Plan in order to plan and implement a smooth transition.

4.14 LIMITATION OF RIGHTS

4.14.1 Parking Operator shall not install any software on City-owned computers used in the Facilities and computers connected to the City's Local Area Network ("LAN") without prior written approval of the Director. Parking Operator shall not connect any device, local or wireless, to the network without written approval from the Director.

4.14.2 This Agreement does not grant Parking Operator the right to provide or perform any services, sell any merchandise, or engage in any other business or commercial activity on the Airports. However, Parking Operator shall have the right to provide or perform related services (i.e. windshield and car washing, oil changes, etc.) but only after obtaining the prior written approval of the Director (and a negotiated percentage of such sales), which he may agree to or may not agree to in his sole discretion.

4.15 COLLECTION AND DEPOSIT OF GROSS RECEIPTS

4.15.1 *Collection of Gross Receipts.* Parking Operator shall completely and accurately account for all Gross Receipts generated from the parking Facilities assigned to it. Parking Operator shall collect, count, record, and hold all Gross Receipts received by it in trust for the City, until deposited daily to an HAS bank account.

4.15.1.1 "Gross Receipts" means the aggregate dollar amount of all sales (inclusive of sales taxes, and any other revenues of any type arising out of or in connection with the Parking Operator's management and operation of the Facilities, whether performed by the Parking Operator, its subcontractors, joint venture partners, subsidiaries, associated companies, or any other entity corporate or otherwise, for cash or credit or otherwise, of every kind, name and nature, regardless of where or whether collected, as if the same had been sold for cash.

- 4.15.1.1.1 There shall not be any deduction, credit, or any reduction in the amount of Gross Receipts as hereinabove defined, which results from any arrangement for complimentary or non-revenue parking (except Director approved complimentary or non-revenue transactions), rebate, kickback, or hidden credit given or allowed to any customer.
- 4.15.2 *Deposit of Gross Receipts.* Parking Operator shall deposit Gross Receipts by the bank's close of business on the second (2nd) business day following collection from all parking Facilities it operates on the Airports.
- 4.15.3 *Credit Cards and Checks.* Parking Operator shall accommodate patrons wishing to pay parking fees by nationally recognized credit and/or debit cards as directed by the Director. Acceptance of checks shall be limited to authorized companies or vendors for employee parking.
- 4.15.4 *Credit Card Processing.* HAS plans to hold agreements with credit card processing services for the handling of credit card payments by parking customers and will be responsible for credit card processing fees. If so directed by the Director in writing, Parking Operator shall maintain service agreements with credit card processors. Credit card receipts are deposited daily by the credit card processors directly to a HAS account designated for this purpose.
- 4.15.5 *Overage and Shortages.* All overages are to be deposited daily along with a reason for the overage. An overage is any revenue collected over the amount reported on the end-of-shift ticket and PRCS reports. All shortages (a missing deposit, a cash shortage in a drawer, etc.) are to be repaid to the City by Parking Operator as a credit in the next weekly expense invoice. There shall be no "netting" of overage and underage in the preparation of reports and deposits.
- 4.15.6 *Unaccounted-for-Tickets/Missing Tickets.* Parking Operator shall be fully accountable for all parking tickets issued, including both used and unused tickets. Liquidated damages may be assessed for Unaccounted-for-tickets/Missing Tickets per **Section 6.11.3.3**.
- 4.15.7 *Revenue Reports.* Parking Operator shall submit daily and monthly reports, certified by the Parking Operator's General Manager or HAS-approved designee, to reconcile Gross Receipts and bank deposits as follows:
- 4.15.7.1 *Daily.* A detailed reconciliation of daily revenue collections for each lot, structure, or area, all deposits made into HAS's parking revenue account(s), and the Gross Receipts reported by Parking Operator, in total, by parking are and payment method (including credit card type).

4.15.7.2 *Monthly*. A detailed reconciliation of monthly Gross Receipts captured by the PRCS, Gross Receipts reported by Parking Operator, deposits, in total, by lot and by payment method (including credit card type). Also, a detailed reconciliation of credit card receipts by the PRCS and credit card deposits, in total by lot and credit card type.

ARTICLE 5 – TERM

5.1 EFFECTIVE DATE AND DURATION

5.1.1 This Agreement shall become effective on the Effective Date and unless sooner terminated in accordance with **Article 14**, shall expire ten (10) years from the State Date, and shall be of no further force and effect.

ARTICLE 6 – COMPENSATION TO PARKING OPERATOR

6.1 OPERATING EXPENSE BUDGET

6.1.1 *Operating Expense Budget*. Parking Operator shall prepare and submit to the City for its review and approval an annual Operating Expense Budget (hereinafter referred to as the “Budget”), detailed by line item and by month for each upcoming Contract Year or Partial Contract Year during the Term.

6.1.1.1 Only expenses applicable to HAS parking operations and shuttle bus services are permitted to be included in the Operating Expense Budget. Budget approvals and approvals of revisions to the Budget must be made in writing by the Director. Parking Operator will not be reimbursed for any expenses exceeding the total annual approved Budget, as may be revised.

6.1.1.2 The Operating Expense Budget shall be comprised of three types of expenses:

6.1.1.2.1 *Reimbursable Expenses*. Reimbursable Expenses are comprised of recurring and non-recurring operating expenses that are reimbursable at cost without markup or contractual rates in the case of health benefits. Reimbursable Expenses are further described in **Section 6.2**.

6.1.1.2.1.1 *Recurring Reimbursable Expenses*. Normal, recurring reimbursable expenses, including: salaries, wages, payroll related costs, and benefits (excluding Bus drivers); fuel; contractual services, etc.

6.1.1.2.1.2 *Non-recurring Reimbursable Expenses.* Non-recurring reimbursable expenses, include, but are not limited to: facility renovation and improvement projects identified by HAS, such as signage enhancements or minor facility renovations, and periodic expenses that occur on a one-time or irregular basis, such as striping and painting.

6.1.1.2.2 *Shuttle Bus Charges.* Calculated and payable as a multiplication of the contractual Shuttle Bus Hourly Rate by the number of shuttle bus operating hours.

6.1.1.2.3 *Management Fee.* Established as a contractual amount to compensate Parking Operator for its services. Any expenses not considered as a Reimbursable Expenses or captured in the Shuttle Bus Hourly Rate shall be the responsibility of the Parking Operator.

6.1.2 *Budget Schedule.* Parking Operator shall develop and submit an Operating Budget for the first Partial Contract Year to the Director for review and approval within fifteen (15) business days after award of the Agreement. For the subsequent Contract Years and Partial Contract Year, which begin on July 1st (concurrent with the City's fiscal year), Parking Operator shall develop and submit its Budget to the Director by the preceding January 30th, or such date as directed by the Director in advance. Parking Operator shall ensure that all expenses are submitted for payment in accordance with the approved Budget and fall within the expenditure's fiscal budget cycle.

6.2 REIMBURSABLE EXPENSES

6.2.1 All line items included in the reimbursable expense section of the approved Operating Expense Budget shall be considered Reimbursable Expenses. All payroll and related costs for shuttle bus drivers are to be excluded from Reimbursable Expenses and recovered through the Shuttle Bus Hourly Bus Rate.

6.2.2 Reimbursable Expenses include, but are not necessarily limited to, the following:

6.2.2.1.1 Base payroll for all on-site and authorized Parking Operator's employees, including regular salaries and wages, payroll related costs (FICA, SUTA, Workers Compensation at State of Texas Rate), employee incentives (as authorized by the Director), employee training costs (local) and overtime as evidenced by a payroll register.

6.2.2.1.2 Leave benefits including sick days, bereavement, vacation, personal days, and approved holidays actually paid, not accrued.

- 6.2.2.1.3 Health insurance at the approved contractual rates for Single, Single +1, and Family. The rates through the end of the first full Contract Year (i.e. June 2018) will be those proposed in the RFP by the Parking Operator. Rates for subsequent Contract Years shall not increase more than the Consumer Price Index (CPI) for Health Insurance as published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS);
- 6.2.2.1.4 Retirement program, e.g. 401(k), to be reimbursed at actual cost not to exceed 1.5% of the total employee salaries and wages (excluding benefits);
- 6.2.2.1.5 Other personnel related costs including incentive awards, personnel recruiting expenses, pre-employment testing, random drug testing, criminal history checks, and airport security badging;
- 6.2.2.1.6 CNG fuel for Shuttle Buses, inclusive of maintenance contract for CNG station;
- 6.2.2.1.7 Fuel for operations service vehicles;
- 6.2.2.1.8 Purchase or lease, and maintenance and repair, of courtesy carts;
- 6.2.2.1.9 Facility Maintenance and Repair Responsibilities, as described in **Exhibit "F"**;
- 6.2.2.1.10 PRCS equipment, parts and supplies, which include ticket stock, receipt paper, and PRCS maintenance and software agreements;
- 6.2.2.1.11 APGS equipment, part and supplies, which includes an APGS maintenance and software agreement;
- 6.2.2.1.12 Garage and parking lot supplies, signs and small equipment;
- 6.2.2.1.13 Facility renovations and improvements;
- 6.2.2.1.14 Towing services;
- 6.2.2.1.15 Uniforms and the cost of uniform maintenance including professional cleaning;
- 6.2.2.1.16 Change Fund, to include bank for each cashier lane and petty cash;
- 6.2.2.1.17 Armored car service;

- 6.2.2.1.18 Training materials for on-site employees, employee seminars, and local training programs or seminars;
- 6.2.2.1.19 Office supplies, pre-printed forms for operation, and postage and freight;
- 6.2.2.1.20 Communication equipment and services, including mobile and landline phones, PDA and other wireless devices, local and long distance voice services and data services (to the extent not provided by the Director);
- 6.2.2.1.21 Parking-related Marketing, including the cost of the Frequent Parker Program;
- 6.2.2.1.22 Customer Refunds (approved per the SOP);
- 6.2.2.1.23 Personal Property taxes on Shuttle Buses and courtesy carts;
- 6.2.2.1.24 Sales or use taxes incurred on goods and services purchased under the Agreement; and
- 6.2.2.1.25 Audits (financial, operational, and PCI compliance).

6.3 SHUTTLE BUS CHARGES

- 6.3.1 *Shuttle Bus Hourly Rate.* Parking Operator shall charge the Shuttle Bus Hourly Rates for ecopark and ecopark 2 operations as set forth in **Exhibit “G”**. An Shuttle Bus Hourly Rate shall be charged for the baseline number of hours of operation, which covers both the fixed and variable costs of the buses. Any operations above the baseline hours, shall be charged for the incremental hours of operation, which covers only the variable costs, as follows:
 - 6.3.1.1 *Fixed Costs.* Shuttle bus vehicles, bus wraps, vehicle insurance, vehicle license and state/DOT inspections, required DOT commercial driver licenses and medical cards.
 - 9.2.2.1. *Variable Costs.* Driver wages, driver payroll related expenses, driver benefits (leave benefits, health insurance, and retirement (401k)), other personnel related costs, all maintenance and repair costs (labor, parts, fluids, supplies, washing and cleaning), and any damages/deductibles.
 - 9.2.2.2. *Shuttle Bus Charges.* Total Shuttle Bus charges will be calculated and payable as a multiplication of the contractual Shuttle Bus Hourly Rate by the number of actual shuttle bus operating hours, which shall be detailed in the Certified Monthly Statement.

6.4 MANAGEMENT FEE

6.4.1 As compensation to the Parking Operator for its services during the Term, the City shall pay Parking Operator a Management Fee, shown in **Exhibit “H”**. The Management Fee shall be inclusive of all fees and costs not included in Reimbursable Expenses or Shuttle Bus Hourly Rate, including, but not limited to, the cost of:

- 6.4.1.1 All insurance, including automobile liability, employer’s liability, commercial general liability, excess liability, garage keeper’s liability. Deductibles for insurance claims and the administrative costs of administering claims.
- 6.4.1.2 The Proposal Guarantee submitted with Parking Operator’s Proposal and Parking Operator’s Performance Bond of \$5 million.
- 6.4.1.3 Purchase or lease, maintenance and repair of all operations service vehicles.
- 6.4.1.4 Start-up and transition activities.
- 6.4.1.5 Office furniture, equipment and computers.
- 6.4.1.6 Time-recording systems, payroll processing, and direct deposit of wages.
- 6.4.1.7 Legal, audit, administrative, bookkeeping and executive personnel of Parking Operator, who are not on site.
- 6.4.1.8 Home office travel, home office or local entertainment and accommodations, and off-site office space. Meetings between executive level representatives of Parking Operator and HAS or City staff.
- 6.4.1.9 Business license (or similar fees), Legal representation, and working capital incurred by Parking Operator in its business operations.
- 6.4.1.10 Any cashier shortages from cashier terminals, including robberies.
- 6.4.1.11 All fines, fees, and damages incurred by Parking Operator.
- 6.4.1.12 Missing or unreturned item fees for employee badges, lost employee parking permits, uniforms, laundry and linens.
- 6.4.1.13 Any special employee compensation benefits, e.g., a car allowance.

- 6.5 *Service Vehicles.* With the exception of one SUV in use at IAH ecopark2, which has been newly leased by the current parking operator, all such vehicles must be purchased or leased new by the Parking Operator prior to the Start Date. The cost of these and replacement vehicles is to be factored in the Management Fee. The Parking Operator must transfer or acquire the vehicle in use at IAH ecopark2 from the current Parking Operator. Specifications on the number and type are detailed in **Exhibit “I”**.
- 6.6 *Furniture and Other Equipment.* Parking Operator shall purchase prior to the Start Date, from the current parking operator, the furniture and other equipment necessary to support its services under this Agreement, in accordance with **Exhibit “J”**. Such office furniture and other equipment, are to be included in the Management Fee and will belong to the City.
- 6.7 *Adjustments to Management Fee.* Should the Director open a new parking Facility, or permanently close an existing Facility, with a capacity of more than 1,000 spaces, then the Management fee will be increased or decreased proportionately to the number of spaces added or closed versus the total number of spaces on the Start Date.
- 6.8 *Expiration or Termination Other than End of Month.* If the Term shall end on a day other than the last day of a calendar month, the payment of the Management Fee shall be prorated based upon the number of days in the month.
- 6.9 *Right of Offset.* The City shall have the right to offset against and deduct from the Management Fee payable to Parking Operator any amounts due to the City from Parking Operator, including, but not limited to, unauthorized or disputed expenses and Liquidated Damages. If the City pays any sum or incurs any obligations or expense because of the failure, inability, neglect, or refusal of Parking Operator to perform or fulfill any of the terms or conditions of this Agreement that it is obligated to perform or fulfill, then the City shall have the right to deduct said expenses from the Weekly Payment.

6.10 PAYMENT OF REIMBURSABLE EXPENSES, SHUTTLE BUS HOURLY RATES, AND MANAGEMENT FEE

- 6.10.1 Parking Operator shall submit a weekly invoice for 1/52nd of the approved Budget, excluding non-recurring Reimbursable Expenses, to be paid in arrears by the City every Friday throughout the Term, starting on the first Friday following the Start Date (referred to as “Weekly Payment”). Payments shall be made by electronic transfer to the account designated in writing by Parking Operator within ten (10) days. In order to reconcile the actual operating expenses incurred by Parking Operator and the weekly amounts paid by the City during the immediately preceding month, Parking Operator shall provide the City with a Certified Monthly Statement, covering all expenses including non-recurring

Reimbursable Expenses, signed by its principal financial officer or approved designee, within fifteen (15) days after the end of each month.

6.10.1.1 *Certified Monthly Statement.* The Certified Monthly Statement shall detail the actual expenses by line item, supported by:

6.10.1.1.1 Original invoices (if original invoices are not available, then copies of invoices certified as authentic by the vendor will be accepted),

6.10.1.1.2 In the case of payroll, payroll register indicating hours, gross wages paid, and benefits,

6.10.1.1.3 In the case of Shuttle Bus Hourly Rates, actual bus operating hours from a computerized log and driver timecards supporting said log,

6.10.1.1.4 A certification by the Parking Operator that the City has not previously reimbursed Parking Operator for any of the itemized costs and expenses, and

6.10.1.1.5 Explanations and justifications for variances versus budget.

6.10.1.2 *Expense Reconciliation.* If the actual operating expenses, approved in the Budget, are greater than the total weekly amounts paid by the City for such month, then Parking Operator shall include the deficiency in its next weekly invoice for payment by the City. If the actual operating expenses, approved in the Budget, are less than the total weekly amounts paid by the City for such month, then Parking Operator shall include the overage as a credit to the City in its next weekly invoice.

6.10.1.3 *Disputed Expenses.* The City shall give Parking Operator written notice of any disputed Parking Operator expenses and the reasons for such dispute. Parking Operator, within fifteen (15) days from receipt of such notice from the City, has the right to present a written explanation of the disputed expenses to the City. Parking Operator may appeal the City's written decision to the Director. Should the Director determine that the expense is not reimbursable the amount of such expense shall be deducted from Parking Operator's subsequent Weekly Payment.

6.10.1.4 *Aged Expenses.* No expenses will be reimbursed if the expense has been incurred in a prior City fiscal year and the City's books have been closed for that year and such expense is over sixty (60) days from the date of purchase or receipt of services.

6.11 PERFORMANCE-BASED INCENTIVE PROGRAM

6.11.1 The program is in addition to the Management Fee and provides the Parking Operator a financial incentive to perform at the highest possible level. The program consists of: (i) a performance incentive, and (ii) liquidated damages. Each element will be assessed bi-annually starting six months after the Start Date and netted together to make up a total Performance-Based Incentive Program award. Such award, if any, shall be due and payable within ninety (90) days.

6.11.2 *Performance Incentive.*

6.11.2.1 Parking Operator may be eligible to receive a semi-annual Performance Incentive based on Parking Operator's performance under this Agreement, commencing on the State Date, and the Director's level of satisfaction of that performance. Parking Operator has no vested right to receive the Performance Incentive described herein.

6.11.2.2 Parking Operator's performance herein will be evaluated for the preceding six (6) months based upon the criteria contained in **Exhibit "K"**.

6.11.2.3 The potential performance incentive payment will be set at five (5) cents per Eligible Transaction per year of the Agreement, with a maximum of \$200,000 in the first year escalated by three percent (3%) annually. "Eligible Transactions" are defined as all public transient revenue transactions processed by the Parking Operator less all non-revenue transactions.

6.11.2.4 Within twenty (20) days after the bi-annual period, the Parking Operator shall submit its bi-annual parking and shuttle bus performance evaluation report to the Director. The Director will evaluate Parking Operator's performance evaluation report and notify Parking Operator within thirty (30) days in writing of the point score and amount of the award, if any, for the bi-annual period.

6.11.3 *Liquidated Damages.* The following provisions relate to the quality of the service that the City expects to be provided under the Agreement. Parking Operator agrees that it is obligated to perform the following and that non-performance degrades the quality of the service, and therefore, is in violation of the Agreement. The occurrence of any of the following situations may result in the imposition of liquidated damages. Parking Operator agrees that the following liquidated damages are fair and reasonable and that they do not constitute a penalty. Liquidated damages may be netted with the Performance Incentive payment (if any) to make up the total Performance-Based Incentive Program award. Failure to impose liquidated damages for a particular violation shall not bar the City from imposing liquidated damages for subsequent violations of the same nature. The

liquidated damages remedy is in addition to all other rights and remedies of the City.

6.11.3.1 *Late or Incomplete Deposits.* Parking Operator shall deposit Gross Receipts by the second (2nd) business day following collection from all parking Facilities it operates on the Airports. If Parking Operator fails to deposit Gross Receipts by the end of the second (2nd) business day following its collection and fails to provide documentation to substantiate late deposits, liquidated damages may be assessed at **\$500 per late deposit, per day.**

6.11.3.2 *Shuttle Bus Headway Frequencies.* Parking Operator shall operate and maintain the required headway time, and pick up customers in trunk-to-trunk service within the required performance Standards specified in **Section 5.3.2.** Parking Operator shall provide supporting documentation to substantiate compliance or non-compliance. If proper headway is not maintained, liquidated damages may be assessed at **\$100 per occurrence.**

6.11.3.3 *Unaccounted For Tickets.*

6.11.3.3.1 Tickets shall be reconciled monthly and tickets “not accounted for” shall be calculated as the number of vehicles in the Facilities at the start of the month, plus tickets issued during the month, less vehicle exits processed, less vehicles remaining in the Facilities at the end of the month. The ending inventory of vehicles for one month shall be the beginning inventory of vehicles for the next month. Vehicle exits shall include lost ticket transactions. Ticketless transactions shall be excluded for the purpose of this reconciliation. Liquidated damages may be assessed for tickets not accounted for in the monthly reconciliation as follows:

6.11.3.3.1.1 **\$5 per ticket** shall be assessed for tickets not accounted for in the monthly reconciliation from 1% or more of the total number of tickets issued during that month, but less than 1.5% of the total number of tickets issued that month.

6.11.3.3.1.2 **\$10 per ticket** shall be assessed for tickets not accounted for in the monthly reconciliation from 1.5% or more of the total number of tickets issued during that month, but less than 2.0% of the total number of tickets issued that month.

6.11.3.3.1.3 **\$20 per ticket** shall be assessed for tickets not accounted for in the monthly reconciliation that are equal to or exceed 2.0% of the total number of tickets issued during that month.

6.11.3.3.1.4 A negative result from the computation indicates an artificial gain of tickets that must be attributed to an inventory or reconciliation error. In such case, Liquidated Damages may be assessed in **\$25,000 per occurrence**.

6.11.3.4 *License Plate Inventory (LPI)*. Parking Operator shall update and provide daily a complete and accurate LPI report. In the event Parking Operator fails to provide the daily LPI report, Liquidated Damages may be assessed at **\$300 per occurrence**.

6.11.3.5 *Failure to Submit Reports in a Timely Manner*. Should Parking Operator fail to provide the Director by the specified submittal date one or all of these subject reports and fail to provide supporting documentation to substantiate the delay or obtain the Director's approval to delay or omit a particular report, liquidated damages may be assessed at **\$100 per delayed report per day**.

6.11.3.6 *Inadequate or Unmet Janitorial/Cleanliness Standards*. Parking Operator shall meet the standards for janitorial services and cleanliness of the Facilities and shuttle buses. Should the Parking Operator fail to meet this requirement, liquidated damages may be assessed at **\$750 per occurrence**.

6.12 LIMIT OF APPROPRIATION

6.12.1 The City's duty to pay money to Parking Operator under this Agreement is limited in its entirety by the provisions of this Section.

6.12.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

6.12.2.1 The City makes a supplemental allocation by issuing to Parking Operator a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of

City Council.

<p style="text-align: center;">NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS</p> <p>By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.</p> <p style="text-align: center;">\$ _____</p>

- 6.12.3 City Council delegate to the Director the authority to approve up to \$ _____ in supplement allocations for this Agreement without returning to Council.
- 6.12.4 The Original Allocation plus all supplemental allocations are the “Allocated Funds”. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Parking Operator must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Parking Operator’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

ARTICLE 7 – PARKING RATES AND REPORTS

7.1 PARKING RATES

- 7.1.1 Parking Operator shall permit the shuttle buses, service vehicles, City-owned and operated buses/vehicles, and certain other vehicles as approved by the Director to park in the public parking areas at no charge. Parking Operator shall charge all other patrons the parking rates as set forth by the City, which may be amended from time to time. The City shall provide Parking Operator written notice of any changes in such rates at least seven (7) days before their proposed effective date. Parking Operator shall be responsible for changing all rate signs and notices of rates, and, if directed by the Director, for making adjustments to the PRCS hardware or software necessary to properly implement the rate changes. The rate schedule shall be included in the SOP.
- 7.1.2 The rate structure for all parking fees to be charged in the designated parking Facilities shall be established by the Director and shall be subject to change by the Director at his sole discretion. Parking Operator shall charge parking patrons only those rates established by the Director and shall permit only such complimentary use of parking space as the Director may direct or approve.
- 7.1.3 If Parking Operator charges any patron a price more than the established schedule of rates, the amount by which the charge exceeds the established rate shall

constitute an overcharge which shall be promptly refunded to the patron. If Parking Operator charges any patron a price which is less than the established schedule of rates or fails to collect any parking fee which it is required to collect for any reason other than a malfunction by the PRCS outside of the Parking Operator's control, the amount by which the charge is less than the established rate schedule, or the amount of the fee which Parking Operator failed to collect, shall constitute an undercharge and the amount equivalent thereto shall be paid, without demand by the City, by Parking Operator to the City.

- 7.1.4 A patron shall pay the full day's fee for each day parked if a ticket is lost, based upon the rate structure of the area where the patron's vehicle was parked. Such notice shall be posted at the entrance and exit of each parking area, and shall also be printed on each parking ticket. Parking Operator shall comply with all procedures governing rate adjustments and refunds contained in the SOP.

7.2 OPERATING REPORTS

- 7.2.1 Parking Operator shall submit reports to the Director. The Director may direct, in writing, Parking Operator to add, change, or delete certain reports. Parking Operator shall comply with all reasonable requests within the time period specified by the Director. Such reports shall include, but are limited to, the following:
- 7.2.1.1 Accounting Reports (Budget Variance Report, Unaccounted-for-Ticket Report, Lost Ticket Report, Cashier Over/Short Report, Contract Parking Revenue Report);
 - 7.2.1.2 Exception Transaction Reports (VIP Monthly Report, City Official Business Permit Report, Executive Parking Report);
 - 7.2.1.3 Operations Reports (Lot Closing Report, Monthly Overtime Analysis, License Plate Inventory Report, Shuttle Bus Activity Report, Towing and Abandoned Vehicle Disposition Report, Hire and Separation Report);
 - 7.2.1.4 Parking Activity Reports (Ingress/Egress Report, Revenue and Non-revenue Transaction Report, Revenue Analysis Report);
 - 7.2.1.5 Maintenance Inspection Reports;
 - 7.2.1.6 Customer Service Reports (Customer Comments); and
 - 7.2.1.7 MWBE Reports.

7.3 **BOOKS AND RECORDS OF OPERATOR**

- 7.3.1 *Operator to Maintain Certain Books and Records.* Parking Operator shall maintain such books and records as would normally be examined by an independent Certified Public Accountant (“CPA”) pursuant to generally-accepted accounting principles (“GAAP”), in order that the City may perform an audit of, among other things, the amount of Gross Receipts collected by Operator. Such books or records shall contain records of all Parking Operator's Gross Receipts in connection with its operations on the Facilities, in a form consistent with good accounting practice, and shall contain itemized records of all Gross Receipts and of all other receipts derived by Parking Operator from its operations on the Facilities, and the internal accounting and auditing records, work papers, procedures and methods of collection. These books and records, including, without limitation, ledgers, journals, revenue control reports, and books of accounts shall reflect the operations of Parking Operator at the Airports under the Agreement.
- 7.3.2 *Location of Books and Records.* Parking Operator shall keep the books and records it is required to maintain at its Airport office or local home office. Such books and records shall be kept segregated from Parking Operator's books and records relating to operations other than pursuant to the Agreement, and shall be retained by Parking Operator for a period of not less than seven (7) years following the end of the Contract Year or Partial Contract Year to which such books and records relate (notwithstanding the expiration or earlier termination of the Agreement).
- 7.3.3 *Books, Records, and Information.* Books, records, and information that are to be made available to the City during an audit shall include but not be limited to:
- 7.3.3.1 All accounting source documents necessary to the City's performance of an audit in accordance with GAAP;
 - 7.3.3.2 The complete (cumulative) corporate general ledger that identifies Parking Operator's operation at the Airports for the period under the audit;
 - 7.3.3.3 A detailed description of Parking Operator's accounting system, including:
 - 7.3.3.3.1 A flow chart tracing transactions through all accounting records used to prepare the Airport's Certified Monthly Statement; and
 - 7.3.3.3.2 A description of the accounting system used for tracking control numbers assigned to each location.

- 7.3.3.4 A complete copy of the chart of accounts and a detailed description of the accounts shown thereon;
 - 7.3.3.5 Bank statements and canceled checks applicable to the operation of this management contract at the Airport; and
 - 7.3.3.6 Parking Operator shall also provide, upon the written request of the City, the name and telephone number of Parking Operator's accounting manager who has a thorough knowledge of the accounting system as it pertains to the Agreement and who will assist the City with its audit.
- 7.3.4 *Controls.* In addition to maintaining the books and records required by this section, Parking Operator shall at all times use, such cashier terminals, invoicing machines, sales slips and other accounting equipment, devices and forms necessary to record properly, accurately, and completely all sales from and on the Facilities of Parking Operator's goods and services.
- 7.3.5 *Independent Audit.* The Parking Operator shall initiate an independent audit annually, to be conducted by a third party certified public accountant, of the Gross Revenues collected and deposited to the City. Such audit shall be at the Parking Operator's cost and its findings shall be reported to the Director.

ARTICLE 8 – RIGHTS AND DUTIES OF CITY

8.1 MAINTENANCE

- 7.1.1 The City shall performance the maintenance responsibilities set forth in Exhibit “F”. Further, the City shall maintain all elevators and escalators (except the cleaning of the waiting areas hereof) in the Facilities and shall maintain access to the Facilities up to the ramps leading into the Facilities. Provided, however, City may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right-of-way for such access, ingress or egress, whether inside or outside the Facilities, so long as a means of access, ingress or egress reasonably equivalent to that formerly provided, and not adverse to the Parking Operator's continued use and enjoyment of the Facilities, is substituted therefor and is concurrently made available therefor. **PARKING OPERATOR UNDERSTANDS AND AGREES THAT THERE SHALL BE INCONVENIENCE CAUSED BY CONSTRUCTION OR RENOVATIONS OF THE FACILITIES AND ROADWAYS, AND PARKING OPERATOR HEREBY RELEASES AND DISCHARGES CITY FROM ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION WHICH PARKING OPERATOR NOW OR AT ANY TIME HEREAFTER MAY HAVE AGAINST CITY ARISING OR ALLEGED TO ARISE OUT OF THE CLOSING OF ANY RIGHT OF WAY OR OTHER AREA USED AS SUCH WHETHER WITHIN OR WITHOUT THE FACILITIES, SO LONG AS CITY MAKES AVAILABLE A MEANS OF FREE ACCESS,**

INGRESS OR EGRESS REASONABLY EQUIVALENT IF AVAILABLE TO THAT EXISTING PRIOR TO EACH SUCH MODIFICATION, IF ANY. City shall be responsible for water systems, sewer systems, electrical systems and provision of the trash receptacles, except as expressly provided for as Parking Operator's obligation herein.

8.2 RIGHT TO INSPECT

- 8.2.1 The Director shall have the right at all times to enter upon and inspect the Facilities (including office and storage space Facilities) and the shuttle bus operation, to observe the performance by Parking Operator of its obligations hereunder and to do any act which City may be obligated or have the right to do under this Agreement, the City's Code of Ordinances, or the Airports' regulations.
- 8.2.2 If upon entry it is determined that maintenance, repair, janitorial, or any other obligations are not being performed adequately, the Director shall so notify Parking Operator in writing. If maintenance, repair, janitorial, or any other obligations are not commenced promptly as circumstances reasonably require after receipt of such notice, City, or its agents, contractors or employees, shall have the right to enter upon the particular area and perform the maintenance, repair, or janitorial services. City's cost for the performance of such maintenance, repair, or janitorial services plus an amount equal to fifteen percent (15%) of cost to cover administrative costs, shall be charged to and paid by Parking Operator.

8.3 AUDITS AND ENFORCEMENT

- 8.3.1 Throughout the Term of this Agreement and within seven (7) years after the end of any year of the Term, the Director or the City Controller may upon fourteen (14) days' written notice, without cost to Parking Operator, cause an inspection and audit to be made of the reports described in **Sections 7.2** and accounting books and records in **Section 7.3**. If, as a result of such inspection and audit, it is established that additional monies are due the City, Parking Operator shall pay such additional monies to the City within fifteen (15) days of receipt of written notice from the Director. If an inspection and audit establishes that Parking Operator has overpaid the City, then such overpayment shall be credited to Parking Operator through its Management Fee; however, in no event shall the City be liable for interest if there has been an overpayment by Parking Operator.
- 8.3.2 Notwithstanding the foregoing, City shall have the right, without notice to Parking Operator, to conduct on-going review (on line/site) or spot audits (financial and/or operational) of Parking Operator's performance under this Agreement at any time as necessary to ensure compliance with the requirements of this Agreement. Parking Operator shall cooperate with the Director and provide information and records (including accounting books and records) requested by the Director in the conduct of such spot audits and reviews.

8.3.3 The City Attorney shall have the right, after consultation with the Director, to enforce all legal rights and obligations under this Agreement without further authorization. Parking Operator covenants to provide the City Attorney all documents and records (including accounting books and records) that the City Attorney deems necessary to assist in determining Parking Operator's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

8.3.4 Parking Operator agrees that all accounting books and records and any related documents required by the Director shall be made available to the Director, the City Controller, or their designees at the Airport office or HAS Administration Building, or when such books and records and related documents are not maintained at the Airport office, at such other location that is reasonably acceptable to the Director. If for any reason, on the first working day after the fourteen (14) days' notice period expires, accounting books and records and related documents required for audit or inspection are not made available at the Airport office or HAS Administration Building, Parking Operator shall arrange and pay or reimburse City within thirty (30) days of expenditure by City for reasonable transportation costs (including airfare and ground transportation) and room and board for up to three (3) City representatives to the location where such accounting books and records and related documents are maintained by Parking Operator. Parking Operator shall allow the Director, City Controller, or their designees to photocopy the accounting books and records and related documents that they determine to be necessary to conduct and support their audit. Parking Operator shall provide retrievals of computer based records or transactions determined necessary to conduct the audit. Parking Operator shall not charge the City for the reasonable use of Parking Operator's photocopy machine while conducting an audit, nor for the cost of retrieving, downloading to electronic or other media, and printing any records or transactions stored in magnetic, optical, microfilm, or other media.

8.4 LOSS OF BUSINESS. The City shall not be liable to Parking Operator for any loss of business or be obligated to Parking Operator for any additional Management Fee as a result of any change in the operation or configuration of, or any change in, any procedure governing the operation of the Airports.

ARTICLE 9 – RELEASE AND INDEMNIFICATION

9.1 RELEASE

9.1.1 PARKING OPERATOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR

INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

9.2 INDEMNIFICATION

9.2.1 GENERAL/NEGLIGENCE

9.2.1.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, PARKING OPERATOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

9.2.1.1.1 PARKING OPERATOR'S AND/OR ITS AGENTS', EMPLOYEES, OFFICERS, JOINT VENTURE PARTNERS, DIRECTORS, CONTRACTORS, OR SUB-CONTRACTORS, (COLLECTIVELY IN NUMBERED PARAGRAPHS 9.2.1.1.1-9.2.1.1.3, "PARKING OPERATOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

9.2.1.1.2 THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE, WHETHER OPERATOR IS IMMUNE FROM LIABILITY OR NOT; AND

9.2.1.1.3 THE CITY'S AND OPERATOR'S ACTUAL OR ALLEGED STRICT LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PARKING OPERATOR IS IMMUNE FROM LIABILITY OR NOT.

9.2.1.2 PARKING OPERATOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR TEN (10) YEARS THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

9.2.2 INTELLECTUAL PROPERTY INFRINGEMENT

9.2.2.1 PARKING OPERATOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING PARKING OPERATOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS PARKING OPERATOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. PARKING OPERATOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

9.2.2.2 PARKING OPERATOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

9.2.2.3 WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, PARKING OPERATOR SHALL, AT ITS OWN EXPENSE, EITHER (I) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (II) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND PARKING OPERATOR SHALL REFUND THE PURCHASE PRICE.

9.3 SUBCONTRACTOR'S INDEMNITY

9.3.1 PARKING OPERATOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

9.4 INDEMNIFICATION PROCEDURES

9.4.1 *Notice of Claims*

9.4.1.1 If the City or Parking Operator receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

9.4.1.1.1 a description of the indemnification event in reasonable detail,

9.4.1.1.2 the basis on which indemnification may be due, and

9.4.1.1.3 the anticipated amount of the indemnified loss.

9.4.1.2 This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Parking Operator is prejudiced, suffers loss, or incurs expense because of the delay.

9.4.2 *Defense of Claims*

9.4.2.1 Assumption of Defense. Parking Operator may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Parking Operator shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Parking Operator must advise the City as to whether or not it will defend the claim. If Parking Operator does not assume the defense, the City shall assume and control the defense, and all defense expenses shall be reimbursed monthly and in addition to an indemnification loss.

9.4.2.2 Continued Participation. If Parking Operator elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Parking Operator may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Parking Operator does not fund in full, or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 10 – INSURANCE AND PERFORMANCE SECURITY

10.1 INSURANCE

10.1.1 With no intent to limit Parking Operator's liability or the indemnification provisions set forth herein, Parking Operator shall, at a minimum, maintain certain insurance in the following amounts:

Coverage	Limit of Liability
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident)
	Bodily Injury by Disease \$500,000 (policy limit)
	Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Contractual Liability, Bodily and Personal Injury, Property Damage, Products and Completed Operations Coverage (for two years following completion of the Services under this Contract)	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$2,000,000 aggregate
Automobile Liability (for vehicles Parking Operator uses in performing under this Contract, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
ALL RISK Covering Parking Operator's Improvements, Fixtures, Removable Fixtures, and Equipment (including fire, lightning, vandalism, and extended coverage perils)	[Replacement Value]
Garage Keepers Liability	\$10,000,000 combined single limit per occurrence for bodily injury and property damage.
Excess Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

10.1.2 *Insurance Coverage.* At all times during the term of this Agreement and any extensions or renewals, Parking Operator shall provide and maintain insurance coverage that meets the Contract requirements. Prior to the Start Date, at any time upon the Director's request, or each time coverage is renewed or updated, Parking Operator shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Parking Operator shall be responsible for and pay (a) all

premiums and (b) any claims or losses to the extent of any deductible amounts. Parking Operator waives any claim it may have for premiums, deductibles, or self-insured retentions against the City, its officers, agents, or employees. Parking Operator shall also require all contractor, subcontractors, consultants, or joint venture partners whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$1,000,000 per occurrence. Upon request, Parking Operator shall provide copies of such certificates to the Director.

10.1.3 **Form of Insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall not (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each issuer must be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the Director and City Attorney, in their sole discretion, as to conformance with these requirements.

10.1.4 *Required Coverage.* The City shall be an Additional Insured under this Agreement, and all policies, except Worker's Compensation, shall explicitly name the City as an Additional Insured for both ongoing and completed operations. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Parking Operator waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees. Each policy, except professional liability, must contain an endorsement waiving such claim. Each policy hereunder, except Worker's Compensation, must contain an endorsement that the policy is primary and non-contributory to any other insurance available to the Additional Insured with respect to claims arising hereunder.

10.1.5 *Notice.* PARKING OPERATOR SHALL GIVE THIRTY (30) DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Parking Operator shall provide other suitable policies in order to maintain the required coverage. If Parking Operator does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Parking Operator from any further performance under this Agreement and begin procedures to terminate for default. All policies maintained by Parking Operator as required herein shall be endorsed to provide thirty (30) days' notice of cancellation to the City.

10.1.6 *Claims.* Parking Operator shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Parking Operator reduce the aggregate amount of coverage below the amounts required by this Agreement.

12.1.7. *Casualties.* Parking Operator shall immediately notify the Director of any fire, flood, casualty, or damage in or to any of the Facilities or equipment, or of any uninsured problem, condition, or threat of casualty. Parking Operator shall also immediately notify the Director of any personal injury or threat of personal injury in any Facility.

10.2 PERFORMANCE SECURITY

10.2.1 Parking Operator, without expense to the City, shall cause to be made, executed and delivered to the City:

10.2.1.1 A performance bond in an amount equal to \$5,000,000.00 conditioned on the faithful performance of all terms, conditions and covenants of this Agreement. That performance bond shall be substantially in the form attached as **Exhibit “L”**, and executed by Parking Operator and a corporate surety company authorized to do business in Texas having an "underwriting limitation" of at least the amount of the penal sum of the bond. Said surety bond shall be renewable annually and shall be kept in full force for the complete Term; or

10.2.1.2 An irrevocable letter of credit, substantially in the form attached as **Exhibit “M”**, payable upon presentation to a solvent bank or savings and loan in the initial principal amount equal to \$5,000,000.00, which shall be kept in full force and effect for the complete Term.

10.2.2 If Parking Operator is found to be in default by the City, the City shall have the right to enforce the performance bond or the letter of credit and apply the proceeds thereof to cover payments owed to the City by Parking Operator and to pay such costs as may be incurred by the City as a result of Parking Operator's breach of contract. However, in no event shall enforcement of the bond or letter of credit be deemed an exclusive remedy to the City.

ARTICLE 11 – EQUAL EMPLOYMENT, DBE, AND DRUG POLICY

11.1 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

11.1 Parking Operator shall comply with the City's Equal Employment Opportunity Ordinance set out in in Section 15-17 of the Code of Ordinances.

11.2 NON-DISCRIMINATION

11.2.1 Parking Operator shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 CFR Part 21. These provisions are inclusive of any amendments which may be made to such regulations. Further, Parking Operator shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit “N”**, attached and incorporated herein.

11.3 MINORITY AND WOMEN BUSINESS ENTERPRISES

11.3.1 It is the City’s policy to ensure that Minority and Women Business Enterprises (“MWBEs”) have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

11.3.2 Parking Operator shall make good faith efforts to award subcontracts or supply agreements in at least **35%** of the value of this Agreement to MWBEs. The City’s policy does not require Parking Operator to in fact meet or exceed this goal, but it does require Parking Operator to objectively demonstrate that it has made good faith efforts to do so. To this end, Parking Operator shall maintain records showing:

11.3.2.1 subcontracts and supply agreements with Minority Business Enterprises,

11.3.2.2 subcontracts and supply agreements with Women’s Business Enterprises, and

11.3.2.3 specific efforts to identify and award subcontracts and supply agreements to MWBEs.

11.3.2.4 Parking Operator shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity (“OBO”) Director in the form and at the times he prescribes.

11.3.3 Parking Operator shall ensure that all subcontracts with MWBE subcontractors and suppliers will permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

11.3.4 Parking Operator shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

11.3.4.1 _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("OBO Director").

11.3.4.2 _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

11.4 Within five (5) business days of execution of this subcontract, Parking Operator (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

13.5. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

11.5 DRUG DETECTION AND DETERRENCE

11.5.1 It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. The manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. By executing this Agreement, Parking Operator represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), both of which are on file in the City Secretary's Office. For purposes of this Section, Parking Operator shall be referred to as "Contractor" in the attached exhibits.

11.5.2 Confirming its compliance with the Mayor's Policy and the Executive Order, Parking Operator, as a condition precedent to City's obligations under this Agreement, will have filed with the Contract Compliance Officer for Drug Testing ("CCODT"), prior to the execution of this Agreement by the City:

11.5.2.1 a copy of its drug-free workplace policy,

11.5.2.2 the Drug Policy Compliance Agreement substantially in the format set forth in **Exhibit "O"**, attached and incorporated herein, together with a written designation of all safety impact positions and,

11.5.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "P"**, attached and incorporated herein.

11.5.3 If Parking Operator files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Agreement or upon the completion of this Agreement if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "Q"**, attached and incorporated herein. Parking Operator shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each six (6) month period of performance and within thirty (30) days of completion of this Agreement. The first six (6) month period begins to run on the Start Date.

11.5.4 Parking Operator shall have the continuing obligation to file with the CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Agreement that safety impact positions are added if initially no safety impact positions are designated. Parking Operator shall also have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Operator's work force.

11.5.5 Parking Operator shall require that its subcontractors hereunder comply with the Mayor's Policy and Executive Order. Parking Operator shall be responsible for securing and maintaining the required documents for City inspection throughout the Term of this Agreement.

11.5.6 Parking Operator's failure to comply with the above Sections shall be a breach of this Agreement entitling City to terminate in accordance with **Article XIV**.

11.6 PAY OR PLAY

11.6.1 The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this

Agreement for all purposes. Parking Operator has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

ARTICLE 12 – ENVIRONMENTAL LAWS

12.1 GENERAL

- 12.1.1 Parking Operator shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including, but not be limited, to the following:
- 12.1.1.1 The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.,
 - 12.1.1.2 The Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
 - 12.1.1.3 The Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
 - 12.1.1.4 The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
 - 12.1.1.5 The Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
 - 12.1.1.6 The Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
 - 12.1.1.7 The Clean Water Act, 33 U.S.C., Section 1251 et seq.;
 - 12.1.1.8 The Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
 - 12.1.1.9 The Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and
 - 12.1.1.10 Those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws").
- 12.1.2 Within ten (10) days of receipt of an invoice, Operator shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental

Quality (“TCEQ”), or any other governmental agency for Parking Operator's failure to comply with the Environmental Laws.

12.1.3 Parking Operator shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airports, or any other areas or Facilities subject to this Agreement, except in strict compliance with the Environmental Laws. “Hazardous Materials” include, but are not limited to, the following:

12.1.3.1 All substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws;

12.1.3.2 Asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste; or

12.1.3.3 Any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

12.1.4 The Airports are subject to the National Pollution Discharge Elimination System Program (“NPDES”), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airports. Operator is familiar with these NPDES stormwater regulations; and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Operator understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

12.1.5 Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Operator shall implement "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Operator as defined in the federal stormwater regulations.

12.1.6 The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. All applicable portions of the permit shall bind Operator.

12.1.7 Parking Operator shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Parking Operator. Parking Operator shall meet all deadlines that may be imposed or agreed to by the City and Parking Operator. Time is of the essence.

12.1.8 Parking Operator shall include the City on all correspondence to and information submitted to a government entity(ies) under applicable NPDES stormwater regulations that affect the Airports.

Upon Parking Operators written request, the City shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.

12.1.9 Parking Operator appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's stormwater discharge permit.

12.1.10 Parking Operator shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airports.

12.1.11 The City may enter upon Parking Operator's Premises at any time for purposes of inspection to ensure that Parking Operator is complying with this Section and any other provisions in this Agreement without committing a trespass.

12.1.12 The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.

12.1.13 WITH NO INTENT TO LIMIT PARKING OPERATOR'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION 9.2.1, PARKING OPERATOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO THE FOLLOWING:

12.1.13.1 ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO PARKING OPERATOR'S, ITS EMPLOYEES', SUBCONTRACTORS', JOINT VENTURE PARTNERS' OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORTS PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

12.1.13.2 ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORTS PREMISES BY PARKING OPERATOR, ITS EMPLOYEES, OR AGENTS;

12.1.13.3 THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY PARKING OPERATOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

12.1.13.4 ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY PARKING OPERATOR, ITS EMPLOYEES, OR AGENTS AT THE AIRPORTS; OR

12.1.13.5 ANY VIOLATION BY PARKING OPERATOR, ITS EMPLOYEES, AGENTS, OR JOINT VENTURE PARTNERS OF ANY ENVIRONMENTAL LAWS.

12.1.14 THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT.

ARTICLE 13 – DAMAGE TO OR DESTRUCTION OF FACILITIES

13.1 GENERAL

13.1.1 If a particular Facility is damaged or destroyed, whether in whole or in part, so as to render it unusable for the purpose of which it was intended, the Director shall have the option whether or not to repair or restore the Facility. The Director shall make any such election within thirty (30) days following the damage or destruction by serving written notice to the Parking Operator. In the event the Director does not elect to repair or restore the Facility, the Parking Operator shall continue to perform under this Agreement as to the remaining Facilities and shuttle bus operation and shall have no recourse against the City for the Director's decision not to repair or restore a Facility.

13.1.2 Notwithstanding the foregoing, if an act or omission of the Parking Operator, its agents, employees, suppliers, subcontractors, joint venture partners, or contractors, causes the damage, the Parking Operator shall repair said Facility and shall pay the costs therefor. However, Parking Operator's obligation herein is limited to the extent of the insurance deductible carried by City on any

casualty policy(ies) on any such Facility, but this limitation only applies to the extent that any such policies cover a particular casualty. If during the Term of this Agreement, such deductible should increase or decrease, Parking Operator's obligation herein shall concomitantly increase or decrease upon thirty (30) days written notice from Director to Parking Operator notifying Parking Operator of any such increase or decrease. Further, should the City elect to cancel or non-renew its casualty insurance coverages on a Facility or Facilities, Parking Operator's obligation herein to repair and to pay the costs therefor shall not be limited to the extent of any previous deductible. Parking Operator shall provide Director with certificates of insurance evidencing the required coverages required herein.

13.2 LIMIT OF CITY OBLIGATIONS

13.2.1 It is understood that, in the application of the foregoing **Sections 13.1**, the City's obligations shall be limited to repairing or reconstructing the structural portions of a Facility as required, to the same extent and of equal quality as existed immediately prior to the damage but only to the extent that insurance proceeds are available. Replacement of Removable Fixtures, improvements, furniture, equipment, vehicles, and supplies shall be the responsibility of Parking Operator and any such replacement and re-equipping shall be of equivalent quality to that originally installed hereunder.

13.3 LIABILITY OF OPERATOR

13.3.1 The provisions of this Article shall not relieve Parking Operator of its responsibility for damage to any part of a Facility caused by any act or omission, whether intentional or negligent, of Parking Operator, its agents, employees, suppliers, subcontractors, joint venture partners, or contractors.

ARTICLE 14 – TERMINATION AND ASSIGNMENT

14.1 TERMINATION FOR CONVENIENCE BY CITY

14.1.1 The Director may terminate this Agreement at any time by giving one hundred and eighty (180) days written notice to the Parking Operator. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

14.1.2 On receiving the notice, Parking Operator shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel (or assign as instructed, in the discretion of the Director) all existing orders and subcontracts that are chargeable to this Agreement and deliver all supplies and materials accumulated in performing this Agreement to a place designated by the Director. Within thirty (30) days after receiving the termination notice, Parking Operator shall submit an invoice showing in detail all costs for services performed

and expenses reasonably incurred under this Agreement up to the termination date. The City shall then pay Parking Operator for services actually performed and costs reasonably incurred, less any offsets and to the extent the City has not previously issued payment, in the same manner as prescribed in **Article VI**, unless the amounts invoiced exceed the allocated funds remaining under this Agreement. For those services provided on the basis of a stipulated sum, the fees will be prorated in accordance with the progress of the services at the date of termination. Parking Operator may also submit invoices for vendor and Subcontractor charges incurred before the notice of termination.

14.1.3 RECEIPT OF PAYMENT FOR SERVICES RENDERED IS PARKING OPERATOR'S SOLE REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH SHALL NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. PARKING OPERATOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

14.2 TERMINATION FOR CAUSE BY CITY

14.2.1 If Parking Operator defaults under this Agreement, the Director may either terminate this Agreement or allow Parking Operator to cure the default as provided below. The City's rights and remedies provided below are in addition to all rights and remedies provided by law or under this Agreement. Default by Parking Operator shall occur if:

14.2.1.1 Parking Operator fails to observe or perform any of its duties under this Agreement;

14.2.1.2 Parking Operator becomes insolvent;

14.2.1.3 All or a substantial part of Operator's assets shall be assessed for the benefit of Parking Operator's creditors; or

14.2.1.4 if a receiver or trustee shall be appointed for Parking Operator.

14.2.2 If default occurs, the Director may, but is not obligated to, deliver a written notice to Parking Operator describing the default and the time frame in which to cure the default along with a termination date if default is not cured. The Director, at his sole option, may extend the termination date to a later date. . If Parking Operator cures such default to the Director's satisfaction before the termination date, then the proposed termination shall be ineffective. If Parking Operator does not cure the default before the termination date, then City may terminate its performance and Parking Operator's rights under this Agreement as of such date, at no further obligation of the City.

- 14.2.3 To effect termination, the Director must notify Parking Operator in writing. After receiving the notice, Parking Operator shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, promptly cancel (or assign as instructed, in the discretion of the Director) all orders or subcontracts chargeable to this Agreement and deliver all work product, supplies, and materials accumulated in performing this Agreement to a place designated by the Director.
- 14.2.4 In the event of termination due to Parking Operator's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Parking Operator shall be liable to the City for any additional cost occasioned to the City thereby.
- 14.2.5 If after termination of this Agreement for cause, it is determined that Parking Operator has not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Section 14.1.2**.

14.3 TERMINATION BY OPERATOR

- 14.3.1 Parking Operator has no right to terminate this Agreement for convenience. Parking Operator may terminate its performance under this Agreement only if (i) the City defaults and fails to cure the default after receiving notice of it in accordance with this section and (ii) Parking Operator is not in default. Default by the City occurs if the City fails to observe or perform any of its material duties under this Agreement. If a default occurs and the Parking Operator decides to terminate the Agreement, Parking Operator must deliver a written notice to the Director describing such default and the proposed date of termination. The date must be at least sixty (60) days after the Director receives notice. Parking Operator, in its reasonable judgment, may extend the proposed date of termination to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default prior to the proposed termination date, then Parking Operator may terminate its performance under this Agreement on the termination date.
- 14.3.2 In addition, this Agreement may be canceled or terminated by Parking Operator by giving a thirty (30) day written notice to Director upon the occurrence of one or more of the following events specified below:
- 14.3.2.1 The permanent abandonment of all passenger terminals for use by airlines or the permanent removal of all certificated passenger airline service from the Airports;
- 14.3.2.2 The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the

Airports, or any substantial part thereof, in such manner as to materially restrict Operator from operating thereon for a period of at least ninety (90) consecutive days;

14.3.2.3 The complete destruction of two-thirds (2/3) or more of the Facilities at the Airports from a cause other than the negligence or omission-to-act of Parking Operator, its joint venture partners, subcontractors, agents or employees, and the subsequent failure of City to repair or reconstruct said Facilities within twelve (12) months after such destruction; or

14.3.2.4 Any exercise of authority by the federal government which shall so interfere with Parking Operator's use and enjoyment of the Facilities as to constitute a termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the United States.

14.4 NO WAIVER OF DEFAULT

14.4.1 A party's election to waive default shall not constitute a waiver of a subsequent default of the same or similar nature. A party's failure to insist on strict performance or failure to exercise a right upon default (i) shall not constitute a waiver of the right to insist on and to enforce strict compliance of other obligations or of future performance, and (ii) shall not constitute a waiver of the right to exercise any right or remedy

14.5 REDELIVERY

14.5.1 Parking Operator shall, upon termination or expiration of this Agreement, quit and deliver up all Facilities which it then currently uses to the City peaceably, quietly, and in as good order and condition as the same now are or may hereafter be improved by Parking Operator or the City, normal wear and tear excepted. This provision in no way implies that Parking Operator has a possessory interest in the Facilities.

14.6 HOLDING OVER

14.6.1 The Director, in his sole discretion, may extend this Agreement on a month-to-month basis after the expiration of the Term. Any continuation by Parking Operator of its services after this Agreement has been terminated or has expired, shall not work as a renewal of this Agreement, but only as a month-to-month extension of this Agreement completely at the sufferance of the City. Parking Operator shall be compensated during such holdover at the same amounts or rates due in the last Contract Year or Partial Contract Year, as applicable. The Director may, during such period of sufferance, terminate Parking Operator's operations without notice and cause removal of all officers, agents, and employees of Parking Operator from the Airports.

14.7 ASSIGNMENT

14.7.1 Except as otherwise may be provided herein or upon the prior written consent thereto by the Director, the Parking Operator shall not transfer or assign this Agreement or any part hereof or any of its rights hereunder. Any such transfer or assignment without the consent of the Director shall constitute default on the part of the Parking Operator under this Agreement. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of this Agreement. The acceptance of consideration, no matter how many times accepted, by any officer, agent or employee or department of the City after any such assignment, shall not constitute a waiver hereof nor any estoppel to so terminate on account thereof unless as aforesaid, the same be consented to by the Director.

ARTICLE 15 – LIENS AND ENCUMBRANCES

15.1 OTHER LIENS AND ENCUMBRANCES

15.1.1 One cannot lien public real property. If any mechanics' liens or other liens or orders for the payment of money shall be filed against the Facilities, or any portion thereof, (i) by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for the Parking Operator, or (ii) for or by reason of any change, alteration, or addition or the cost or expense thereof, or any contract relating thereto, or against the City as owner thereof, then Parking Operator shall within thirty (30) days cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of the Parking Operator, and shall also defend on behalf of the City, at the Parking Operator's sole cost and expense, any action, suit, or proceeding which may be brought thereon or for the enforcement of such lien, liens, or orders.

15.1.2 Parking Operator further covenants and agrees that it will not make any contract or agreement, either oral or written, for the construction, alteration, or repair of the Facilities without providing in such contract or agreement that no lien or claim shall thereby be created or arise or be filed or maintained by anyone thereunder upon or against the Facilities or any of the appurtenances, equipment, machinery, or fixtures thereon or therein, and without procuring from the architect, engineer, contractor or contractors, materialmen, mechanics, persons, firms, or corporations named in any such contract or agreement, a written waiver of all right of lien which said architect, engineer, contractors, materialmen, mechanics, persons, firms, or corporations might otherwise have or claim upon the estate or interest of the City in the Facilities or the items furnished by the Parking Operator, and the Parking Operator hereby agrees that before any work shall begin or material be furnished it will exhibit and cause to be delivered to the Director said original waiver or waivers of lien, and the Parking Operator shall,

upon written demand from the Director, stop any and all work and delivery of materials therefor if such waivers of lien are not delivered as herein provided, and it is expressly understood and agreed, and notice is hereby given, that no persons, firms, or corporations furnishing labor, material, or service for the construction, repairing, reconstruction, or the making of the alterations or additions to any of the Facilities shall have any lien upon the Facilities or any part or portion thereof.

15.2 NO AUTHORITY TO BIND CITY

15.2.1 This Agreement does not, expressly or impliedly, grant Parking Operator authority to bind the City for the payment of any money in connection with the construction/renovation, installation, repairs, alterations, additions, or reconstruction work relating to the Facilities, nor is there any authority given to Parking Operator, directly or indirectly, to permit any mechanic's, materialmen's, or contractors' liens to arise against the Facilities, and the Parking Operator expressly agrees that it will keep and save the Facilities and the City harmless from all costs and damages resulting from any such liens or lien of any character created through any act or thing done by the Parking Operator.

ARTICLE 16 – MISCELLANEOUS

16.1 RULES AND REGULATIONS

16.1.1 In conducting its services hereunder, Parking Operator shall comply with all applicable laws of the United States of America and the State of Texas, and all applicable rules, regulations and ordinances of the City of Houston, Harris County, Texas, any and all applicable rules and regulations promulgated by the Director or by law.

16.1.2 Parking Operator understands and agrees that fines and/or penalties may be assessed by the Federal Aviation Administration for Parking Operator's noncompliance with the provisions of 14 CFR §107 entitled "Airports Security" or by other agencies for noncompliance with regulations applicable to Operator's operations. Parking Operator shall promptly reimburse the City for any fines or penalties assessed against the City because of Parking Operator's noncompliance with 14 CFR § 107, as may be amended from time to time, or other applicable laws or regulations.

16.2 SUBCONTRACTING

16.2.1 Any subcontract or joint venture agreement for granting of rights acquired under this Agreement shall be void unless the Director has given his prior written consent thereto. Such a subcontract or joint venture agreement must require at a minimum strict compliance with the provisions of this Agreement and a provision providing for the assignment of the subcontract or joint venture

agreement to the City (at City's option) in the event of Parking Operator's default hereunder and the termination of this Agreement prior to its expiration date, without consent of the subcontractor upon request of the City. Parking Operator assumes ultimate responsibility for all work, acts or omissions of any subcontractor made in connection with this Agreement. The above provision shall apply with equal force to any assignment proposed by Parking Operator.

16.3 SUBCONTRACTOR'S FAILURE TO COMPLY

16.3.1 Parking Operator agrees that it is responsible for the performance of its subcontractors and joint venture partners under this Agreement. Parking Operator agrees to initiate and take all corrective action should a subcontractor or joint venture partner fail to comply with its contract with Parking Operator or any provision of this Agreement. The failure of a subcontractor or joint venture partner to comply with the provisions of this Agreement shall constitute a default by Parking Operator under this Agreement entitling City to terminate in accordance with **Section 13.2**.

16.4 AIRPORT SYMBOLS

16.4.1 Parking Operator shall have no right to use the trademarks, symbols, trade names or name of the Airports, either directly or indirectly, in connection with any production, promotion service, or publication without the prior written discretionary consent of the Director.

16.5 TAXES AND LICENSES

16.5.1 Parking Operator shall pay all taxes of whatever character that may be levied or charged upon Parking Operator's operations hereunder (except the City shall be obligated to pay sales taxes out of Gross Sales) and upon Parking Operator's rights to use the Facilities set forth in **Exhibits "A" and "B"**. Parking Operator shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

16.6 RIGHT TO CONTEST TAXES

16.6.1 Parking Operator shall have the right to contest in good faith and by all appropriate proceedings the amount, applicability, or validity of any tax assessment pertaining to the Facilities set forth in **Exhibits "A" and "B"**, at its own cost or expense. In the event Parking Operator contests the assessment, the City shall cooperate whenever possible with Parking Operator, provided that such contest will not subject any part of the Facilities set forth in **Exhibits "A" and "B"** to forfeiture or loss. If, at any time, payment of any tax or assessment becomes necessary to prevent any forfeiture or loss, Parking

Operator shall pay the tax or assessment in time to prevent the forfeiture or loss.

16.7 CONFLICTS BETWEEN OCCUPANTS

16.7.1 In the event of a conflict between Parking Operator and any other lessee, licensee, or operator as to the rights of the respective lessees, licensees, or operators, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, or operator and Operator agrees to be bound by such decision.

16.8 DISPUTE RESOLUTION

16.8.1 For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all parties’ performance under this Agreement.

16.8.2 Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Contractor must be handled as described below:

16.8.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

16.8.2.2 If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven (7) business days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within fourteen (14) business days following its receipt. The decision of the Director is final.

16.9 APPLICABLE LAWS

16.9.1 This Agreement is subject to all laws of the State of Texas, the City Charter and Ordinances of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction, including the City's Charter, Code of Ordinances, and Airports' regulations.

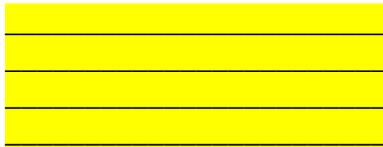
16.9.2 Venue for any litigation relating to this Agreement shall be Harris County, Texas.

16.10 ATTORNEYS' FEES

16.10.1 In the event that the City brings any action, suit, or proceeding to ensure compliance with this Agreement, Parking Operator shall pay the City reasonable attorney's fees, in an amount allowed by the Court in said suit, action or proceedings if the City is successful.

16.11 NOTICES AND CONSENTS

16.11.1 All notices and consents shall be sent to the address listed in the Preamble hereof and also to:



16.11.2 All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in **Section 1.1** of this Agreement or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

16.12 NO THIRD PARTY BENEFICIARY

16.12.1 This Agreement is made for the benefit of the parties hereto, and nothing herein shall be construed to create any right or benefit enforceable by any third party.

16.13 ENTIRE AGREEMENT

16.13.1 This Agreement contains the entire, integrated, full and final agreement between the parties relating to the subject matter hereof, and there are no other enforceable agreements between the parties, whether written or oral, relating to the subject matter.

16.14 SURVIVAL OF CERTAIN PROVISIONS

16.14.1 Parking Operator shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond and service the expiration or termination of this Agreement, including but not limited to the indemnity provisions hereof.

16.15 CONSTRUCTION AND INTERPRETATION

- 16.15.1 The captions at the beginning of the articles and sections of this Agreement are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Agreement.
- 16.15.2 Any reference to gender shall include the masculine, feminine, and neutral.
- 16.15.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

16.16 RELATIONSHIP OF THE PARTIES

- 16.16.1 This Agreement is not and is not to be construed as a lease. The right to use the Facilities is entirely dependent upon and is nothing more than incident to, the existence of the rights and privileges granted by this Agreement. Operator will in no instance be deemed to have acquired any possessory rights against the City in or to the Facilities set forth in **Exhibits "A" or "B"** and Parking Operator shall not be deemed to be a tenant of the City.
- 16.16.2 The City and Parking Operator agree that no partnership relationship between the parties hereto or joint venture between City and Parking Operator is created by this Agreement, and Parking Operator is not made the agent or representative of the City for any purpose or in any manner whatsoever. Parking Operator shall be an independent contractor at all times.

16.17 NO WAIVER OF GOVERNMENTAL AUTHORITY

- 16.17.1 Nothing in this Agreement shall be construed to abrogate or impair any governmental power and authority to regulate the prices, terms of service, and other operations of Parking Operator to the full extent allowed by law, regardless of whether such regulation is imposed by the City or by other governmental authority. Parking Operator understands that such governmental power and authority may not lawfully be bartered for or contracted away, anything in this Agreement to the contrary notwithstanding.

16.18 NO WAIVER IMPLIED

- 16.18.1 The failure of either party to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party, but the obligation of

such party with respect to the future performance of such term, covenant, or condition shall continue in full force and effect.

16.19 SEVERABILITY

16.19.1 In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either Parking Operator or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

16.20 WRITTEN AMENDMENT

16.20.1 Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Parking Operator. The Director is only authorized to perform the functions specifically delegated to him in this Agreement.

16.21 ACCEPTANCE AND APPROVAL

16.21.1 An approval by the Director, or by any other instrumentality of the City, of any part of Parking Operator's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required by this Agreement or by law. The Director is not authorized to vary the terms of this Agreement.

16.22 AMBIGUITIES

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

16.23 NO CITY EXPENDITURE

16.23.1 Nothing in this Agreement shall be construed to require that the City make any expenditure of its funds to Parking Operator or to any other party.

16.24 SUCCESSORS

16.24.1 This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City.

16.25 FORCE MAJEURE

- 16.25.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Parking Operator to extra Reimbursable Expenses or payment.
- 16.25.2 This relief is not applicable unless the affected party does the following:
- 16.25.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible;
 - 16.25.2.2 provides the other party with prompt written notice of the cause and its anticipated effect; and
 - 16.25.2.3 provides the other party with written notice describing the actual delay or non-performance incurred within seven (7) days after the Force Majeure ceases.
- 16.25.3 The Director will review claims that a Force Majeure that directly impacts the City or Parking Operator has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.
- 16.25.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 16.25.5 If the Force Majeure is of such a nature that it materially affects the operating capabilities of the Airports/continues for more than thirty (30) days, the Director may terminate this Agreement by giving seven (7) days' written notice to the other party. This termination is not a default or breach of this Agreement. **PARKING OPERATOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**
- 16.25.6 Parking Operator is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees or employees of

its joint venture partners or subcontractors. Parking Operator shall employ only fully trained and qualified personnel during a strike.

16.26 ASBESTOS

16.26.1 Parking Operator shall notify the City of any Asbestos-Containing Materials (“ACM”) found in the Facilities and Parking Operator shall not disturb such material. If necessary, the City shall be responsible for abatement or removal of ACM in the Facilities.

16.27 REMEDIES CUMULATIVE

16.27.1 The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereafter existing whether by statute, at law, or in equity; provided, however, that neither party may terminate its duties under this Agreement except in accordance with the provisions hereof.

16.27.2 Except as otherwise provided herein, the rights and remedies contained in this Agreement shall not be exclusive, and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity.

16.28 PARKING OPERATOR DEBT

16.28.1 IF PARKING OPERATOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT PARKING OPERATOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY PARKING OPERATOR IN WRITING. IF PARKING OPERATOR DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO PARKING OPERATOR UNDER THIS AGREEMENT, AND PARKING OPERATOR WAIVES ANY RECOURSE THEREFORE. PARKING OPERATOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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EXHIBIT "A"

PARKING AND CNG FACILITIES

IAH

1. **ecopark2 - Will Clayton** – 2,300 space covered economy surface lot (located East of IAH on 5021 Will Clayton Pkwy).
2. **A1-West** – A 101 space uncovered surface lot currently used for contract parking
3. **Area 1** – A 796 space two-level garage (located on levels 3 and 4 of terminal A) currently used for contract parking
4. **A/B Garage** – A 5,071 space eight level parking garage (located between terminals A & B)
5. **Area 3** – A 747 space two-level garage (located on levels 3 and 4 of terminal B) currently used for contract parking.
6. **PL6** – A 297 space surface lot (located between Terminal B and the on-airport hotel) currently used for contract parking.
7. **C Garage** – A 7,449 space, seven level garage (located on each side and above Terminal C) currently used for public hourly, daily, guaranteed and contract parking.
8. **Terminal D** – Surface lot west side with 12 spaces.
9. **D/E Garage** – A 1,944 space, eight level garage (located east of the terminal C garage and south of terminal D) currently used for public daily, hourly and contract parking.
10. **ecopark JFK** – A 8,612 space surface (with 1650 covered spaces) economy lot (located at the corner of JFK and Greens Road) currently used for public parking.
11. **Specifically excluded:** A 4,278 space surface lot used for United employee parking (located at the ecopark JFK Lot), the airport hotel garage, the terminal building curb spaces, the taxi cab staging area, private parking areas under exclusive lease to an airport tenant, and HAS employee parking lots at the Administration building and the Airport Services Complex offices (currently housing Airfield Maintenance Group - AMG). Surface lot east of terminal D.
12. **CNG Fueling Station** – Located at 3995 Greens Rd., east of the ecopark JFK Lot.

HOU

1. **Red Parking Garage** – A 3,087 space existing four-level garage currently used for hourly, daily and valet parking.
2. **Blue Parking Garage** – Newly constructed four-level, ± 3,000 space garage.
3. **HOU ecopark** – A 934 space surface lot (located east of the Red Parking garage).
4. **Employee/Tenant Contract Lot** – A 871 space nested surface lot (located south of the air cargo building) currently used for contract parking.

ELLINGTON AIRPORT

1. **Public Parking Lot** – An approximately 550 stall surface lot that is not currently utilized for paid public parking but may be for special events or future needs.

EXHIBIT "B"

OFFICE AND STORAGE SPACE FACILITIES

SUPPORTING FACILITIES

The following locations are available for the Concessionaire as support space in an "as is" condition. The Concessionaire will be responsible for the costs of all improvements necessary to make this space suitable. All spaces shall be available for the Concessionaire's use on the Effective Date. During the Term of this Agreement, there may be construction disruptions that may require the temporary relocation of the office and storage spaces described herein.

IAH

1. **Terminal A** – an office & support area of approximately 4000 square feet located on the baggage claim level.
2. **Terminal C** – two supervisor's office spaces (located adjacent to the east and west exits plazas).
3. **ecopark JFK** – a supervisor's office, employee break room, and shuttle bus storage area (located next to the exit plaza), and the tower storage building (located in the middle of the economy lot).
4. **Terminal A/B Garage** – two supervisor's offices with an employee break room located in the northwest corner of the first floor.
5. **AB Garage Valet Offices** – (3) offices: One office also used to store uniforms and some equipment.
6. **Terminal A/B Garage** Janitorial Mop Closet and Store Room on level 1.
7. **Terminal C-1** Store Rooms on levels 1, 2, 3, 4 and 5.
8. **Terminal C-3** Store Rooms on levels 3, 4 and 5.
9. **Terminal C Valet Booth** – An approx. 100 Sq. Ft. enclosed and air-conditioned modular structure for valet cashiers and key storage
10. **Terminal B – Office/Storage space at the south terminal road curbside.**
11. **Terminal D/E Valet Booth** – An approx. 100 Sq. Ft. enclosed and air-conditioned modular structure for valet cashiers and key storage
12. **ecopark2 - Will Clayton – Manager/supervisor offices, employee break room, shuttle bus storage area.**

HOU

1. **Toll Plaza Offices** – Currently a temporary trailer is in place to serve as the parking offices until the permanent offices/break room is constructed.
2. **Terminal** – Two manager's office located on the first floor (baggage claim level) these spaces will be vacated once the permanent offices are constructed.
3. **Blue Garage support space** – approximately 100 sq. ft. will be provided on the first level of the new HOU Blue garage for parking support space.
4. **Valet Booth** – An approx. 75 Sq. Ft. enclosed and air-conditioned modular structure for valet cashiers and key storage.

EXHIBIT “C”

PRCS AND APGS EQUIPMENT

[REFER TO ATTACHMENT 3 IN RFP]

EXHIBIT “D”

SHUTTLE BUS SPECIFICATIONS

[REFER TO ATTACHMENT 8 IN RFP]

EXHIBIT “E”

IAH ECOPARK2 SHUTTLE BUS FLEET AMORTIZATION

[SEE ATTACHMENT 4 OF RFP]

EXHIBIT "F"

FACILITY MAINTENANCE AND RESPONSIBILITIES

[SEE ATTACHMENT 10 OF RFP]

EXHIBIT "G"

SHUTTLE BUS HOURLY RATE

[SEE EXHIBIT B OF RFP]

EXHIBIT “H”
MANAGEMENT FEE RATES

[SEE EXHIBIT C OF RFP]

EXHIBIT "I"

SERVICE VEHICLE TYPE AND QUANTITY

[SEE ATTACHMENT 6 OF RFP]

EXHIBIT "J"

REMOVABLE FIXTURE LIST

EXHIBIT "L"

PERFORMANCE BOND

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THAT WE, _____, as principal, hereinafter called "Contractor" and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation ("City") in the sum of _____ (\$ _____) for the payment of which sum, well and truly to be made to the City of Houston, and its successors, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, on or about this day, Contractor has entered into a contract in writing with the City of Houston, Texas, for _____ ("Agreement") which is made a part of this instrument as fully and completely as if set out in full herein.

NOW, THEREFORE, if Contractor shall faithfully and strictly perform the Agreement in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and shall comply strictly with each and every provision of the Agreement and with this bond, and shall promptly pay to the City of Houston in full the sums of money that become due and payable to it under the terms of the Agreement, including attorney fees, and shall indemnify, and hold harmless the City, its officers, agents, and employees as required by the Agreement, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect, and the sum of \$ _____ shall be payable to the City of Houston on demand.

It is further understood and agreed that the Surety has full faith and confidence in the integrity and ability of Contractor to perform under the Agreement, and the Surety does hereby relieve the City of Houston and its representatives from the exercise of any diligence whatever in securing compliance on the part of Contractor with the terms of the Agreement, and the Surety waives any notice to it of any default, or delay by Contractor in the performance of this Agreement and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of Contractor, its agents and representatives in all matters pertaining to the Agreement.

It is further expressly agreed by the Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any changes, extensions, or modifications in the Agreement, and in the work to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any changes in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking, or release the Surety therefrom. The Surety hereby expressly waives notice of all changes, extensions and modifications to the Agreement.

IT IS EXPRESSLY AGREED THAT SURETY AND CONTRACTOR WILL FULLY AND COMPLETELY INDEMNIFY AND HOLD HARMLESS THE CITY OF HOUSTON FROM AND

AGAINST ANY LIABILITY, LOSS, COST, EXPENSE AND DAMAGE ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF CONTRACTOR, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES, TO FAITHFULLY AND FULLY PERFORM UNDER THE AGREEMENT, AS THE SAME MAY BE CHANGED, EXTENDED, OR MODIFIED. THE SURETY'S OBLIGATION SHALL NOT EXCEED THE AMOUNT OF THIS BOND.

If the City brings any suit or other proceeding at law on this bond, or the Agreement or both, Contractor and Surety agree to pay to the City the additional sum of 10% of whatever amount may be recovered by the City, which sum of 10% is agreed by all parties to be indemnity to the City for the expense of or time consumed by its City Attorney, his or her assistants, and other costs and damage to the City. The amount of 10% is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas, and shall be non-cancelable.

This bond is renewable annually at the option of the Surety upon each anniversary of the effective date of the Agreement Term, as stated in the Agreement (the "renewal date"); provided that this bond shall be automatically renewed unless the Surety gives Contractor and the City written notice 30 days prior to the renewal date that Surety elects not to renew this bond. Notice shall be given to the City and to Contractor at the addresses specified in the Agreement.

THIS PERFORMANCE BOND shall be binding on the Contractor and Surety executing the same, jointly and severally, their legal representatives, successors and assigns.

EXECUTED in triplicate originals this ____ day of _____, 20____.

ATTEST/WITNESS (Corporate Seal):

(Principal)

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST/WITNESS: (Corporate Seal)

Surety (Full Legal Name of Surety)

By: _____
Name:
Title:

By: _____
Name:
Title:

The foregoing bond is approved as to form this ____ day of _____, 20____.

REVIEWED:

Assistant City Attorney

EXHIBIT "M"

IRREVOCABLE LETTER OF CREDIT

DATE OF ISSUANCE _____

City of Houston
Houston Airport System
P.O. Box 60106
Houston, Texas 77205

Re: Letter of Credit No. _____

We hereby establish our Irrevocable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ (\$ _____), available to you at sight upon demand at our counters at Houston, Texas, on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of the City of Houston:

1. "Account Party has not provided a substitute Letter of Credit or alternate security in accordance with the terms and provisions (include any applicable notice or grace period or both) of the Agreement dated _____, 20____, between the City of Houston and Account Party, as the same may be amended (the "Agreement") and this Letter of Credit has 20 days or less until expiration."

or

2. "Account Party has failed to pay the City in accordance with the provisions of the Agreement, applicable City of Houston Ordinances, or Houston Airport System rules and regulations. Therefore, we are drawing under [issuing bank]'s letter of credit no. [reference number] in the amount of \$ _____."

The amount which may be drawn by the City of Houston under this Letter of Credit will be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

This Letter of Credit expires _____ days from the date of issuance, but shall automatically extend without amendment for additional _____-day periods from such expiration date and from subsequent expiration dates, if the City of Houston, as beneficiary, and the Account Party have not received due notice of our intention not to extend at least 90 days before any such expiration date.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit must be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practices Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (UCP), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

If an act of God, riot, civil commotion, insurrection, war, or any other cause beyond our control interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to close for business on the last day of presentation, the expiration date of this Letter of Credit will be automatically extended without amendment to a date 30 calendar days after the place for presentation reopens for business.

This Letter of Credit may not be amended, changed or modified without the express written consent of the City of Houston as the Beneficiary and the Issuing Bank.

Sincerely,

WITNESS:

Name:
Title:

Name:
Title:

EXHIBIT "N"

TITLE VI: NON-DISCRIMINATION

During the performance of this Agreement, Parking Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations - The Parking Operator shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation ("DOT") 49 CFR Part 21, as may be amended from time to time ("Regulations"), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Parking Operator, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Parking Operator shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Parking Operator for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Parking Operator of the Parking Operator's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Parking Operator shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Parking Operator is in the exclusive possession of another who fails or refuses to furnish this information, the Parking Operator shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Parking Operator's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 - 5.1. withholding of payments to the Parking Operator under the Agreement until the Parking Operator complies, and/or
 - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Parking Operator shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Parking Operator shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Parking Operator becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Parking Operator may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Parking Operator may request the United States of America to enter into such litigation to protect the interests of the United States.

EXHIBIT "O"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with City of Houston; and that by making this Contract, I affirm that Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with City and may result in non-award or termination of the contract by City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "Q"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____ have personal knowledge and full
(Contractor - Name of Company)
authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20 _____.

_____ (Initials) A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ (Initials) Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ (Initials) Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

_____ (Initials) Appropriate safety impact positions have been designated for employee positions performing on City of Houston contract. The number of employees in safety impact positions during this reporting period is _____

_____ (Initials) From _____ (Start date) to _____ (End date) the following test has occurred

	<i>RANDOM</i>	<i>REASONABLE SUSPICION</i>	<i>POST ACCIDENT</i>	<i>TOTAL</i>
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ (Initials) Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ (Initials) I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)