

PARKING PERMIT AGREEMENT

(City Owned Parking Garage #8, 1077 Van Ness Ave)

This Parking Agreement (the "Agreement") is dated as of the ____ day of _____, 2015, by and between City of Fresno, a California municipal corporation, ("City"), and J. Colin Computing Systems, Inc., a California Corporation, DBA J – I.T. Outsource ("Licensee"). Licensee together with City shall be referred to herein as the "Parties."

RECITALS

WHEREAS, the City owns in fee all rights, title and interest in and has rate making authority over Public Underground Parking Garage No. 8 located at 1077 Van Ness ("Garage No. 8"); and

WHEREAS, Licensee is relocating to Downtown Fresno and desires to obtain thirty (30) parking spaces ("Parking Spaces," as more fully defined in Section 4 of this Agreement) in Garage No. 8 for use by Licensee's employees and service vehicles ("Staff"); and

WHEREAS, City finds and determines that providing Licensee with fixed rate parking upon the terms and conditions herein is in furtherance of the public interest and contributes to revitalization/reinvigoration of Downtown Fresno and environs through increased workforce, customer and visitor activity and interest, reduction of physical blight/economic deterioration, an increase in private sector investment and related tax based expansion, all in furtherance of downtown revitalization.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and for good and valuable consideration, the City and Licensee do hereby agree as follows:

1. Effective Date of Agreement. For purposes of this Agreement, "Effective Date," shall mean the date first set forth above which shall be the date City signs this Agreement, which shall be after Licensee signs this Agreement.
2. Commencement Date. The initial term of this Agreement shall be one (1) year, commencing on June 1, 2016 ("Commencement Date") and ending on May 31, 2017, ("Initial Term") subject to earlier termination in accordance with this Agreement. The Initial Term may be extended by mutual agreement of the Parties, in writing, for an additional one-year period. The terms and conditions of the Agreement will be subject to renegotiation if the Initial Term is extended. The party seeking to extend this Agreement shall provide written notice to the other party a minimum of sixty (60) days prior to the expiration of the Agreement.
3. Purpose of Agreement. The purpose of this Agreement is to allow Staff reasonably necessary ingress and egress and the non-exclusive licensed use of the Parking Spaces solely for the specific public purpose described in Section 4 of this Agreement, and for no other

purpose whatsoever, subject to the terms, conditions, and restrictions set forth in this Agreement.

4. Definitions and Terms of Use.

Parking Spaces. For purposes of this Agreement, Licensee is granted non-exclusive use of a maximum of thirty (30) non-reserved, “as-is” parking spaces, for monthly parking by the Licensee on any floor of the garage as designated by the City.

Hours of Use. Parking will be available to Staff twenty-four (24) hours a day and seven (7) days a week, including Holidays.

Parking Pass. Entry and parking in Garage No. 8 shall be pursuant to monthly parking passes or access cards issued by City or City’s designated Parking Facilities operator to the Staff through the Licensee solely for Staff’s use.

Compliance. Licensee shall handle parking passes, and cause Staff to use the Parking Spaces for parking of vehicles in accordance with all applicable laws, ordinances, rules and regulations applicable to Garage No. 8, enacted or promulgated by any public or governmental authority or agency having jurisdiction over Garage No. 8, as may be amended from time to time (“Rules and Regulations”). Such Rules and Regulations are incorporated as if set forth in full herein. Licensee acknowledges receipt of a copy of the Rules and Regulations. Any change in the above Rules or Regulations shall be provided to Licensee in writing.

Closure. City reserves the right to temporarily close Garage No. 8, or certain areas therein, in order to perform necessary repairs, maintenance, or improvements. City will post a notice in Garage No. 8 of such closures. City may conduct emergency closures without prior notification.

5. Improvements. Licensee shall not make any alterations, additions, or improvements in or to Garage No. 8.

6. Termination.

(a) Either party may terminate this Agreement where the other party substantially fails to observe, fulfill, or perform any obligation, term, or condition of this Agreement. This failure shall constitute a material breach. The breaching party shall receive written notice of breach, and shall be given sixty (60) calendar days to cure the breach from the date notice is received. If breaching party does not correct the failure within sixty (60) calendar days, then the non-breaching party may terminate the Agreement upon written notice.

(b) Notwithstanding the foregoing, the City may terminate this Agreement, at any time after the Commencement Date, in the public interest, by giving prior written notice to the Licensee.

7. Invoicing and Payment.

(a) Licensee agrees to pay City for the use of the Parking Spaces as follows: Licensee agrees to pay City a monthly rate of forty dollars (\$40.00) per space ("Monthly Rate Per Space") for up to thirty (30) parking stalls, beginning on the last day of the first full month following the Commencement Date and then on the last day of each month thereafter. Licensee will be issued all applicable parking passes and or access cards through the City Contracted parking Operator.

(b) All payments shall be made to the following City Contracted Parking Operator or at such other location as City may designate by written notice.

SP Plus
2115 Kern Street, Suite101
Fresno, CA 93721

(c) Licensee shall make all payments in full. Any payment of less than the amount stated in the Agreement shall be deemed a partial payment. Under no circumstances shall City's acceptance of a partial payment constitute accord and satisfaction, nor will City's acceptance of a partial payment forfeit City's right to collect the balance due on the account. City may accept any partial payment check with any conditional or restrictive endorsement or memorandum without prejudice to City's right to recover the balance remaining due or to pursue any other remedy available under this Agreement.

(d) Licensee hereby acknowledges that any late payment to City of sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges, which may be imposed upon City by terms of any mortgage or trust deed or financing arrangement covering Garage No. 8. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of twenty-five dollars (\$25.00), and thereafter, City may require Licensee to pay all future payments of the Monthly Rate Per Space or other sums due by money order or cashier's check.

8. Assignment.

(a) Licensee shall not assign, subcontract, or otherwise transfer its rights or obligations under this Agreement without the prior written consent of City. Any assignment, subletting, occupation, or use without the consent of City shall be void and, at the option of City, shall terminate this Agreement. No interest of Licensee in this Agreement shall be assignable by involuntary assignment through operation of law. Each of the following acts shall be considered an involuntary assignment: (i) if Licensee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Licensee is the bankrupt; or (ii) if a writ of attachment or execution is levied on this Agreement; or (iii) if in any proceeding or action to which Licensee is a party, a receiver is appointed with authority to take possession of the Parking Spaces. An involuntary assignment shall constitute a default by Licensee and City shall have the right to elect to terminate this Agreement, in which case this Agreement shall not be treated as an asset of Licensee.

(b) City may assign this Agreement, and/or sell Garage No. 8, in whole or in part, to any other party, without providing Licensee with prior written notice. Licensee agrees to attorn to any assignee/purchaser.

9. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by the Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

10. Property Tax. Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by City is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Licensee under this Agreement, Licensee, by its signature hereunto affixed, agrees to pay any property taxes levied upon such interest, or thereby warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Agreement, Licensee either took a copy of this Agreement to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined that Licensee will not be taxed on its possessory interest hereunder.

11. Governing Laws and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

12. Condemnation. If the Parking Spaces or any portion thereof are taken under the power of eminent domain, or sold to a public authority under the threat of the exercise of said power (all of which is herein referred to as "Condemnation"), this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. All awards for the taking any payment made under the threat of the exercise of condemnation shall be payable to the City, and Licensee shall not claim any portion of such award by virtue of any interests created by this Agreement or otherwise.

13. Severability. If any term, provision, covenant, or restriction in this Agreement is determined to be invalid, void, unenforceable, or otherwise inconsistent with applicable law, the remainder of the terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of City and the Licensee that they would have executed the remaining terms, provisions, covenants, and restrictions set forth in this Agreement without including any of such terms, provisions, covenants, or restrictions that may be hereafter declared invalid, void, or unenforceable.

14. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

15. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

16. Interpretation. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall be resolved by construing the terms of this Agreement in accordance with their generally accepted meaning.

17. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Licensee.

18. Binding. Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

19. Compliance with Law. Licensee shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

21. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific Parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

22. Bond and Indenture Requirements and Subordination. Notwithstanding any other terms or provisions of this Agreement, the Parties acknowledge and agree that the Parking Garage is encumbered by certain 2010 Private Placement Bonds and Indenture (City Hall and various capital projects) and covenants/conditions therein. This Agreement shall be deemed modified to any extent required, at any time in the opinion of City's bond counsel for compliance with the Bonds and Indenture. Without limiting the foregoing, the Parties acknowledge and agree that, the terms, covenants, provisions and conditions herein are and shall be subject and subordinate to the Bond and Indenture and any and all City bond and other financings and refinancings of the Parking Garage. Licensee agrees to provide a written subordination upon City's reasonable request.

23. Notices. Any notices required or permitted to be given under the terms of this Agreement must be in writing and may be: (a) personally delivered; (b) mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) sent by reputable

overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the Licensee:

J – I.T.Outsource
Attention:
J. Colin Petersen, President/CEO
497 N. Clovis Avenue, Suite 204
Clovis, California 93611
Phone: (559) 485-4335

If to the City:

City of Fresno
Development and Resource Management Department
Attention: Parking Manager
2600 Fresno Street Room 4019
Fresno, CA 93721-3623
Phone: 559-621-7275
Fax: 559-457-1265

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IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

J. COLIN COMPUTING SYSTEMS, INC.
a California Corporation, DBA J – I.T.
Outsource

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____
(If corporation or LLC, Board Chair,
Pres.
or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

By: _____
Deputy

Name: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: _____
(If corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Deputy City Attorney

Date

Addresses:
CITY:
City of Fresno
Attention:
Del Estabrooke
2600 Fresno Street, Room 4019
Fresno, CA 93721
Phone: (559) 621-7275

BUSINESS:
J – I.T. Outsource
Attention:
J. Colin Petersen, President/CEO
Phone: (559) 485-4335 x.15