

PARKING PERMIT AGREEMENT

[Facility]
[Address]

This Parking Agreement (the Agreement) is dated the [day] day of [Month], 201[Year], by and between City of Fresno, a California municipal corporation, (City), and [Licensee], a [Entity Type] (Licensee). Licensee and City shall be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. The City owns in fee all rights, title, and interest in and to the parking spaces in the parking facility located at [] (Parking Facility).
- B. Licensee desires to obtain [number of parking spaces] parking spaces (Parking Spaces, as more fully defined in Section 5 of this Agreement) in the Parking Facility specifically for use by Licensee’s permittees (Permittees).
- C. The Parties now desire to enter into this Agreement to memorialize their respective rights and obligations related to Licensee’s use of the Parking Facility.

AGREEMENT

NOW THEREFORE, for and 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. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. Purpose of Agreement. The purpose of this Agreement is to allow the Permittees licensed use of the Parking Spaces solely for the specific public purpose described in Section 5 of this Agreement, and for no other purpose whatsoever, subject to the terms, conditions, and restrictions set forth in this Agreement.
- 3. Effective Date of Agreement. This Agreement shall be effective as of the date first set forth above which shall be the date City signs this Agreement, which shall be after Licensee signs this Agreement.
- 4. Term. The initial term of this Agreement shall be five years, commencing on [], (Commencement Date), and ending on [] (Initial Term), subject to earlier termination in accordance with this Agreement.
 - a. Extension of Term. The Initial Term may be extended by mutual agreement of the Parties, in writing, for no more than two additional five-year periods, on the same terms and conditions as set forth in this Agreement. The Party seeking to extend this Agreement under the terms and conditions contained herein shall provide written notice to the other Party a minimum of ninety days prior to expiration of the then current term.
- 5. Definitions and Terms of Use.
 - a. Parking Spaces. For purposes of this Agreement, Licensee is granted [non-exclusive/exclusive] use of a maximum of [non-reserved/reserved] “as-is” parking spaces for monthly parking by Permittees [on which floor/anywhere] in the Parking Facility as designated by the City.

- b. Hours of Use. Parking will be available to the Permittees [specify parking hours: for example "during the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday"] excluding state or national holidays officially observed by Licensee.
 - i. Noncompliance Penalty. Use of the Parking Facility for unauthorized purposes (for instance, outside of authorized hours) may result in a parking citation issued by the City of Fresno.
 - c. Parking Pass. Entry and parking in the Parking Facility shall be pursuant to monthly parking passes or access cards issued by City or City's designated Parking Facilities Operator to Licensee or other documentation acceptable to the City. Parking passes may be issued directly to Permittees at Licensee's request, however, in any event Licensee shall remain responsible for all compliance set forth in this Agreement, including Section 5.d. below.
 - d. Compliance. Parking passes shall be for use by Permittee only and may not be transferred. Licensee shall handle parking passes and cause Permittees to use the Parking Spaces for parking of vehicles in accordance with all applicable laws, ordinances, rules, and regulations applicable to the Parking Facility, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Parking Facility, as may be amended from time to time.
 - e. Closure. City reserves the right to temporarily close the Parking Facility, or certain areas therein, to perform necessary repairs, maintenance or improvements. City shall post a notice in the Parking Facility of any such closure. City may conduct emergency closures without prior notification. In the event of a closure impacting Licensee, City shall provide substitute parking spaces at another City-owned parking facility reasonably proximate to the Parking Facility.
 - f. Relocation. The City may relocate Licensee's Parking Spaces to a different location within the Parking Facility or to a new or different parking facility altogether by providing thirty days' written notice of such change to Licensee. In the event of relocation, City shall provide Licensee with substitute parking spaces at another City-owned parking facility reasonably proximate to the Parking Facility.
 - g. Security. City shall not be responsible for the security of Licensee's vehicles. Licensee shall be solely responsible for any and all damages occasioned from Licensee's use of the Parking Facility under this Agreement.
6. Improvements. Licensee shall not make any alterations, additions or improvements in or to the Parking Facility.
7. Termination.
- a. Material Breach. Any material breach of this Agreement, which shall include substantial failure by a Party to observe, fulfill, or perform any obligation, term or condition of this Agreement, shall be cause for termination as set forth herein. Upon notice by a non-breaching Party to a Party which has materially breached this Agreement, the breaching Party shall have ninety calendar days to cure the breach from the date of the notice. If the breaching Party does not cure within

the ninety calendar days provided, the non-breaching Party may terminate the Agreement, effective immediately, upon written notice to the breaching Party.

- b. City's Right to Terminate. Notwithstanding the foregoing, the City may terminate this Agreement at any time after the Commencement Date and for any reason, by giving thirty days' prior written notice to the Licensee of such termination. This Agreement is also subject to termination by the City as may be otherwise set forth in this Agreement.
- c. Licensee's Right to Terminate. Notwithstanding the foregoing, Licensee may terminate this Agreement at any time after the Commencement Date and for any reason, by giving ninety day's prior written notice to the City of such termination. In such event, Licensee shall pay to City all amounts due to City through the specified date of termination. This Agreement is also subject to termination by the Licensee as may be otherwise set forth in this Agreement.

8. Invoicing and Payment.

- a. Allocation of Parking Spaces. Licensee shall have a right to be allocated up to the number of stall noted in 5.a. above. Parking Spaces shall be allocated upon Licensee's providing the City with thirty days' written notice of its need for a parking space. The number of parking spaces allocated may be less than the maximum allowable spaces. City may, at its option, rent to the general public any unallotted parking spaces.
- b. Minimum Parking Spaces. The Monthly Rate Per Space (defined below) is a discounted bulk rate based upon the rental of at least fifty parking spaces by Licensee. Accordingly, in no event shall Licensee pay for less than fifty Parking Spaces per month. Should less than fifty Parking Spaces be allocated to Licensee in any given month (due to Licensee's decision not to utilize at least fifty Parking Spaces), Licensee shall remain liable for payment for fifty Parking Spaces.
- c. Monthly Rate Per Space. Licensee shall pay City for the use of the Parking Spaces in accordance with the then-current monthly parking rate set forth in the Master Fee Schedule for Parking Permits for Bulk Annual Purchase of fifty stalls or more (Monthly Rate Per Space). The Monthly Rate Per Space as of the Commencement Date, as provided in the City's Master Fee Schedule is \$[] per space. The Monthly Rate Per Space shall be subject to change based upon changes to the Master Fee Schedule. The Parties acknowledge that the Monthly Rate Per Space, as provided in the Master Fee Schedule, is subject to the following condition:

Effective July 1, 2018, staff shall administratively update the parking fees adjusted by this resolution annually to reflect the twelve month percentage change in the U.S Bureau of Labor Statistics Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Area), for the most current month that data is available, or 3% whichever is less.

- d. Payment. Licensee shall make all payments in full. Licensee shall pay a pro-rated Monthly Rate Per Space beginning on the Commencement Date for the remainder of the month of the Commencement Date and then on the first day of each month thereafter, such that Licensee pays for monthly use in advance. Licensee will be issued all applicable parking passes and or access cards through the City or City's Contracted Parking Operator. All payments shall be made to the City of Fresno, Parking Services, 2600 Fresno Street, Room 4019, Fresno, CA 93721.
 - i. Excess Use. Licensee shall be responsible for use of stalls in excess of the allotted Parking Spaces; such use shall be subject to payment in arrears at the then-current daily parking rate set forth in the Master Fee Schedule for Short Term Daily Rates – Maximum Per Day (\$9.00 per space as of the Commencement Date). Following invoicing, payment shall be due on the first day of the next month.
- e. Partial Payment. Receipt of a payment of less than the amount due shall be deemed to be nothing more than a partial payment and shall be considered a material breach of this Agreement. 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.
- f. Late Payment. Late payments are subject to a Late Payment Penalty as provide in the City's Master Fee Schedule. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of \$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 only.

9. Assignment.

- a. Assignment by Licensee. Licensee shall not assign, subcontract, or otherwise transfer its rights or obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld. Any assignment, subletting, occupation, or use without the consent of City shall be void and, at the option of City, shall terminate this Agreement immediately without benefit to Licensee or its assignee of the ninety days' written notice provided for in Section 7.
 - i. Involuntary Assignment. 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 immediately without benefit to Licensee or its assignee of the ninety days' written notice provided for in Section 7, in which case this Agreement shall not be treated as an asset of Licensee.

- b. Assignment by City. City may assign this Agreement, and/or sell the Parking Facility, in whole or in part, to any other Party, without providing Licensee with prior written notice. Licensee agrees to attorn to any assignee/purchaser.
10. 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 all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
11. 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.
12. Notices. Any notices required or permitted to be given under the terms of this Agreement must be in writing and 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:

To Licensee:

[]
[]
[]
[]

To City:

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

13. 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.

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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 Party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
21. 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.
22. 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.

23. 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.
24. Bond and Indenture Requirements and Subordination. Notwithstanding any other terms or provisions of this Agreement, the Parties acknowledge and agree that the Parking Facility may be encumbered by certain Bonds and Indenture and covenants and 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 refinancing of the Parking Facility. Licensee agrees to provide a written subordination upon City's reasonable request.

The Parking Facility is encumbered by the following: [].

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:
CITY OF FRESNO,
a California municipal corporation

LICENSEE:
[]
[]

By: _____
Wilma Quan-Schechter
City Manager

By: _____
[]

Date: _____

Its: []

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Tracy N. Parvanian Date
Senior Deputy City Attorney

ATTEST:
Yvonne Spence, MMC
City Clerk

By: _____
Deputy

REVIEWED & RECOMMENDED FOR APPROVAL:

By: _____
Thomas Gaffery
Parking Manager
Development and Resource Management Department