City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	1 T
COUNCIL MEETING	6/3/2010
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

DATE: June 3, 2010

FROM: PATRICK WIEMILLER, Director
Public Works Department

BY: DEL ESTABROOKE, Parking Manager
Public Works/Parking Services Division

SUBJECT: ADOPT A FINDING OF CATEGORICAL EXEMPTION PURSUANT TO ARTICLE 19, SECTION 15301 CLASS 1 (EXISTING FACILITY) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES FOR THE PARKING PERMIT AGREEMENT WITH THE JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS AND APPROVE SAID PARKING AGREEMENT.

RECOMMENDATION
Staff recommends:

1. Adopting CEQA Categorical Exemption pursuant to Article 19, Section 15301 /Class 1 (Existing Facility) for the Parking Permit Agreement with the Judicial Council of California Adminstrative Office of the Courts.

2. Approving the Parking Permit Agreement with the Judicial Council of California Administrative Office of the Courts to provide juror parking in city owned and operated parking facilities. The Agreement provides a maximum of two-hundred and forty (240) parking stalls for juror use. The price of each parking stall will be $33.00 per month.

EXECUTIVE SUMMARY
The Parking Services Division provides parking spaces in the downtown area in metered stalls, garages and parking lots. Parking Services has previously contracted with the County of Fresno to provide parking for jurors. The Judicial Council of the California Administrative Office of the Courts has been assuming management practices from the County court system to include providing juror parking. The Federal Courthouse formerly known as the Sisk Building is being renovated. Once this building is open the State will assume overall management of jury parking for the three (3) courts that are located downtown. The juror parking will be located in the City of Fresno parking lot located at H St. and Kern St. adjacent to Chukchansi Park.

BACKGROUND
For the last several years Parking Services has contracted with the County of Fresno to provide juror parking stalls in the parking lot located adjacent to Chukchansi Park. Each prospective juror is mailed along with their summons a map of the central parking location for jurors. Once they arrive at the parking lot they are then shuttled to and from the courts. The courts include the courthouse located at Tulare and M Streets while the second court is located Tuolumne and N Streets. In January 2011, renovations to the former Sisk Building located on O Street and Fresno Street will be completed. The building will re-open as part of the new State operated system. The Agreement streamlines juror parking for all three buildings

making it easy for those citizens selected for jury. Use of a single lot also makes parking management efforts easier. This Agreement provides parking Monday through Friday, from 6AM until 6:30PM, in the designated lot. The price for parking in the lot will be paid by the State. The Agreement will commence once all parties have signed for approval. The initial term will run through June 30, 2012 and there will be two (2) one year extensions available. For the initial Agreement term the price per stall will be $33.00 per month, subject to an annual CPI adjustment.

CEQA FINDING

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemptions set forth in California Environmental Quality Act (CEQA) Guidelines,(Existing Facilities), as this Agreement involves no or minor alterations of existing parking facilities with no or negligible expansion of use, and would not result in any significant negative effects relating to traffic, noise, air quality or water quality. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

FISCAL IMPACT

The current agreement provides approximately $86,000 in yearly parking revenue. The new Agreement will provide approximately $95,000 in yearly revenue, an increase of approximately $9,000.

Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, San Francisco, CA 94102-3688

PARKING PERMIT AGREEMENT

This Agreement ("Agreement") is entered into as of the Commencement Date (defined below), between the CITY OF FRESNO, a municipal corporation ("CITY"), and the Judicial Council of California, Administrative Office of the Courts ("AOC"), for the benefit of the Superior Court of California, Fresno County ("COURT"). In this Agreement, the AOC and CITY are sometimes individually referred to as a "Party" and together referred to as the "Parties".

1. **Effective Date of Agreement**. For purposes of this Agreement, "Effective Date", shall mean the date that CITY signs this Agreement following City Council approval thereof, which shall be after AOC signs it.

2. **Commencement Date**. This Agreement shall commence as of [June 1, 2010] **("Commencement Date")** and end on June 30, 2012, ("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 no more than two (2) additional one year periods, on the same terms and conditions as set forth in this Agreement except as to monthly rates. 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 sixty (60) days prior to expiration of the then current term of this Agreement. Before any extension is approved by the Parties, monthly rates shall be subject to renegotiation, to reflect increases in public facility parking fees.

3. **Purpose of Agreement**. The purpose of this Agreement is to allow the AOC to use the Premises 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. **Premises: Definition and Terms of Use**.

4.1. Premises. For purposes of this Agreement, "Premises" shall mean the Stadium Lot, located at the southeast corner of "H" and Kern Streets in downtown Fresno, which is owned by CITY – and which is shown on Exhibit "A", attached hereto and incorporated herein by this reference.

4.2. Hours of Use. During the hours of 6:00 a.m. to 6:30 p.m., Monday through Friday, except Holidays, CITY will permit AOC to utilize a total of 240 reserved parking spaces for jury parking for jurors from the COURT, in the north end of the Stadium Lot. AOC may utilize additional spaces ("Additional Spaces") in the Stadium Lot for juror parking beginning on the first of any month during this Agreement, provided AOC (i) gives CITY at

least fourteen (14) calendar days prior written notice of the number of spaces required for the juror parking and the month such spaces will first be needed, and (ii) pays the monthly rate per Additional Space as provided in Section 7 of this Agreement. AOC may cancel its use of any such Additional Spaces (those exceeding the 240 reserved parking spaces) beginning on the first of any month during the term of this Agreement, provided AOC gives CITY at least fourteen (14) calendar days prior written notice of the number of spaces and the month such spaces will no longer be required by AOC.

4.3. Intentionally deleted.

4.4. Parking Pass. Entry and parking by jurors in the Stadium Lot shall be subject to presenting CITY's attendant, thereat, the Superior Court summons to appear for jury duty on that day at the Fresno County Courthouse located in downtown Fresno, or other document that is acceptable to the CITY'S Public Works Parking Manager. Upon such presentation, CITY's attendant will issue a parking pass to such juror for that day.

4.5. Compliance. AOC and its officials, employees, invitees and agents shall use the parking spaces for parking of vehicles in accordance with all applicable laws, ordinances, rules and regulations applicable to the Stadium Lot, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Stadium Lot, as amended from time to time, incorporated herein, provided to AOC. Any change in the above rules or regulations shall be provided to AOC in writing.

4.6. "Holidays" defined. For purposes of this Agreement, "Holidays" shall mean New Years Day, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday immediately following, and Christmas Day.

5. **Permanent or Temporary Relocation of Parking Spaces**. At any time, upon at least thirty (30) calendar days notice to AOC, CITY, in its sole discretion in the public interest, may permanently or temporarily substitute parking spaces for use by AOC at another location within 1500 feet of the Stadium Lot, provided that an attendant and signs are posted directing the jurors and shuttle transportation is provided to and from the permanent or temporary parking lot for a period of 30 days, or until the parking is returned to the Stadium Lot, whichever is shorter. In this event, AOC agrees that the use of such substituted spaces shall be upon the same terms and conditions of this Agreement, beginning on the date specified in CITY's notice to AOC, unless AOC provides CITY at least fifteen (15) calendar days notice of termination of the Agreement.

6. **Termination**. 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 date notice is received. If breaching party does not correct the failure within thirty (60) calendar days, then the non-breaching party may terminate the Agreement upon written notice. Either Party may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. If AOC is unable to pay for the use of the parking spaces because

of the State of California's failure to timely approve and adopt a State budget, no breach or event of default will be deemed to have occurred provided AOC promptly pays any previously due and unpaid rent upon approval and adoption of the State budget.

Notwithstanding the foregoing, in the sole event of non-appropriation relating to this Agreement, the Parties and each of them shall have the right to terminate this Agreement, at any time, in the manner and subject to the terms specified in this paragraph. The terminating Party shall give written notice of such termination not less than ninety (90) calendar days before the desired termination date. For purposes of this paragraph, "non-appropriation" shall mean the failure of the terminating party or its governing body to appropriate money for any fiscal year sufficient for the continued performance of this Agreement by the terminating party.

Under circumstances other than those set forth above, this Agreement may be terminated, effective June 30, 2011 at 11:59:59 p.m., by either party without cause, upon the giving of at least thirty (30) calendar days advance written notice of an intention to terminate.

CITY may, but is not obligated to, operate (or continue to operate) a downtown shuttle service that services persons parking in the Stadium Lot. In the event that CITY ceases operation of its then operating downtown shuttle service to persons parking in the Stadium Lot, AOC may terminate the Agreement upon the giving of at least thirty (30) calendar days advance written notice to CITY, subject to financial obligations then due and owing.

7. **Invoicing and Payment**. AOC agrees to pay CITY for the use of the parking spaces as follows: During the Initial Term, AOC agrees to pay CITY a monthly rate per space of Thirty-Three Dollars ($33.00) per space ("Monthly Rate Per Space"), payable in arrears, beginning on the last day of the first full month following the Commencement Date (prorated for portions of a month) and then on the last day of each month thereafter. Invoices are to be sent to the address for the AOC / Portfolio Administration Analyst, set forth in Section 12, below. Commencing on the first anniversary of the Commencement Date and on each successive anniversary thereafter, ("Adjustment Date") the Monthly Rate Per Space shall be adjusted by <u>the lesser of</u> (i) the amount calculated by multiplying the current Monthly Rate Per Space by the percentage difference which the CPI (defined below) increased or decreased over the preceding contract year (or portion thereof if partial year); or (ii) the amount calculated by multiplying the current Monthly Rate Per Space by three percent (3%). CITY will calculate the rental adjustment and provide AOC written notice of the adjusted Monthly Rate Per Space at least thirty (30) days prior to when the adjusted Monthly Rate Per Space is due, and AOC shall not be obligated to pay the adjusted Monthly Rate Per Space until AOC receives written notice from CITY of the adjusted Monthly Rate Per Space.

The CPI utilized hereunder shall be the Consumer Price Index (Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Metropolitan Area (1982-1984 = 100 Urban Consumers, U.S. Cities Average) as published by the United States Department of Labor, Bureau of Labor Statistics, or the successor of such index ("CPI"). If the CPI or the successor index is changed so that the base year differs from that in effect on the Commencement Date, the CPI or successor index shall be converted in accordance with the conversion factor published by the United Stated Department of Labor, Bureau of Labor Statistics. In the event that compilation and/or publication of the CPI shall be transferred to any other governmental department or agency or shall be discontinued, then the index most similar to the CPI shall be used for purposes of adjusting the Rent.

Beginning the last day of the month on which the Additional Spaces are to be utilized and monthly in arrears thereafter during the remainder of the life of this Agreement, AOC agrees to pay CITY the same monthly rate per space including adjustments (in accordance with the preceding paragraph) for each Additional Space added by AOC pursuant to Section 4 of this Agreement. The monthly total payment in the preceding paragraph then being paid shall be increased and paid accordingly.

All payments shall be made to City of Fresno, Public Works Accounting Division, 2600 Fresno Street, 4th Floor, Fresno, CA 93721, or as CITY may otherwise designate from time to time in writing.

8. **Assignment**. AOC shall not assign, subcontract or otherwise transfer its rights or obligations under this Agreement without the prior written consent of CITY.

9. **Waiver**. The waiver by either party of a breach by the other 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.

10. **Indemnification and Insurance**. AOC shall indemnify, hold harmless, and defend CITY and each of its officers, officials, agents, and volunteers from any and all loss, liability, fines, penalties forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, AOC or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of AOC or any of its officers, officials, employees, agents, invitees or volunteers (including security personnel) in the performance of this Agreement or use of the Stadium Lot.

CITY shall indemnify, hold harmless, and defend AOC, the Superior Court of California, County of Fresno ("COURT") and each of their officers, officials, agents, and volunteers from any and all loss, liability, fines, penalties forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, AOC, COURT, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of AOC or any of its officers, officials, employees, agents, invitees or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law and equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as modified hereafter.

This section shall survive termination or expiration of this Agreement.

It is understood and agreed that AOC and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective

16. **Certification of Authority to Execute this Agreement**. CITY and the AOC each certifies that the individual(s) signing this Agreement on its behalf has authority to execute this Agreement on its behalf and may legally bind it to the terms and conditions of this Agreement and Exhibit "A" hereto.

17. **Counterparts**. This Agreement may be executed in multiple counterparts (each of which will be deemed an original for all purposes).

18. **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 AOC 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.

19. **Signage, Maintenance and Security.** CITY will provide signage at Stadium Lot directing jurors to appropriate parking spaces. CITY is responsible for any and all maintenance, repairs and replacement to the Stadium Lot including but not limited to the following: general maintenance, cleaning, sweeping, lighting, striping, resurfacing, etc. City will provide a reasonable level of security for the Stadium Lot. The level of security needed for security to be "reasonable" will be determined by the City in its reasonable discretion, considering the nature of events held at the Stadium and the number of event participants, upon consultation with AOC.

20. **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.

21. **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.

22. **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 AOC.

23. **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.

24. **Compliance with Law**. AOC shall at all times comply with all applicable laws, 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.

25. **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.

26. **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 other than COURT.

27. **Subordination**. Notwithstanding any other terms or provisions of this Agreement, the parties acknowledge and agree that, the terms, covenants, provisions and conditions herein are and shall be subject and subordinate to any and all City bond and other financings and refinancings of the Premises. AOC agrees to provide a written subordination upon City's reasonable request, provided that AOC receives non-disturbance protection in connection with such subordination agreement.

CITY OF FRESNO,
a municipal corporation

By: _____
Andrew T. Souza
City Manager

ATTEST:

Rebecca E. Klisch, City Clerk

By: _____
Deputy

REVIEWED & RECOMMENDED FOR APPROVAL:

By: _____
Del Estabrooke
Public Works Parking Manager

APPROVED AS TO FORM:

James C. Sanchez, City Attorney

By: _____ 5-24-10
Deputy

ADMINISTRATIVE OFFICE OF THE COURTS

By: _____
Grant Walker
Senior Manager, Business Services

Date: 5/13/10

APPROVED AS TO FORM:
Administrative Office of the Courts
Office of the General Counsel

By: _____
Name: Leslie G. Miessner
Attorney

Date: 5/11/10

Exhibit A
Map of Premises

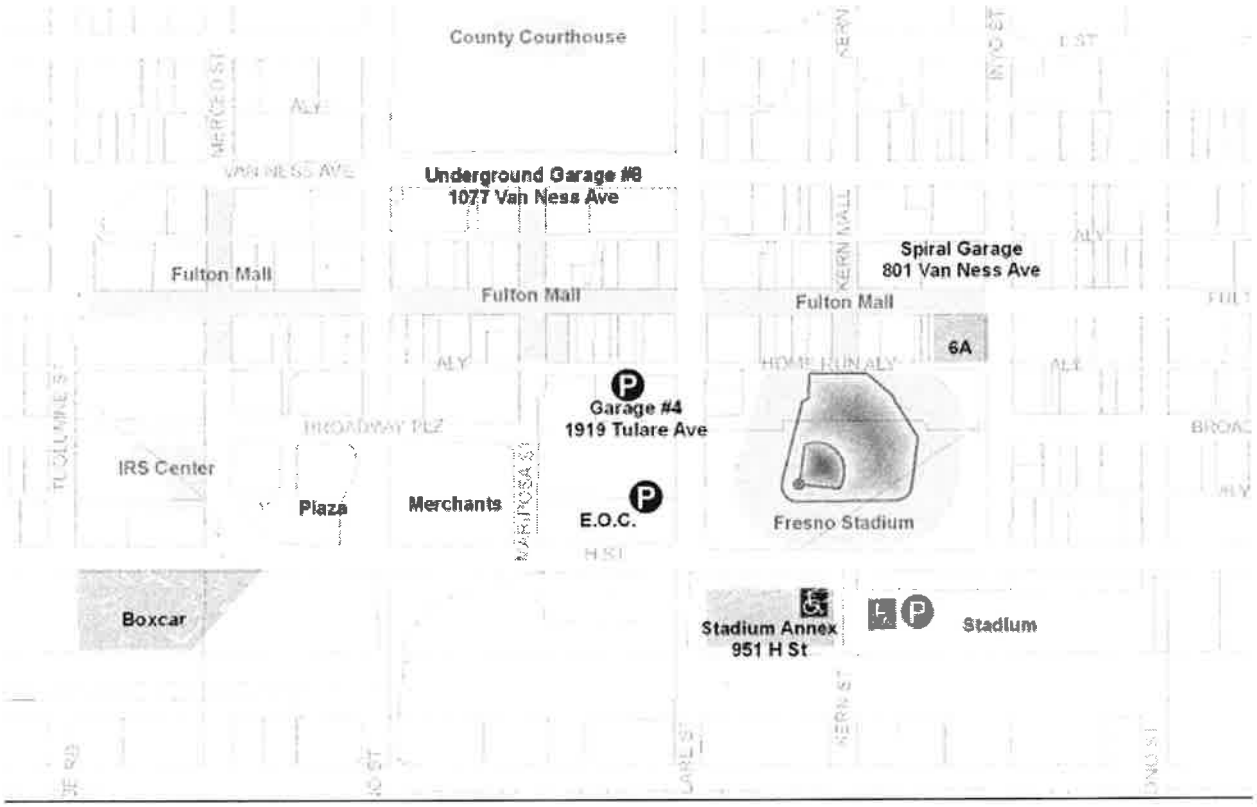

Exhibit A
Map of Premises