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10/25/2012

CITY OF FRESNO  
City Clerk's Office (Original)

**PARKING PERMIT AGREEMENT**

This Parking Permit Agreement ("Agreement") is entered into as of the Effective Date (defined below), between the CITY OF FRESNO, a municipal corporation ("CITY"), and COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY").

**RECITALS**

WHEREAS, COUNTY desires parking for its employees;

WHEREAS, parking spaces are available in the Convention Center Garage, 707 "O" Street in downtown Fresno, (hereinafter referred to as the "Garage") and other City of Fresno Parking Facilities owned by CITY; and

WHEREAS, COUNTY desires to obtain use of at least 650 parking spaces in these City of Fresno Parking Facilities for employee parking.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Effective Date and Term of Agreement. For purposes of this Agreement, "Effective Date", shall mean the Date that CITY signs this Agreement which shall be after COUNTY signs it.

The initial term of this Agreement shall begin retroactively on July 1, 2011, and end on June 30, 2014 (the "initial term") subject to earlier termination in accordance with paragraphs 3 and 8 of this Agreement. The initial Agreement term of 36 months may be extended by the parties, in writing, for no more than two (2) additional one year periods. Before any extension is approved by the parties, monthly rates shall be subject to renegotiation, to reflect increases in public facility parking fees.

2. Number and Use of Parking Spaces. During the hours of 6:00 a.m. to 6:30 p.m., Monday through Friday, except Holidays (as designated in this Section 2), CITY will permit COUNTY to utilize 150 reserved parking spaces for employee parking in the Convention Center Garage. CITY will locate the subject 150 parking spaces on the same floor within the Garage, subject to availability. COUNTY may utilize additional spaces for employee parking, not to exceed 500 spaces, in the Garage or at other Parking Facilities, such as 801 Van Ness, downtown Fresno (hereinafter referred to as the "Spiral Garage), as designated by CITY in this Agreement, and subject to availability, for employee parking. On the first of any month during the term of this Agreement, COUNTY may add employee parking spaces, provided COUNTY (i) gives CITY at least fourteen (14) calendar days prior written notice of the number of spaces required for the employee parking and the month such spaces will first be needed, and (ii) pays the monthly rate per additional space as provided in Section 5 of this Agreement. COUNTY may

cancel its use of any such additional parking spaces beginning on the first of any month during the term of this Agreement, provided COUNTY 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 COUNTY. The total number of parking spaces utilized by COUNTY during the Term of this Agreement shall not exceed 650 parking spaces.

COUNTY acknowledges that for each employee vehicle remaining after 6:30 p.m., an additional charge of \$9.00 per vehicle will be charged. Each employee who remains after 6:30 pm will be solely responsible for this additional fee, or be subject to a citation issued by the CITY.

COUNTY 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 Garage or the other City parking locations, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Garage. Any change in the above rules or regulations shall be provided to COUNTY in writing.

CITY acknowledges and agrees to place numbers or other individually identifying information on each individual parking space that is reserved for COUNTY employee parking. COUNTY will assign employees to individual parking spaces and agrees to provide the CITY with the space assignment information upon request.

For purposes of this Agreement, "Holidays" shall mean New Years Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday immediately following, and Christmas Day.

3. Permanent or Temporary Relocation of Parking Spaces. At any time, upon at least ninety (90) calendar days notice to COUNTY, CITY may either (i) cancel the permit to County, hereunder, as it applies to COUNTY's use of any specified parking space(s), or (ii) for the purpose of maintaining the Garage, temporarily suspend the permit to COUNTY, hereunder, as it applies to COUNTY's use of any parking space(s); provided that CITY substitutes parking spaces for use by COUNTY at another location owned and operated by CITY that is mutually agreeable to the CITY and COUNTY. In the event that the substituted parking spaces are provided due to cancellation of the permit, COUNTY agrees to the use of such substituted spaces under the same terms and conditions of this Agreement for the remaining life of this Agreement, beginning on the date specified in CITY's notice to COUNTY, unless COUNTY provides CITY at least fifteen (15) calendar days notice of termination of the Agreement within fifteen (15) calendar days of CITY's notice of permit cancellation. In the event that the substituted parking spaces are provided due to suspension of the permit, COUNTY agrees to the temporary use of such substituted spaces under the same terms and conditions of this Agreement for the period of time specified in CITY's notice to COUNTY.

4. Parking Pass. Entry and parking by COUNTY employees in any Parking Facility shall be subject to presenting CITY's attendant, thereat, a parking access pass previously issued by CITY for such purpose, or other document that is acceptable to the CITY's Public Works Parking Manager.

5. Invoicing and Payment. COUNTY agrees to pay CITY for the use of the parking spaces as follows: During the term of this Agreement, County agrees to pay CITY \$30.00 per stall per month for the period July 1, 2011 to October 31, 2012, for a total of 400 stalls X \$30 per

stall per month X 16 months equaling \$192,000. The amount due of \$192,000 for this period shall be paid in full no later than December 1, 2012. Thereafter COUNTY agrees to pay CITY a monthly rate of 50% of the City Council approved Master Fee Schedule per parking space, for a minimum of 150 stalls per month payable in advance on the first of each month for each parking stall used in the city facilities.

Beginning the first of the month on which the additional spaces are to be utilized and monthly in advance thereafter during the remaining life of this Agreement, COUNTY agrees to pay CITY the same monthly rate per space (in accordance with the preceding paragraph) for each additional space added by COUNTY pursuant to Section 2 of this Agreement.

All monthly payments, including those pursuant to Section 2 of this Agreement, shall be made to City of Fresno, Parking Services Division, Room 4019, 2600 Fresno Street, 4<sup>th</sup> Floor, Fresno, CA 93721, or as CITY may otherwise designate from time to time in writing. All payments hereunder shall indicate that payment is for "County Parking Fees" and shall be due and payable on the first of each month and paid no later than the tenth of each month.

6. Assignment. Neither party shall assign, subcontract or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party.

7. Indemnification and Insurance. COUNTY 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, COUNTY 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 COUNTY or any of its officers, officials, employees, agents, invitees or volunteers (including security personnel) in the performance of this Agreement or use of the Garage.

CITY shall indemnify, hold harmless, and defend COUNTY 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, COUNTY 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 COUNTY 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.

It is understood and agreed that COUNTY and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence

of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

This section shall survive termination or expiration of this Agreement.

8. 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 thirty (30) calendar days to cure the breach from the date notice is received. If the breaching party does not correct the failure within thirty (30) calendar days, this Agreement will automatically terminate. In the event either party terminates the Agreement pursuant to the foregoing, such 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.

Either party may terminate this Agreement at any time, for any or no reason, by the terminating party providing ninety (90) days prior written notice to the other party.

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. 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.

11. Notices. Except as otherwise expressly provided in this Agreement, any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

12. Signage, Maintenance and Security. CITY will provide signage and general maintenance of the Garage such as cleaning, striping and lighting; and provide a minimum of one attendant to conduct security patrols for the Garage during business hours.

13. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
14. 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.
15. 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.
16. 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 COUNTY.
17. 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.
18. Compliance With Law. COUNTY 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.
19. 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.
20. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year below written.

(Signatures on Following Page)

COUNTY:  
COUNTY OF FRESNO, a political subdivision  
of the State of California

By: Deborah A. Poochigian  
Deborah A. Poochigian, Chairman  
Board of Supervisors

Date: 9/25/12

ATTEST: Bernice E. Seidel, Clerk  
BOARD OF SUPERVISORS

By: Kelly Greenough  
Deputy

APPROVED AS TO LEGAL FORM:  
KEVIN B. BRIGGS, COUNTY COUNSEL

By: Jan T. Smith  
Deputy

APPROVED AS TO ACCOUNTING FORM:  
VICKI CROW, C.P.A.  
AUDITOR-CONTROLLER/TREASURER-  
TAX COLLECTOR

By: Alisa E. Lacey

RECOMMENDED FOR APPROVAL:

By: Gary M. Osmondson  
Gary M. Osmondson, Director  
Internal Services Department

Fund: 1035, Subclass: 10000, Org: 8970, Acct: 7340

Addresses:  
COUNTY:  
County of Fresno  
Internal Services Department (L-272)  
Gary M. Osmondson  
2220 Tulare Street, 21<sup>st</sup> Floor  
Fresno, CA 93721-2106  
Telephone: (559) 600-5800  
FAX: (559) 600-1708

CITY:  
CITY OF FRESNO, a municipal corporation

By: Bruce Rudd  
Bruce Rudd, Assistant City Manager

Date: 10/31/12

ATTEST:  
Yvonne Spence, City Clerk

By: Nancy Wio 10/31/12  
Deputy

APPROVED AS TO FORM:  
James C. Sanchez, City Attorney

By: Deputy A. Alvarez

REVIEWED AND RECOMMENDED FOR  
APPROVAL:

By: Dei Estabrooke  
Dei Estabrooke  
Parking Manager

CITY:  
City of Fresno  
Development and Resource Management Division  
Parking Manager  
2600 Fresno Street, Room #4019  
Fresno, CA 93721-3623  
Telephone: (559) 621-7275  
FAX (559) 498-1439