

PARKING PERMIT AGREEMENT

This Agreement ("Agreement") is entered into as of the Effective Date (defined below), between the CITY OF FRESNO, a municipal corporation ("CITY"), and the HOUSING AUTHORITY OF THE CITY AND COUNTY OF FRESNO, a public benefit corporation ("HOUSING AUTHORITY").

RECITALS

WHEREAS, HOUSING AUTHORITY desires parking for its employees;

WHEREAS, parking spaces are available in the CITY leased Parking Garage No. 9, located at Merced Street and Van Ness Avenue in downtown Fresno, (the "Garage"); and

WHEREAS, HOUSING AUTHORITY desires to obtain use of 20 parking spaces in the CITY Garage 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 HOUSING AUTHORITY signs it.

The initial term of this Agreement shall begin on May 1, 2013, and end on April 30, 2018 (the "Initial Term") subject to earlier termination in accordance with Sections 3 and 8 of this Agreement. The Initial Term may be extended by the parties, in writing, for two (2) additional five year periods.

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 HOUSING AUTHORITY to utilize 20 reserved parking spaces for employee parking in the Garage. CITY will designate the subject 20 parking spaces on the same floor within the Garage, subject to availability. The total number of parking spaces utilized by HOUSING AUTHORITY during the term of this Agreement shall not exceed 20 parking spaces.

HOUSING AUTHORITY acknowledges that each employee vehicle remaining after 6:30 p.m. will be charged an additional charge of the maximum daily rate, currently \$9.00, per vehicle according to the CITY Master Fee Schedule which may change from time to time. Each employee whose vehicle remains in the Garage after 6:30 pm will be solely responsible for this additional charge, or be subject to a citation issued by the CITY.

HOUSING AUTHORITY 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

CITY OF FRESNO
City Clerk's Office (Original)

regulations applicable to the Garage, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Garage.

CITY acknowledges and agrees to place numbers or other individually identifying information on each individual parking space that is reserved for HOUSING AUTHORITY employee parking. HOUSING AUTHORITY 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, Martin Luther King Jr. 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 HOUSING AUTHORITY, CITY may either (i) cancel the permit to HOUSING AUTHORITY, hereunder, as it applies to HOUSING AUTHORITY's use of any specified parking space(s), or (ii) for the purpose of maintaining the Garage, temporarily suspend the permit to HOUSING AUTHORITY, hereunder, as it applies to HOUSING AUTHORITY's use of any parking space(s); provided that in either instance CITY substitutes parking spaces for use by HOUSING AUTHORITY at another location owned and operated by CITY that is mutually agreeable to the CITY and HOUSING AUTHORITY. In the event that the substituted parking spaces are provided due to cancellation of the permit, HOUSING AUTHORITY 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 HOUSING AUTHORITY, unless HOUSING AUTHORITY provides CITY 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 temporary suspension of the permit, HOUSING AUTHORITY 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 HOUSING AUTHORITY.

4. Parking Pass. Entry and parking by HOUSING AUTHORITY employees in the Garage shall be subject to presenting CITY's parking attendant a parking access pass issued by CITY for such purpose, or other document that is acceptable to the CITY's Parking Manager.

5. Invoicing and Payment. HOUSING AUTHORITY agrees to pay CITY for the use of the parking spaces as follows: Effective May 1, 2013, HOUSING AUTHORITY agrees to pay CITY a monthly payment (the "Monthly Payment") equal to Seven Hundred dollars (\$700) The Monthly Payment is based on \$35 per parking space ("Space Fee") for 20 spaces. The Monthly Fee is payable in advance, beginning on May 1, 2013 and the first of each month thereafter, for the 20 parking spaces in the Garage.

Each year on May 1, the Monthly Payment and Space Fee will increase by the smaller of three percent (3%) or the percentage increase in the U.S. Department of Labor, Bureau of Labor Statistics (USDLBLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average) from January 1 to December 31 during the last calendar year.

All Monthly Payments shall be made to City of Fresno, Parking Services Division, Rm. 4019, 2600 Fresno Street, 4th 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 "HOUSING AUTHORITY 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 obligation under this Agreement without the prior written consent of the other party.

7. Indemnification and Insurance. HOUSING AUTHORITY 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, HOUSING AUTHORITY 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 HOUSING AUTHORITY 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 HOUSING AUTHORITY 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, HOUSING AUTHORITY 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 HOUSING AUTHORITY 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 HOUSING AUTHORITY 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 7 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 date notice is received. If breaching party does not correct the failure within thirty (30) calendar days of notice, the non-breaching party

may elect to terminate the Agreement. 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.

In the sole event of non-appropriation relating to this Agreement, HOUSING AUTHORITY 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 endeavor to give written notice of such termination not less than one hundred and twenty (120) calendar days, but shall give such notice not less than ninety (90) calendar days, prior to the termination date, and shall notify the other party of any anticipated termination. For purposes of this paragraph, "non-appropriation" shall mean the failure of the terminating party or its governing body to appropriate money sufficient for the continued performance of this Agreement by the terminating 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 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, 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. Taxable Possessory Interest. Any interest in real property that 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 there in or thereon) that is owned by the City of Fresno 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 HOUSING AUTHORITY under this Agreement, HOUSING AUTHORITY, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Agreement, HOUSING AUTHORITY either took a copy of this Agreement to the Office of the Fresno County Tax Assessor or by some other appropriate means independent of CITY or any employee, agent, or

representative of CITY determined, to HOUSING AUTHORITY's full and complete satisfaction, how much HOUSING AUTHORITY will be taxed, if at all.

13. Signage, Maintenance and Security. CITY will provide signage and general maintenance of the Garage such as cleaning, striping and lighting; and provide the current level of security for the Garage.

14. 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.

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 HOUSING AUTHORITY.

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 party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

19. Compliance With Law. HOUSING AUTHORITY 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 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.

CITY OF FRESNO,
a municipal corporation

HOUSING AUTHORITY OF THE CITY AND
COUNTY OF FRESNO, a public benefit
corporation

By: 
Bruce Rudd
~~Assistant~~ City Manager

By: 
Preston Prince, CEO/Executive Director

Date: 12/3/13

Date: 10/30/13

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: 
Deputy
12/5/2013

APPROVED AS TO FORM:
City Attorney's Office

By: 
Raj Singh Badhesha
Deputy City Attorney

Date: 11.4.13

Addresses:

City of Fresno
Parking Manager
Room # 4019, 2600 Fresno Street
Fresno, CA 93721-3623
Phone: (559) 621-7275
FAX: (559) 498-1439