Resolution No. 04-0613

STOCKTON CITY COUNCIL

RESOLUTION APPROVING A PARKING MANAGEMENT AGREEMENT BETWEEN THE CITY OF STOCKTON AND THE COUNTY OF SAN JOAQUIN FOR THE OPERATION AND ROUTINE MAINTENANCE OF THE PUBLIC PARKING FACILITY WITHIN THE COUNTY'S HUNTER STREET PARKING STRUCTURE

WHEREAS, the County of San Joaquin built a parking structure in 1993 at the corner of Hunter and Market Streets; and

WHEREAS, on November 1, 1993, the City entered into an Agreement with the County to operate the facility through the City's Central Parking District; and

WHEREAS, the County now desires to enter into a new agreement for parking management services; and

WHEREAS, the City is willing to manage said facilities for the County; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized and directed to execute said "Professional Services Parking Management Agreement" on behalf of the City of Stockton, a copy is attached hereto as Exhibit A and incorporated by this reference.

2. The City Manager is hereby authorized and directed to take the actions necessary to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED AUG 17 2004.

ATTEST:

GARY A. PODESTO, Mayor of the City of Stockton

KATHERINE GONG MEEN,
City Clerk of the City of Stockton
PROFESSIONAL SERVICES
PARKING MANAGEMENT AGREEMENT

Parties: COUNTY: County of San Joaquin
212 N. San Joaquin Street
Stockton, CA 95202
Attention: Craig Ogata

CONTRACTOR: City of Stockton
Central Parking District
400 E. Market Street
Stockton, CA 95202
Attention: Edmund Coy

AGREEMENT: The parties hereby agree:

1. Professional Services

CONTRACTOR shall supervise the operation and routine maintenance of the public parking facility within COUNTY's Hunter Street parking structure. COUNTY hereby specifically contracts and agrees with CONTRACTOR, pursuant to the terms, conditions and provisions as herein set forth, that the CONTRACTOR shall at all times collect gross receipts and operate revenue control systems and provide administrative supervision of the premises in a first-class manner, with employees and supervisory employees trained and disciplined in the performance of their duties and courtesy to the public utilizing said premises. Said premises are to be operated by CONTRACTOR as a commercial parking facility and shall be used for no other purpose without prior written consent of COUNTY.

COUNTY shall have the right to approve all operating policies of the CONTRACTOR as they pertain to the premises and by written notice to CONTRACTOR, make such changes in policy from time-to-time as in COUNTY's judgment may be appropriate. CONTRACTOR agrees to carry out, execute and perform COUNTY's directives as they relate to all matters of policy pertaining to management of the revenue control system not specifically provided for herein, including, but not limited to, operating procedures, traffic controls, hours of operation, uniforms and customer public relations.

It is understood and agreed that COUNTY, in no event, shall be construed to be a partner, associate or joint venture with CONTRACTOR in the operation of said premises or the conduct of CONTRACTOR's business thereon, nor shall COUNTY be liable, except to the extent provided herein, for any debts, expenses or other financial responsibilities incurred by CONTRACTOR. CONTRACTOR is an independent contractor and neither party, its officers, directors nor employees shall be considered to be the agent of the other for any purpose whatsoever.

A list of specific tasks is outlined in Attachment A, Scope of Services.
2. Operating Revenues

CONTRACTOR covenants that it will collect or cause to be collected, all of the gross receipts from the operation and use of the premises. All gross receipts received by CONTRACTOR shall be deposited twice per month with the County Treasurer-Tax Collector.

A. Records

CONTRACTOR agrees that it will keep true, accurate, full and complete records of all gross receipts and disbursements (Operating Expenses) pertaining to the operation of the parking functions and on or before the 20th of each month (beginning with the second month of the term hereof and continuing through and including the 20th day of each month following the termination hereof), shall render to COUNTY a complete accounting of all said receipts and disbursements for the preceding month. Said accounting shall be referred to as the monthly operating report. In addition, CONTRACTOR agrees to keep all other necessary and customary records which should be utilized in the prudent, first-class operation of parking facilities.

B. Maintenance, Inspection, and Audit of Books and Records

CONTRACTOR shall maintain in accordance with accepted accounting practices and principles during the term hereof and for one (1) year thereafter, records and books of account recording all transactions at, through or in any way connected with CONTRACTOR's business operation of the premises. Audits of CONTRACTOR's books, records and accounts may be undertaken by COUNTY or representatives of COUNTY, or by a reputable firm of Certified Public Accountants satisfactory to the COUNTY. The cost of such audit shall be borne by COUNTY unless the results of such audit reveal that a discrepancy of more than five percent (5%) between the gross receipts recorded and what should have or did constitute the gross receipts as determined by the audit. In the case of such discrepancy, the full cost of the audit shall be borne by CONTRACTOR and CONTRACTOR shall promptly pay all additional fees owing to COUNTY, in addition to interest at the rate of eighteen percent (18%) per annum.

3. Term of Agreement

The term of this Agreement shall be for one (1) year beginning September 1, 2004 through August 31, 2005. The Agreement may be extended for up to three additional years through annual extensions, subject to the consent of both parties.

4. Compensation

Work performed under this Agreement will be compensated at rates not to exceed those specified in Attachment B. Reimbursable expenses (including purchase of maintenance materials directly related and necessary to the successful completion of this Agreement) will be based on actual costs and will be itemized on invoices separately from professional services.
CONTRACTOR shall require any subcontractor to provide it with evidence of Workers’ Compensation and Employer’s Liability Insurance, all in strict compliance with California State Laws.

5. Indemnity

CONTRACTOR shall protect, defend and hold COUNTY and its officers, commissioners, and/or employees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of (1) injury or death of any person; (2) damage to any property, or (3) violation of any law, rule or regulation relating to discrimination including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement (or the use or occupancy of the leased premises) or the acts or omissions of CONTRACTOR’s officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the loss may occur, unless such loss is caused by the sole negligence of the COUNTY. The COUNTY shall give to CONTRACTOR reasonable notice of any such claims or actions. The CONTRACTOR shall also use counsel reasonably acceptable to COUNTY in carrying out its obligations hereunder.

6. Public Liability Insurance

CONTRACTOR shall provide evidence of automobile and general liability self-insurance coverage. The amount of coverage shall not be less than the following:

Policy Limits: $1,000,000 combined single limit each occurrence for bodily injury, personal injury, and property damage.

The following endorsements must be indicated on the Certificate:

A. COUNTY, its officers, and employees are named as additional insureds as to the work being performed under the contract;
B. The coverage is Primary and no other insurance carried by COUNTY will be called upon to contribute to a loss under this coverage;
C. The coverage includes Blanket Contractual Liability;
D. The limits of liability are provided on an occurrence basis;
E. The coverage includes Broad Form Property Damage Liability;
F. The coverage includes products and completed operations;
G. The coverage includes non-owned autos;
H. The coverage shall not be canceled nor materially altered unless thirty (30) days written notice is given to COUNTY;
I. The coverage does not include defects in the construction of the facility.

7. Discrimination

CONTRACTOR and subcontractors shall not discriminate against any individual based on race, color, religion, nationality, sex, age, or handicapped condition.
8. **Termination**

This Agreement may be terminated by either party upon written notice. In such event, CONTRACTOR shall be compensated for services completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Paragraph 4, together with such additional services performed after termination which are authorized by COUNTY to wind up the work performed to date of termination.

9. **Assignment and Subcontracting**

CONTRACTOR shall not assign or subcontract any of its rights under this Agreement or any interest therein without the prior, unqualified written consent of COUNTY.

10. **Attorneys Fees**

In the event of a breach of the terms of this Agreement by ether party, such party agrees to pay the costs and expenses of enforcing compliance of same, including the payment of reasonable attorney’s fees.

11. **Notices**

All notices, certificates, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations or other communication sufficient to have been given on the second day following the day on which the same are mailed by registered or certified mail, postage prepaid addressed as follows:

<table>
<thead>
<tr>
<th>COUNTY:</th>
<th>City of San Joaquin</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>212 N. San Joaquin Street</td>
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<tr>
<td></td>
<td>Stockton, CA 95202</td>
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<td>Attn: Craig Ogata</td>
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<td>Stockton, CA 95202</td>
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<tr>
<td></td>
<td>Attn: Edmund Coy</td>
</tr>
</tbody>
</table>

COUNTY and CONTRACTOR may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates of other communication shall be sent.

12. **Report of Accident, Claims and Unusual Occurrences**

CONTRACTOR shall report promptly to COUNTY every accident, claim, demand, legal process or other unusual occurrence arising out of CONTRACTOR’s operation of the premises hereunder; provided, such report shall be made in writing to COUNTY at the address herein provided.
13. **Severability**

In the event any terms, covenants, conditions or provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition or provision hereof.

14. **Descriptive Headings**

The descriptive headings of the Sections of this Agreement do not constitute part of this Agreement, and shall not affect the meaning, construction, interpretation or effect of this Agreement.

15. **Consent Not Unreasonably Withheld**

Whenever it is provided herein that the consent or approval of COUNTY or CONTRACTOR is required, such consent or approval shall not be withheld or delayed unreasonably unless otherwise specifically provided herein.

16. **Construction of Management Agreement**

In the event of ambiguity in any of the terms or substance of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

17. **Construction and Enforcement**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Whenever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing, any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

18. **Entire Agreement**

This Agreement (including the Exhibits hereto) expresses the entire understanding of COUNTY and the CONTRACTOR concerning the premises and all agreements of COUNTY and the CONTRACTOR with each other, and neither COUNTY nor CONTRACTOR has made or shall be bound by any agreement or any representation to the other concerning the premises which is not expressly set forth in this Agreement (including the Exhibits hereto). This Agreement (including the Exhibits hereto) may be modified only by a written agreement of subsequent date thereto signed by COUNTY and the CONTRACTOR.

19. **Binding Effect**

This Agreement shall inure to the benefit of and shall be binding upon COUNTY, CONTRACTOR and their respective successors and assigns, it such assignment shall
have been made in conformity with the provisions of this Agreement.

20. **Interpretation of Management Agreement**

   Notwithstanding all provisions of this Agreement, it is mutually understood between the parties hereto that this Agreement shall not in any way be construed to be a lease, but is merely recitation of contract provisions for a Management Agreement.

   IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

   COUNTY OF SAN JOAQUIN, a political subdivision of the State of California

   By ____________________ Chairman
   Board of Supervisors
   "COUNTY"

   ATTEST:
   CLERK OF THE BOARD
   COUNTY OF SAN JOAQUIN
   STATE OF CALIFORNIA

   By ____________________ Deputy Clerk

   "CONTRACTOR"
   CITY OF STOCKTON
   Central Parking District

   By ____________________
   Mark Lewis, Esq.
   City Manager

   APROVED:
   DEPARTMENT OF FACILITIES MANAGEMENT

   By ____________________
   Craig Ogata, Director

   ATTEST:

   APPROVED AS TO FORM:

   By ____________________
   Sheryle L. Sparks
   Deputy County Counsel

   APPROVED AS TO FORM:

   By ____________________
   Guy D. Petzold
   Deputy City Attorney
COUNTY PARKING STRUCTURE
Scope of Services

CITY OF STOCKTON
(Central Parking District)

Provide adequate trained personnel to operate and maintain the public parking facility in the County parking structure weekdays from 6:00 a.m. to 7:00 p.m. The parking garage will not be utilized after regular business hours. Subject to the direction or approval of the County, services include, but not be limited to:

General
- Establish and enforce rules and regulations
- Set monthly and hourly rates
- Monitor traffic and utilization of spaces
- Resolve problems and complaints

Security
- Open and close the facility
- Reasonable security precautions
- Control keys and entry protocols
- Manage and control car access system; deleting old cards and using new ones
- Secure doors and access from nonpublic areas
- Report suspicious activities
- Arrange removal of unauthorized vehicles
- Report incidents and accidents
- Maintain found articles

Maintenance
- General maintenance and cleaning
- Sweeping of public parking areas
- Removal of graffiti
- Appropriate and necessary signs
- Electronic systems and gates
- Report unsafe conditions and maintenance needs

Records
- Collect monthly and hourly parking fees
- Deposit collections as directed by County Auditor
- Record monthly, hourly, and validation activity
- Maintain accounting for audits
- Cooperate with audit and information requests
Attachment "B"

COMPENSATION

Hours of Operation: 6:00 a.m. to 7:00 p.m. (Monday through Friday only)
The parking garage will not be utilized after regular business hours.

Attendants, Operations & Maintenance ........................................... $ 64,210.00
Records & Accounts ................................................................. $ 5,160.00

Subtotal ................................................................. $ 69,370.00
Management ........................................................................ $ 8,600.00

TOTAL .............................................................. $ 77,970.00