PARKING MANAGEMENT AGREEMENT

THIS PARKING MANAGEMENT AGREEMENT (this “Agreement”), dated as of ____, 2014 (the “Effective Date”), is entered into by and between the Parking Authority of the City of Stockton, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California (“Operator”), and the City of Stockton, a municipal corporation and charter city organized and existing under the laws of the State of California (“City”).

RECATALS

A. WHEREAS, City presently is in possession of and controls the Project (as defined below), which consists of parking facilities, and has the authority to contract for the management of such parking facilities;

B. WHEREAS, Operator is an entity organized and existing for purposes relating to management and operation of certain parking facilities within the City, including the Project; and

C. WHEREAS, City and Operator desire to enter into an agreement whereby Operator will manage or caused to be managed all parking at such facilities upon the terms, covenants and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Operator hereby agree as follows:

AGREEMENT

1. Project. City hereby grants to Operator and Operator hereby accepts from City the exclusive right and obligation of administering, managing and operating the parking operations with respect to the public parking facilities located within the Downtown Parking District in the City (Exhibit 1, the “Project”) including the City-leased portion of the State’s EDD lot located at 135 West Fremont Street.

2. Term. This Agreement shall terminate on the same date as that certain Installment Sale Agreement, dated as of [_____] (the “Installment Sale Agreement”), by and between the City, the Operator, National Public Finance Guarantee Corporation (“NPFG”) and Wells Fargo Bank, National Association, attached hereto and incorporated by this reference. In addition to any other termination rights granted herein, provided City has obtained the prior written consent of NPFG, which consent shall not be unreasonably withheld, City may terminate this Agreement at any time, with or without cause, and for any reason or no reason. Any references in this Agreement to “Term” or words of similar import shall have the same meaning ascribed to the definition of “Term” in the Installment Sale Agreement and shall be calculated as therein set forth.
3. **Operator’s Obligations and Services; Operating Expenses.** Operator hereby covenants and agrees that it will, or cause a suboperator to, as applicable:

(a) Supervise and direct the operation, repair and maintenance of the Project as parking facilities, and render the usual and customary services incidental thereto, in a professional, businesslike and efficient manner, similar to other professionally managed parking facilities, and in compliance with all applicable laws, ordinances, rules, statutes, constitutions, regulations, court orders, treaties, codes and common law decisions now or hereafter in force and effect, including, without limitation, Part 2 of Division 18 of the Streets and Highways Code of the State of California, being Sections 32500 et seq. (collectively, “Applicable Law”).

(b) Routinely maintain the parking equipment provided by City (if any) in good operating condition and repair, and keep the Project in a neat and orderly condition through daily inspections, routine cleaning, regular sweeping and debris removal, and power washing, touch-up painting, floor striping and light bulb replacement as necessary.

(c) Employ, supervise and pay a sufficient number of experienced and qualified personnel to operate and staff the Project, who will be courteous to the public and render the services required by this Agreement in a professional and business-like manner.

(d) Employ criminal background checks and other reasonable due diligence on personnel who will operate the Project.

(e) Promote, advertise and endeavor to maximize the efficiency of the services rendered.

(f) Collect parking revenues, including the billing of monthly parkers in advance.

(g) Pursue delinquent accounts in a timely fashion. If City requests in writing that Operator establish and/or honor non-prepaid validation agreements or programs with any third parties or City’s tenants or other occupants or visitors, Operator shall do so.

(h) Maintain courteous, business-like relations with users of the Project, whose requests shall be received, considered and promptly acted upon.

(i) Cause the Project to be repaired and maintained in a clean and orderly manner according to reasonable standards acceptable to City, but Operator shall not be authorized to make, without City’s prior written approval, any Project-structural or Project-system installations, alterations or repairs to the Project.

(j) Promptly notify City of any matter that in Operator’s reasonable judgment requires City’s attention.

(k) Develop and implement rules and regulations applicable to the
Prepare and file all necessary returns, reports and forms required by Applicable Law in connection with unemployment insurance, social security taxes, worker’s compensation insurance, disability benefits, Federal and state income tax withholding and other similar taxes and all other returns and reports required by any Applicable Law and pay or make all deposits required for such taxes.

Keep the Project open for business during such hours and on such days as City and Operator agree, but in the absence of such agreement, then at least between the hours of 5:00 a.m. and 12:00 a.m. daily, or such longer hours as may be required under any agreement entered into by the City, subject to the mutual agreement of City and Operator.

Not permit anything which is indecent or offensive to the senses, or an obstruction to the free use of property, as those terms are used in California Civil Code section 3479, to emanate from the Project that is objectionable to the public, except such noises and odors in such levels as are customary in the operation of an automobile parking facility and shall not create or maintain a nuisance thereon.

Unless otherwise directed by City, give priority to the rental of parking spaces to tenants and other occupants of the Project and adjacent City-owned property, and to City’s agents, employees and visitors.

City shall provide assistance for operations and management as needed, and provide administrative services for the Operator. City may charge Operator overhead, internal service costs for necessary equipment, and/or indirect costs for these services at rates that do not exceed City’s actual costs. Operator shall pay/record all City charges in a timely fashion/in the period incurred.

As used herein, the term “Operating Expenses” shall mean all reasonable expenses incurred by Operator in the performance of its duties, obligations and services pursuant to, and exclusively for complying with, this Agreement. Operating Expenses shall include, without limitation (i) all real estate taxes and assessments, (ii) all taxes on personal property used in the operation of the Project, (iii) the costs of any maintenance and repair required of Operator hereunder, (iv) Sales Tax (defined in Section 5 below), if any, (v) costs and expenses as may be necessitated to comply with the Americans With Disabilities Act of 1990, as may have been or may be amended, (vi) salaries and wages and associated payroll burden (including, without limitation, payroll taxes and fringe benefits) for on-site personnel, (vii) license and permit fees, (viii) compliance with Applicable Law, (ix) on-site uniforms, supplies, tools and cleaning, (x) tickets, paper and reporting forms, (xi) vehicle damage claims, (xii) telephone and utility charges, (xiii) banking and credit card system services if utilized, and (xiv) postage and freight.

4. Maintenance. Operator shall be responsible for maintaining the Project. Thus, in the event the Project requires repairs as a result of normal wear and tear, an accident, casualty or age, Operator shall oversee, and bear the cost of, such repairs, and shall not look to the City for any financial contribution or reimbursement.
5. **Gross Receipts; Sales Tax.** Operator shall collect Gross Receipts to pay the cost of the Operating Expenses. “Gross Receipts” shall mean revenues of every kind and nature charged and received by Operator in connection with its operation of the Project during any given period of time, including, without limitation, all sums collected by Operator for the parking and storage of motor vehicles, whether on an hourly, daily, weekly or monthly basis, less all permitted refunds, discounts and allowances made by Operator to its customers and less any sales, use, excise, occupancy, gross receipts, parking, or any other tax or charge collected by Operator on behalf of and payable to the tax collector under Applicable Law (collectively, “Sales Tax”). After all Operating Expenses are paid, including any expenses under Section 4, Operator may retain what remains from the Gross Receipts.

Operator shall be responsible for payment directly to the tax collector of Sales Tax, if any, based on Gross Receipts collected by Operator. Operator agrees to protect, defend, indemnify and hold City harmless from and against any and all actions, adjudications, awards, causes of action, claims, costs, damages, demands, expenses (including, without limitation, attorneys’ fees and costs and court costs), fees, fines, forfeitures, injuries, judgments, liabilities, liens, losses, obligations, orders, penalties, proceedings, stop notices and suits (collectively, “Claims”) in any way arising or resulting from or in connection with or related to any breach of the respective Sales Tax payment obligations set forth herein, or as may be subsequently set forth in any executed amendment(s) hereto.

City may transfer Community Facilities District No. 2001-1 (CFD 2001-1) assessment revenue to the Operator for administrative expenses and the costs of public improvements or public services authorized by CFD 2001-1. Such transfers may be included in the City’s annual budget.

6. **Annual Report and Annual Audit**

City will establish a Parking Authority fund and shall transfer property and debt service obligations in accordance with the settlement terms between the City and National Public Finance Guaranty (NPFG). In addition, other assets and/or liabilities related to the parking operations and not from restricted sources shall be valued by the City and transferred to the Parking Authority fund. The Operator will manage any funds associated with operating the parking facilities within the Downtown Stockton area. Operator shall submit to City not later than September 1 annual fiscal year financial data which are to be made part of the City’s Comprehensive Annual Financial Report (CAFR). Such financial data shall be presented in financial statements that separate the Operator parking activities from other City related programs. Operator shall submit to City statements of net position, cash flows, and revenues, expenditures and changes in fund balance for its prior fiscal year, audited by independent certified public accountants, no later than March 1 in each year, beginning on March 1, 2016. In addition, upon written notice to Operator, City may cause an audit to be made of all Gross Receipts, Operating Expenses (including, without limitation, Sales Tax, if any) and, generally, all of Operator’s financial affairs with respect to the Project.

All reports and statements delivered under this section shall follow Governmental Accounting Standards Board standards and any other applicable generally accepted accounting principles.
7. **Construction; Liens.** Operator agrees that it will not make or construct any improvements, additions or alterations to the Project without the prior written consent of City, which consent may be withheld in City’s sole discretion. Operator agrees not to permit any liens to be filed or recorded against the Project as a result of any work done by or on behalf of Operator.

8. **Trade Name; Intellectual Property.** Operator agrees that it shall operate the parking operations within the Project under such trade name as reasonably approved by City.

9. **Security.** City shall not be liable to Operator for losses due to theft or burglary, or for damages or injury to persons or property done by persons gaining access to the Project, and Operator hereby releases City from all liability for such losses, damages or injury, even if caused by City’s negligence.

10. **Indemnification.**

   (a) Operator shall protect, defend, indemnify and hold City and each of its respective council members, officers, employees, authorized agents, affiliates, representatives and their successors and assigns (collectively, the “City Indemnified Parties”) harmless from and against any and all Claims in any way arising or resulting from or in connection with or related to bodily injury, personal injury, or death, property damage or intangible pecuniary loss, sustained or alleged to have been sustained by any business, organization or person, including, without limitation, employees of Operator and any subcontractors, arising out of or in connection with the performance of the services hereunder (the “Work”) or this Agreement by Operator, its agents, servants, employees, or independent contractors retained or hired by Operator or its subcontractors, except to the extent caused by a City Indemnified Party’s willful misconduct. Each City Indemnified Party shall have the right to participate in the defense of any claim against it that is covered by Operator’s obligations hereunder, including, without limitation, the right to retain its own legal counsel of its choice, and settle any claim, demand, suit or proceeding against the City Indemnified Party without Operator’s consent.

   (b) Operator shall within two (2) days of request pay over, reimburse and make good to City all sums of money that City shall pay, or cause to be paid, or become liable to pay, under or by any reason of any such Claim, including, without limitation, attorney’s fees and any and all charges and expenses of whatsoever kind and nature in connection therewith or in connection with any such Claims. Operator’s indemnification obligations shall extend to all of Operator’s obligations under this Agreement and shall not be limited in duration or amount.

   (c) Within 48 hours of receipt of claim against the Project, Operator shall forward such claim to City Risk Manager.

11. **Licenses and Permits.** Operator shall obtain and maintain all licenses and permits required by an operator of parking facilities by any governmental body or agency having jurisdiction over Operator’s operations at the Project and will abide by the terms of such
licenses and permits. Any license or permit fees incurred by Operator shall be deemed an Operating Expense.

12. Applicable Law. Operator shall comply with Applicable Law and shall not use nor permit any person to use all or any part of the Project for any use or purpose which is (a) forbidden by or in violation of any Applicable Law, or (b) may be dangerous to life, limb or property. Additionally, Operator shall not use or permit any person to use all or any part of the Project for any immoral purpose, and Operator shall not allow the use, sale or dispensing within the Project of any alcoholic or intoxicating beverages or controlled or illegal drugs or substances.

13. Force Majeure. Except with respect to any payment obligation in connection with this Agreement, neither party shall be in violation of this Agreement for failure to perform any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, weather conditions, riots, rebellion, accidents, sabotage or any other circumstances for which it is not responsible and which are not within its control.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. Waivers. No waiver of default by either party of any term, covenant or condition hereof to be performed or observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of the same or any other term, covenant or condition hereof.

16. Severability. If any provision hereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision hereof, provided such invalidity does not materially prejudice either party in its rights and obligations contained in the valid provisions of this Agreement.

17. Additional Termination Rights. If Operator at any time fails for any reason in any respect to properly and diligently perform the Work in the manner and at the time(s) set forth in this Agreement or is otherwise in breach under this Agreement (a “Breach”), City shall have the right to terminate this Agreement and replace Operator as operator of the Project, subject to receipt of written consent of NPFG provided such consent is not unreasonably withheld.

18. Sale of Project. Subject and subordinate to all termination rights hereunder, in the event of a sale of the Project, in whole or in part, this Agreement and Operator’s rights hereunder shall not be disturbed so long as Operator keeps and performs its agreements contained herein.

19. Assignment; Subcontracting. Operator shall not assign or otherwise transfer this Agreement or any of its right, title or interest herein without the prior written consent of City, which consent may be withheld by City in its sole and absolute discretion. Notwithstanding the foregoing, the parties acknowledge that Operator expects and intends to
contract with a suboperator to actually manage the Project. Such a subcontract is permissible provided (i) City consents to the selection of the contemplated suboperator (ii) the terms of this Agreement shall be binding on the suboperator, and (iii) Operator remains liable for all obligations hereunder. In addition, City shall have the right to approve or disapprove a contemplated suboperator, such approval not to be unreasonably withheld.

20. **Notices.** Any notice or communication required to be given to or served upon either party hereto shall be given or served by personal service or by nationally recognized overnight courier (e.g., Federal Express) or by mailing the same, postage prepaid, by United States registered or certified mail, return receipt requested, to the following addresses:

**City’s Address:**

City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202-1997  
Phone: (209) 937-8212  
Fax: (209) 937-7149

Attention: City Manager

**Operator’s Address:**

Parking Authority of the City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202-1997  
Phone: (209) 937-8212  
Fax: (209) 937-7149

Attention: Executive Director

*with a copy to:*

Optinuity Alliance Resources, an MBIA Inc. Company  
Special Situations Group  
113 King Street  
Armonk, New York 10504  
Phone: (914) 765-3533

Attention: Daniel E. McManus, Jr., Esq.

Either party may designate a substitute address at any time hereafter by written notice thereof to the other party.

21. **Environmental Matters.** This Agreement and Operator’s performance of
Work shall be subject to the following:

(a) For purposes of this Agreement, the term “Hazardous Materials” includes (i) any matter or substance defined as a “hazardous material,” “hazardous substance,” “hazardous waste,” “toxic waste,” “toxic material,” “toxic substance,” or any substance or matter listed or subject to regulation in whole or in part under any part of the Resource Conservation and Recovery Act, (RCRA), Toxic Substances Control Act (TOSCA), Comprehensive Environmental Response, Conservation and Liability Act (CERCLA), Occupational Safety and Health Act (OSHA), or any applicable federal, state or local statute, regulation, rule or ordinance, all as amended, or by the Environmental Protection Agency (EPA) or by any federal state or local governmental agency, and (ii) biological agents, including mold.

(b) Operator shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released into the environment or disposed of on, under, above, from or about the Project (which shall include, but is not limited to, subsurface soil and ground water) by Operator, Operator’s subcontractor or their agents, without the prior written consent of City, which may be withheld in City’s sole and absolute discretion. City may, in its sole and absolute discretion, place such conditions as City deems appropriate with respect to such Hazardous Materials, and may further require that Operator demonstrate to City, which may include an opinion from an independent environmental or legal consultant at City’s sole option, that such Hazardous Materials are necessary to Operator’s performance of the Work and will be generated, stored, used, and disposed of in a manner that complies with all Applicable Laws regulating such Hazardous Materials and with best industry customs or business practices. City may require Operator to obtain Operator’s Pollution Liability Insurance to insure against liabilities arising out of the Work, and to include City Indemnified Parties as additional insureds under such insurance policies.

(c) To the fullest extent permitted by Applicable Law, Operator hereby agrees to protect, defend (with attorneys acceptable to City), indemnify and hold harmless City Indemnified Parties, and any successors to all or any portion of City’s interest in the Project, and their successors and assigns from and against any and all Claims including, but not limited to, damages for the loss or restriction on use of rentable or usable space or any amenity of the Project or damages arising from any adverse impact on marketing of space in the Project or diminution in the value of the Project, whether foreseeable or unforeseeable, directly or indirectly, in any such case in any way arising or resulting from or in connection with or related to the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under, over or about the Project by Operator or Operator’s agents, and specifically including the cost of any required or necessary repair, restoration and clean-up, including, but not limited to, the cost of investigation and removal of Hazardous Materials or detoxification of the Project and the preparation of any closure or other required plans, whether or not such action is required or necessary during the Term or after the expiration of this Agreement.

22. **Entire Agreement.** This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties, and supercedes all representations, statements or prior agreements and understandings both written and oral with respect to the
matters contained in this Agreement and exhibits hereto. No person has been authorized to give any information or make any representation not contained in this Agreement. This Agreement may be amended only by written agreement of the parties. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement.

23. **Parties Bound.** Subject to the terms of Section 24 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, executors, administrators, legal representatives and permitted assigns.

24. **Neither Party Deemed Drafter.** The parties to this Agreement have had sufficient time to consult legal counsel and negotiate changes regarding the terms hereof. Therefore, neither party shall be deemed the drafter of this Agreement and, as such, this Agreement shall not be construed against either party due to the drafting hereof.

30. **Attorney Fees.** In the event that either party hereto should (a) retain legal counsel and/or institute any suit against the other for violation of this Agreement or to enforce or interpret any of the covenants or conditions herein, or (b) intervene in any suit in which the other is a party to enforce or protect its interest or rights hereunder, the prevailing party in any such suit shall be entitled to all of its costs, expenses and reasonable fees of its attorney(s) in connection therewith. The rights and obligations of this Section shall survive the expiration or earlier termination of this Agreement.

31. **Time.** Time is of the essence of this Agreement.

32. **Limitation of City Liability.** No City Indemnified Party shall have any personal liability with respect to any of the provisions of this Agreement, or the Project. If City is in breach or default with respect to City’s obligations under this Agreement, Operator shall look solely to the equity interest of City in the Project for the satisfaction of Operator’s remedies or judgments. No other real, personal, or mixed property of any City Indemnified Party, wherever situated, shall be subject to levy to satisfy such judgment. Upon any assignment or other transfer of City’s interest in this Agreement or in the Project, the transferring City shall have no liability or obligation for matters arising under this Agreement from and after the date of such transfer. Under no circumstances shall City be liable for consequential damages, including, without limitation, injury to Operator’s business or for any loss of income or profit therefrom.

33. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, City and Operator have caused their duly authorized representatives to execute this Agreement as of the date first above written.

“OPERATOR”:

Parking Authority of the City of Stockton,
a public body corporate and politic organized and existing under and by virtue of the laws of the State of California

By: ____________________________
Name: __________________________
Title:     Executive Director

“CITY”:

City of Stockton,
a municipal corporation and charter city organized and existing under the laws of the State of California

By: ____________________________
Name: __________________________
Title:     City Manager
Boundary Map of City of Stockton CFD 2001-1 (Downtown Parking District)