

**"PROPOSED" VALET PARKING SERVICES AGREEMENT**

THIS VALET PARKING SERVICES AGREEMENT (this "Agreement") is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_, hereinafter called the "MANAGER" and the City of Auburn, Alabama, hereinafter called the "CITY".

**Statement of Purpose**

MANAGER is engaged in the business of providing valet parking services to cities for their visitors and guests. The CITY desires to retain MANAGER to provide valet parking services to the CITY and its patrons, and MANAGER desires to accept such engagement, upon the terms and conditions hereinafter set forth. In addition to above stated Statement of Purpose, services shall be provided in accordance with the Scope of Services outlined in the Invitation to Bid dated \_\_\_\_\_ and MANAGER's Proposal dated \_\_\_\_\_ which are attached and made part hereof, with respect to the valet parking services.

NOW, THEREFORE, in consideration of the foregoing Statement of Purpose, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**1. Term and Termination**

The term of this Agreement shall be for a period of one (1) year, commencing on \_\_\_\_\_ and terminating on \_\_\_\_\_. The CITY reserves the right, at its sole discretion, to extend the Agreement for two (2) additional one (1) year terms by providing MANAGER with written notice of its intention to renew or terminate the Agreement at least sixty (60) days prior to the expiration of the initial term.

Notwithstanding the foregoing, in the event that the applicable federal, state or local minimum wage for employees of MANAGER increases by any amount at any time during the term of this Agreement, MANAGER may terminate this Agreement at any time after such increase by giving at least thirty (30) days advanced written notice thereof to the CITY. The CITY reserves the right to terminate this agreement without cause provided the CITY provides MANAGER with a (30) day written notice of termination. Should the CITY elect to terminate the agreement without cause, the CITY shall pay to MANAGER an amount equivalent to one month's service fee of \_\_\_\_\_ as presented in MANAGER's proposal.

MANAGER shall commence providing valet parking services on \_\_\_\_\_.

**2. Engagement and Duties of Manager**

During the term of this Agreement, MANAGER shall provide valet parking services to the CITY and its visitors and guests at the CITY's valet location (the "Locations") listed on, and in accordance with the terms and conditions contained in, Exhibit A, which is

attached hereto and hereby made a part hereof (the "Services"). During the term of this Agreement, MANAGER shall have the exclusive right to provide such Services to the CITY and its patrons at the Locations, and the CITY shall not enter into any comparable arrangements for such Services or otherwise interfere with the provision of Services hereunder by MANAGER.

MANAGER shall submit to the CITY weekly transaction reports. Reports shall be submitted to the CITY no later than Tuesday of each week for the previous week's Service activities. Reports shall be submitted electronically to the email address provided by the CITY.

MANAGER shall submit the CITY daily Service reports. Reports shall be submitted electronically to the email address provided by the CITY.

MANAGER shall submit to the CITY on a monthly invoice statement. MANAGER understands that the CITY disburses payments each Friday of the month and CITY requires a minimum of seven (7) prior to the scheduled due date to review invoice statements and process payments.

MANAGER understands that failure to timely submit reports is a violation of this Agreement and the requirements outlined in the Invitation to Bid. Such violation may result in early termination of the Agreement.

MANAGER shall not access or use the Locations during non-Service days and hours. MANAGER understands that accessing or utilization of the Locations during non-Service days and hours is a direct violation of this Agreement. MANAGER further understands that tampering with Location equipment and/or property during non-Service hours is a violation of this Agreement. Violation of this section will result in assessment of a penalty of \$500 per violation, or at the sole option and discretion of CITY, the termination of the Agreement.

### **3. Personnel and Equipment**

MANAGER shall provide all personnel and equipment reasonably necessary to carry out its responsibilities and duties under this Agreement, including, but not limited to, podiums, cones, revenue collection system, and other necessary supplies. If required to facilitate the provision of services, the CITY will work with MANAGER to establish a suitable location to store equipment in the vicinity of the established Location(s).

MANAGER will provide no more than three (3) valet attendants during lunch hours and no more than four (4) attendants during dinner hours unless prior written approval is obtained from the CITY. Should the CITY require additional attendants for a special event as defined in the 'Scope of the Services' section of the Invitation to Bid, CITY shall submit a written request to the MANAGER seven (7) days prior to the event.

CITY shall provide to the MANAGER \_\_\_\_ key fobs to access the Location during Service days and hours. In the event the MANAGER request the CITY to provide a replacement key fob issued to the MANAGER in connection with this Agreement, the

MANAGER shall remit to the CITY a replacement cost of Fifteen Dollars (\$15) per key fob.

CITY shall provide to the MANAGER \_\_\_\_ access cards to access the designated storage area. In the event the MANAGER request the CITY to provide a replacement access card issued to the MANAGER in connection with this Agreement, the MANAGER shall remit to the CITY a replacement cost of Twenty-Five Dollars (\$25) per access card.

MANAGER shall bear the cost to replace or repair any equipment or property damaged by its personnel. This includes, but is not limited to, tampering with or improper handling of entrance/exit gate arms, striking column pad protectors due to reckless driving.

#### **4. Fees and Revenue Collection**

During the term of this Agreement, the CITY shall pay to MANAGER an hourly fee in the amount of \_\_\_\_\_) (“Fees”). Fees will be billed monthly and shall be due net 30 days. A \$25.00 late fee will be charged for any invoices, not in dispute, which are past due.

All Curbside Revenue collected by MANAGER will be remitted to the CITY weekly. Weekly remittances shall be made by ACH deposit only and shall be accompanied by a report detailing the previous week’s service activities and collections. In addition, MANAGER may collect and retain any tips and other gratuities paid to it or its personnel by the CITY’s patrons.

Should the CITY elect to renew the Agreement for an additional term, MANAGER and the CITY will negotiate the service rate(s) for the renewed service period.

MANAGER shall accept all major forms of credit/debit cards and cash as payment for Services provided. MANAGER shall bear all cost and expenses associated with the processing of credit/debit card payments and all subsequent banking fees and service charges associated with the acceptance of payments.

#### **5. Other Duties of Establishment**

During the term of this agreement, the CITY shall provide MANAGER with parking spaces near the CITY’s premises or the actual parking spaces to be used for valet parking, which are reasonably determined by MANAGER to be sufficient in size and number to enable MANAGER to fully perform the Services and to comply with the terms of this Agreement. The designated parking spaces will only be made available to MANAGER personnel during the dates and time periods in which valet service are provided. The CITY reserves the right to re-designate spaces provided the CITY gives MANAGER forty-eight (48) hour notice of the change.

#### **6. Independent Contractor**

In accordance with this Agreement, MANAGER and all MANAGER's representatives, employees, agents, or subcontractors, at all times shall act as an independent contractor and not as employees, agents, partners of, or joint ventures with the CITY. MANAGER shall be responsible for making all withholding and paying all federal, state, and local taxes including, but not limited to, applicable income, social security, worker's compensation and unemployment compensation taxes.

## **7. Insurance and Limitation of Damages**

MANAGER will be required to provide certificates of insurance showing that it carries, or has in force, garage liability insurance, general liability insurance, garage keeper's legal liability insurance and workers' compensation insurance. Limits of liability for garage liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability. Limits of liability for garage keeper's coverage shall be, at a minimum, \$100,000 per any one vehicle and \$1,000,000.00 per location. If any liability insurance is on a claims-made basis, MANAGER will maintain coverage for two (2) years following the completion of work specified in this agreement at the limits specified in this paragraph. If required by law, MANAGER will carry worker's compensation insurance that shall provide statutory insurance and employers' liability coverage of \$500,00 each accident, \$500,000 disease – each employee and \$500,000 disease – policy limit. If MANAGER is not required by law to carry workers' compensation insurance, MANAGER is responsible for any medical or disability benefits to employees whose injuries arise out of and in the course of their employment. MANAGER's insurance shall be primary. If the MANAGER carries higher coverage limits, the higher limits will apply. MANAGER is responsible for the payment of any deductibles or self-insured retentions.

MANAGER acknowledges that they are an independent contractor and not an employee of the City of Auburn.

The certificate of insurance shall provide the City of Auburn, Alabama (City) with thirty (30) days written notice of cancellation of any of the coverage named in said certificate.

The City will be named as additional insured under MANAGER's general liability insurance and garage liability insurance policies. MANAGER shall provide copies of additional insured endorsements.

MANAGER shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by MANAGER. These certificates shall evidence waivers of subrogation in favor of MANAGER and the City, and shall be made available to the City upon request.

MANAGER agrees to indemnify, hold harmless, and defend the City, its officials, representatives, agents, servants, and employees from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including attorneys' fees

and litigation expenses, in whole or in part arising out of, connected with, or in any way associated with the activities of MANAGER, its employees, or its sub-contractors in connection with the work to be performed under this contract. This obligation survives the payment of any losses by MANAGER's insurance company.

## **8. Rights Upon Relocation or additional Locations**

The CITY retains the right to relocate the valet parking from any Location. Pursuant to any governing codes or law MANAGER may terminate the contract or negotiate changes in the current contract. The CITY also retains the right to provide additional valet parking areas. Pursuant to any governing codes or law the CITY retains the right to negotiate with Park, Inc., bid additional contracts or negotiate with another parking company.

## **9. Employees, Agents and Subcontractors**

The CITY acknowledges and agrees that MANAGER has incurred substantial expense in training its personnel and that MANAGER's personnel are extremely valuable to MANAGER in the continuation of its business. The CITY further agrees that the economic loss to MANAGER if such personnel should leave the employ of MANAGER and become employed or be retained directly or indirectly by The CITY would be substantial. Accordingly, CITY agrees that it will not during the term of this Agreement and for a period of one (1) year after the effective date of the termination of this Agreement, (i) employ, hire, retain or contract with, directly or indirectly, any of MANAGER's current or former employees, agents or subcontractors who, during the term of this Agreement, performed any services hereunder for jobs similar to the ones they had while working for MANAGER .or (ii) in any way interfere with the employment or contractual relationship between MANAGER and any of its employees, agents, or subcontractors.

## **10. Default**

In the event that either party is in default with respect to any of the provisions of this Agreement, the non-defaulting party shall have the right to terminate this Agreement effective on the date seven (7) days after the date of notice to the defaulting party by the non-defaulting party of the non-defaulting party's intention to so terminate if such default is not cured to the non-defaulting party's satisfaction within said seven (7) day period. In the event of any such termination, the non-defaulting party shall be entitled (i) to pursue such remedies as are available to it in law or in equity and (ii) to recover from the defaulting party reasonable costs and attorneys' fees incurred by the non-defaulting party in conjunction with the same, if such non-defaulting party is the prevailing party in any litigation.

## **11. Assignment**

A party to this Agreement shall not assign or transfer its rights, duties or obligations hereunder unless the other party hereto consents to such assignment in writing prior to any such assignment, such consent not to be unreasonably withheld.

## **12. Notices**

All notices and other communications hereunder must be in writing and shall be deemed to have been duly given when personally delivered or when placed in the United States mail, first-class, postage prepaid, addressed to the party to whom such notice is being given at the address set forth below:

If to MANAGER:

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If to the CITY:

City of Auburn  
Attn: James C. Buston, III, CITY MANAGER  
144 Tichenor Avenue, Suite 1A  
Auburn, Alabama 36830

A party may change the address to which such notices shall be given by notifying the other party in accordance with this Section 12 of such change of address.

## **13. Severability**

Should any provision of this Agreement or any part thereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

## **14. Governing Law**

This Agreement shall be deemed to have been made and entered into in the State of Alabama, and the construction, validity and enforceability of this Agreement shall be governed by the laws of the State of Alabama, without reference to the conflict of laws provisions thereof.

Legal action arising from the performance of this Agreement will be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama. The Agreement shall be interpreted according to the laws of the State of Alabama.

## **15. Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. The terms and provisions of this Agreement shall survive the expiration or termination of this Agreement to the extent required to give full force and effect thereto. All prior contemporaneous or other oral or written statements,

representations or agreements by or between the parties with respect to the subject matter hereof are merged herein.

**16. Miscellaneous**

This Agreement shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. This Agreement shall not be changed or modified orally but only by an instrument in writing signed by the parties, which states that it is an amendment to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year set forth below.

**"MANAGER"**

**"CITY"**

By: \_\_\_\_\_

By: \_\_\_\_\_

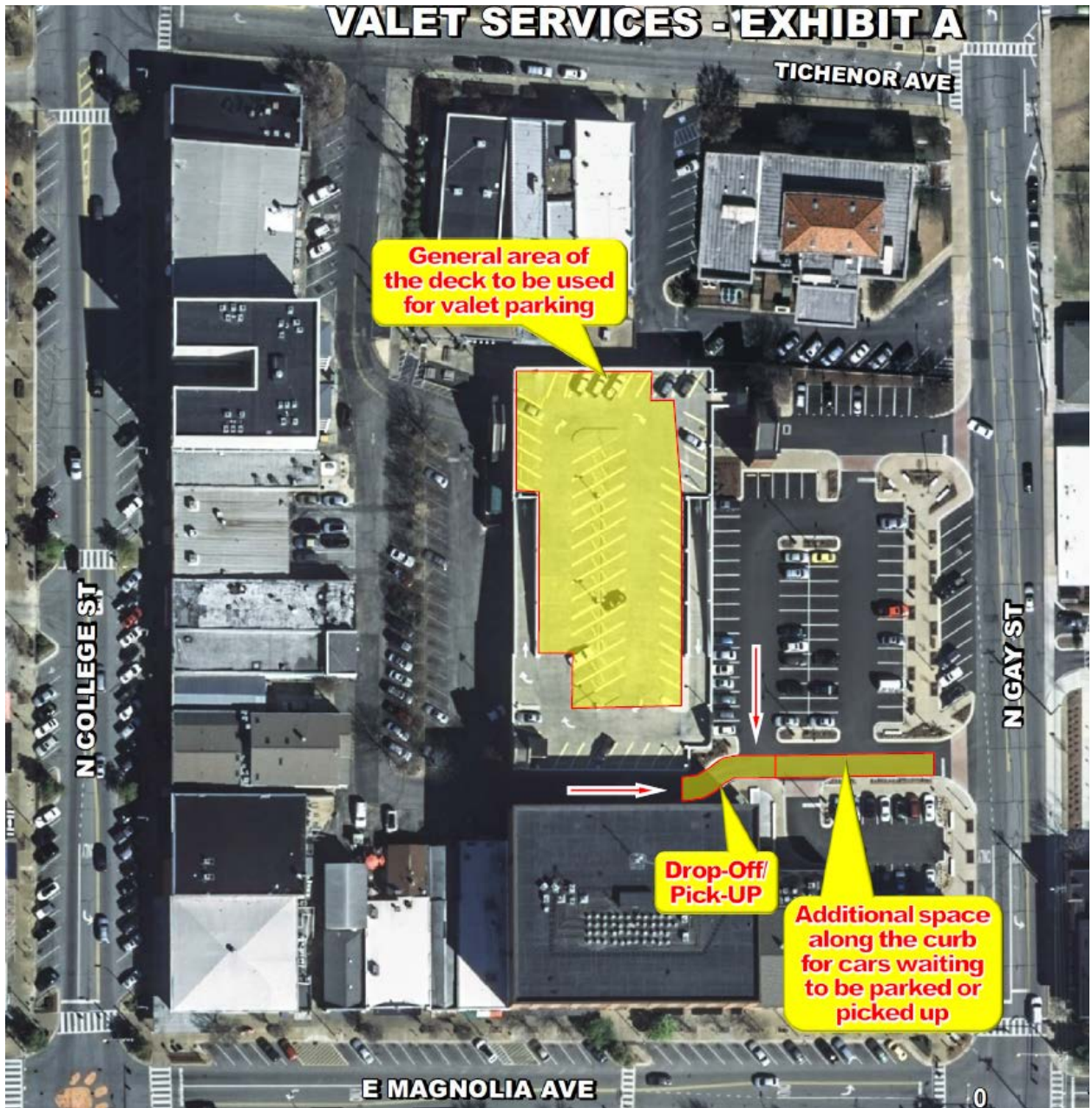
\_\_\_\_\_  
PRESIDENT

James C. Buston, III  
CITY MANAGER



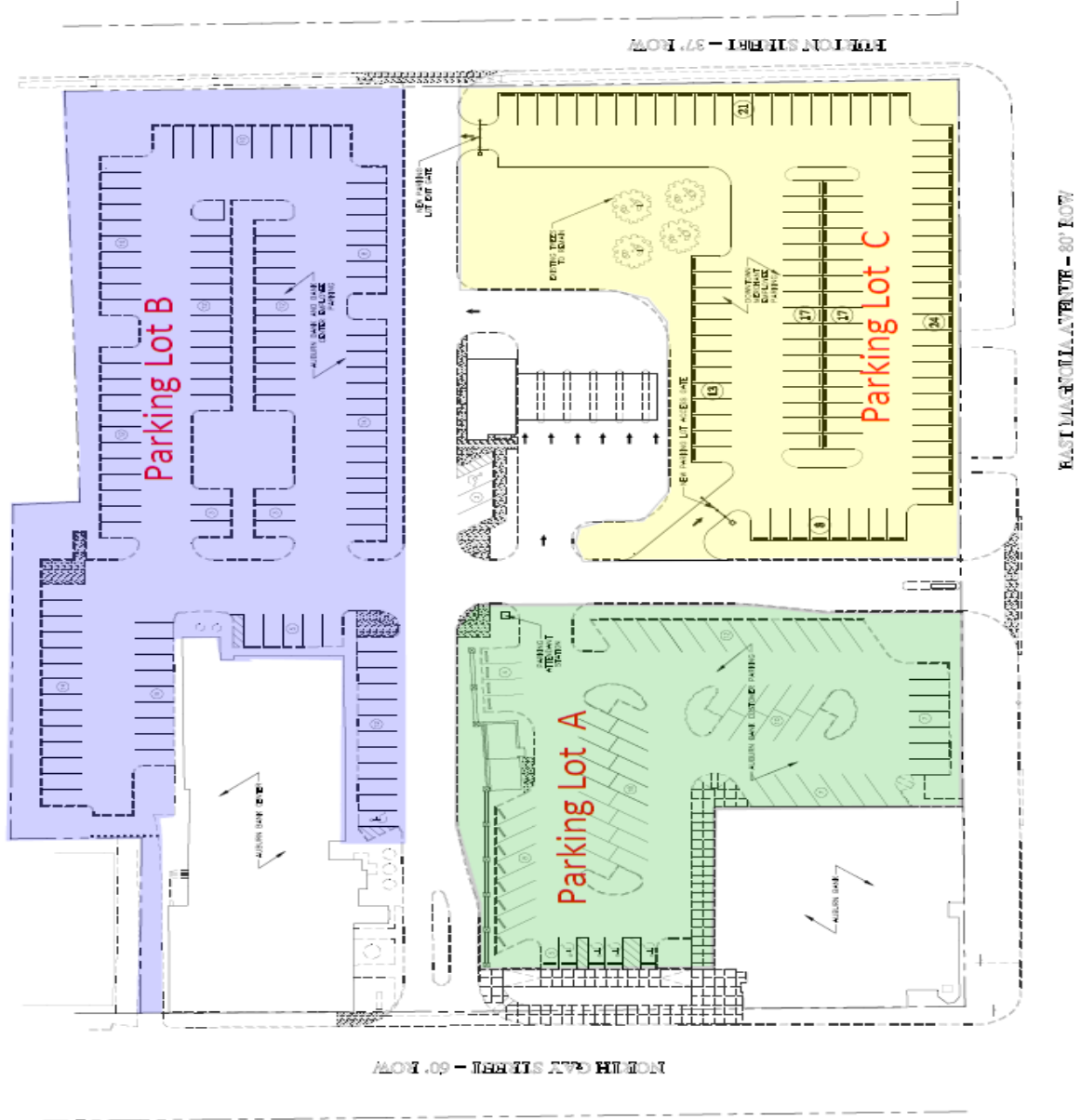
## EXHIBIT A

- Locations:**  
**Primary Service Location**  
City of Auburn Municipal Parking Deck  
North Gay Street  
Auburn, Alabama 36830



## Optional Service Location

Lots A and B  
100 North Gay Street  
Auburn, Alabama 36830



## 2. Service Days and Times

To be negotiated upon award of Agreement