

RESOLUTION NO. 28623

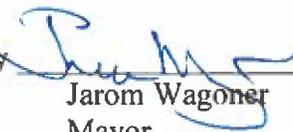
APPROVE RESOLUTION AUTHORIZING THE EXECUTION OF A PARKING OPERATIONS AGREEMENT WITH THE CAR PARK, LLC FOR DOWNTOWN CALDWELL.

THEREFORE BE IT HEREBY RESOLVED by the Mayor and Council of the City of Caldwell, Idaho, that the Caldwell City Council authorizes the execution of the document with The Car Park as hereto attached.

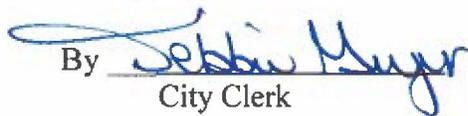
PASSED BY THE COUNCIL of the City of Caldwell, Idaho this 17th day of October, 2023.

APPROVED BY THE MAYOR of the City of Caldwell, Idaho this 17th day of October, 2023.

Approved,

By 
Jarom Wagoner
Mayor

ATTEST:

By 
City Clerk



PARKING OPERATIONS AGREEMENT

CITY OF CALDWELL, IDAHO
AND
THE CAR PARK, LLC

October 17, 2023

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PARKING OPERATIONS AGREEMENT

THIS AGREEMENT (“**Agreement**”) is effective as of the 17th day of October, 2023, by and between the CITY OF CALDWELL, IDAHO, an Idaho municipal corporation, 411 Blaine Street, Caldwell, Idaho 83605 (“**City**”) and THE CAR PARK, LLC, a Delaware Limited Liability Company, 702 West Idaho Street, Suite 400, Boise, Idaho 83702 (“**Operator**”). City and Operator may be individually referred to as a “**Party**” and collectively as the “**Parties.**” City and Operator agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT

A. [§ 101] Purpose of This Agreement

The purpose of the Agreement is to effectuate a Parking Management Plan (to be appended to this Agreement as Attachment 1 within ninety (90) days of the effective date) by providing for the operation of Parking Facilities defined below.

The operation of the Parking Facilities, pursuant to this Agreement and the fulfillment generally of this Agreement, is in the vital and best interests of the City, and the health, safety, and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

B. [§ 102] Caldwell City Code Chapter 9, Article 7 (“Ordinance”)

This Agreement is subject to the provisions of the Ordinance, as follows:

1. The City Council may by resolution establish locations for which paid parking must be paid, valid permits acquired, and time restrictions on parking imposed as well as the amounts and schedules required to be paid, applicable hours, and seasonal enforcement dates. All required fees shall be paid by any method approved by the Operator and the City’s parking and transit manager (“**Manager**”), and these may include, without limitation, paper bills, coins, credit cards, cellphone or internet payment, and validation. The City may identify a number of stalls within a lot or streets for paid or permit parking, and delegate to the Manager the responsibility of designating the specific stalls.

2. The Manager shall propose parking rates for the following season to the City Council by June 1 of each year to go into effect the beginning of the next fiscal year, October 1. The seasonal parking rates in City-controlled parking Facilities shall be intended to produce a target measured occupancy of 85 percent or less during peak visitation periods within the Facilities in order to:

- a. Support the City's businesses by making parking available and encouraging economic development;
- b. Maintain adequate turnover of City-controlled parking spaces;
- c. Encourage an adequate amount of parking availability for a variety of parking users, efficient use of City-controlled perimeter parking locations, and enhanced use of the City's other transportation alternatives; and;
- d. Reduce congestion in travel lanes caused by drivers seeking available parking.

C. § 104] Parking Facilities

The Parking Facilities means those public on-street and off-street parking facilities identified on **Exhibit A ("Parking Facilities")** attached hereto and incorporated by this reference. The terms of this Agreement shall apply to each of the Parking Facilities described in Exhibit A unless otherwise specified.

City may close, dispose of, acquire, or construct other parking spaces, parking lots, garages and parking facilities, which the City may determine in its sole discretion should be added to or deleted from the Facilities. Any addition to the Facilities shall be operated under the terms and conditions of this Agreement. Amendments to this Agreement shall be completed to reflect the addition or deletion of such Facilities and include appropriate negotiated adjustments to Operator's compensation. City shall provide Operator ninety (90) days' written notice of any such addition or deletion to the Facilities.

II. § 200] TERM, CANCELLATION, AND RENEWAL

The initial term of this Agreement shall commence at the effective date and continue through October 1, 2024.

City shall have, in its sole discretion, the option to renew and extend the terms of this Agreement for four (4) one-year increments, renewable each year; such extended term(s) to begin upon the expiration of the then-expiring term of this Agreement, and all terms, covenants, and provisions of this Agreement shall apply to such extended term.

Operator agrees that by entering into this Agreement, it obtains no additional rights or privileges in the future regarding the operation of the Parking Facilities and agrees that City has not waived or abrogated any power or discretion it has regarding the operation of the Facilities upon termination of this Agreement. Non-enforcement of any condition or obligation of this Agreement by City shall not be considered a waiver of any other condition or obligation imposed by this Agreement.

Further, either City or Operator may cancel this Agreement at any time by providing a written notice of cancellation one hundred twenty (120) days prior to cancellation. Prior to the termination or cancellation of the Agreement, Operator agrees to assist City with the orderly transition of the responsibilities for operation and maintenance of the Facilities and to ensure a seamless transition to a replacement operator. If necessary, Operator agrees to provide such services after the effective date of the termination or cancellation of the Agreement for compensation to be negotiated, in good faith, by the Parties, which shall in no event be an amount above the total sum paid to Operator in the thirty (30) day period prior to the effective date of termination.

III. [§ 300] OPERATIONS

A. [§ 301] Operations in General

Operator agrees to manage and operate the Parking Facilities in a professional, economical and businesslike manner, satisfactory at all times to City. Operator agrees to accomplish the following unless otherwise directed by City.

1. Maintain and staff a business and permit sales office (“**Parking Facilities Office**”) in a location approved by City.
2. Employ parking staff (e.g. cashiers, supervisory staff, management staff and office administrative staff) and perform associated responsibilities including but not limited to employee recruitment, orientation, training, evaluation and discipline.
3. Provide on-going customer service in a friendly and professional manner, tracking and resolving any and all customer service-related issues.
4. Use Operator’s best efforts to maintain and develop the customer base of the Facilities.
5. Perform cashiering and daily, weekly, monthly and annual auditing, reconciliation, operations and financial reports.
6. Perform the collection of cash and coins from the parking meters on a schedule approved by the City. All collections shall be deposited on or before the next business day into the bank;
7. Perform routine patrols of the Facilities to enforce the parking rules as set forth by the City. Including the issuing of citations,

collection of citations, adjudication of citations, immobilizing or impounding vehicles.

8. Provide bookkeeping and accounting functions such that Gross Revenues and Operating Expenses are individually computed for each Parking Facility listed on Exhibit A to this Agreement and as more fully described in Section 506 of this Agreement.
9. Contract with monthly or permit parkers, and bill and collect payment for monthly or permit parking in accordance with such contracts.
10. Ensure that customers of the Parking Facilities pay the proper amount for parking and are not permitted to park free of charge except upon express direction of Manager or in compliance with the Parking Management Plan.
11. Pursue payment and collect parking revenues from past due accounts and unpaid fines, fees, and other charges consistent with City's collections policy established by City and Operator.
12. Perform routine maintenance of and repairs to the Parking Facilities in accordance with Section 305.
13. Maintain all Parking Facilities operating equipment and implement a preventative equipment maintenance program in accordance with Section 305.
14. Provide operational and maintenance supplies as are reasonably necessary to operate the Parking Facilities.
15. Propose a customer service amenities program offering such services as: vehicle location assistance, vehicle lock-out assistance, tire inflation, etc. Implement those services approved and included in the Parking Facilities budget by City.
16. Coordinate the operation of the Parking Facilities with public works contractors and tradespeople hired by City to perform work on Parking Facilities. Assist with such tasks as creating temporary construction and storage, routing of traffic, and the shut down and activation of Parking Facility.
17. Be knowledgeable regarding federal, state and local regulations that apply to the operation, maintenance and repair of a public parking Facilities including but not limited to building and safety

regulations and inspection requirements, environmental regulations and procurement regulations and policies. Conduct operations of the Parking Facilities so they comply with applicable federal, state and local regulations.

18. Assist with the development of necessary operating policies and procedures. Implement policies and procedures approved by City.
19. Track parking-related statistics for all Parking Facilities (e.g., parking occupancies, durations, ticket data, allocations, revenues, expenses, and customer service, maintenance, and safety/security activities).
20. Provide parking management advice as necessary concerning operations, pricing, marketing, customer surveys, etc. Implement an outreach and marketing program approved and if included in the Parking Facilities budget by City.
21. Contract security services for the Parking Facilities as directed by City in its sole discretion.

Prior to execution, Operator shall submit to Manager for review any contract with an independent contractor to supply the services enumerated in this Section 301, which has a contract value of more than \$5000, including but not limited to staffing; accounting and reporting; cleaning, maintenance and repair; collections, security, marketing and customer surveys. Manager shall have the right to approve the contractor selected by Operator to provide these services, which approval shall not be unreasonably withheld. Operator shall comply with applicable procurement requirements in the Idaho Code that apply to City whenever City funds are being used either directly or indirectly for procurement of public works construction, personal property, or personal or professional services..

Operator shall not engage in any other business in any part of the Parking Facilities other than to provide additional services such as activating inoperative vehicles as requested by a customer of the Facilities or similar parking customer services, which services have been approved by City by a written letter of approval. Operator shall provide to City a list of all costs for such approved, additional services, and these costs shall be approved by City by written letter of approval prior to the imposition of said costs for such services.

Operator shall report to Manager any and all damages or vandalism to any of the Parking Facilities and any and all claims for loss or damage to vehicles utilizing any Parking Facility, it being understood that Operator assumes full responsibility for processing and settling all such claims for loss or damage to vehicles utilizing any Parking Facility. Operator shall also notify Manager in writing of any and all claims

identified or filed against Operator and/or City, immediately upon discovery of any such claim.

B. [§ 302] Operational Objectives and Standards

Operator shall be responsible for the day-to-day operation of the Parking Facilities in a manner that ensures the safe, attractive, clean, and customer-friendly operation of the Facilities.

Annually, during the budgetary process described in Section 508 of this Agreement, City and Operator shall agree upon a program of objectives and operational standards (“**Parking Facilities Annual Program**” or “**Annual Program**”) for the following fiscal year which shall address: how the Facilities are to be operated, maintained and marketed; customer service; technology upgrades; capital investments, etc. The Annual Program shall include City’s collections policy and a target for collection of past due accounts and unpaid fines, fees, and other charges established by City and Operator.

Operator shall submit its proposal for the Annual Program for the remainder of City’s 2024 fiscal year, and no later than June 1 prior to the commencement of any subsequent fiscal year this Agreement is in effect. The City’s fiscal year runs from October 1 to September 30. City and Operator shall prepare the final Annual Program, guided by the provisions of City’s Parking Management Plan and the operational standards mutually acceptable to City and Operator. City and Operator may also refer to the National Parking Association’s (NPA) Parking Garage Maintenance Manual or any other compilation of standards deemed useful by City and Operator. The final Annual Program shall be reduced to writing and made a part of City’s overall budget for the subsequent fiscal year. Operator acknowledges that the Annual Program described herein shall be effective only when included within City’s overall budget.

The proposed Annual Program shall also include a description of the employee orientation and training program and customer service assessment and improvement program that Operator intends to implement as part of the budget proposed for the upcoming fiscal year (“**Annual Employee Training and Customer Service Programs**”). The Annual Employee Training and Customer Service Programs shall include, but not be limited to, a comprehensive customer service training program for Operator’s employees and for staff supplied to operate the Parking Facilities by any independent contractor. If City decides to amend or update the operational standards in the Parking Management Plan, Operator shall, upon City’s request, provide feedback and suggestions concerning City’s operational standards.

C. **[§ 303] Hours**

Operator agrees to operate the Parking Facilities on the days and during the hours established by City. Hours of operation may be changed from time to time by City upon written notice given by City, and any such changes shall take effect on the dates stipulated by such notice.

D. **[§ 304] Rates Enforcement and Parking Commitments**

Operator agrees to charge and collect rates for parking motor vehicles and bicycle storage that shall be established by City from time to time as set forth in the Parking Management Plan or otherwise approved by the City. Operator agrees that City may change parking rates from time to time at its sole discretion. New rates established shall become effective on the dates stipulated by City. Operator is encouraged to, with or without any specific request, recommend to City changes in parking rates.

Operator shall prepare and submit to City for its approval a parking enforcement policy to cover paid and permit parking in designated Facilities, extended (overtime) parking, and the prevention of unauthorized parking. Such action may include the issuance of parking violations for violating City's parking regulations.

E. **[§ 305] Maintenance, Repair and Inspection Obligations of Operator**

Operator shall be responsible for the day-to-day maintenance and repair of existing and future Parking Facilities the City may acquire or develop in a manner that ensures the cleanliness, safety, and attractiveness of all the Facilities. Such services shall include, but not be limited to, cleaning, painting, striping, trash removal, cleaning stairwells and landings; minor maintenance and repair to the structure, plumbing, electrical, lighting, air ventilation and heating; and maintenance and repair to parking access and revenue control ("**PARCS**") equipment not requiring a manufacturer's authorized technician ("**Routine Maintenance and Repair**"). Minor maintenance and repair is defined as maintenance and repair costing less than \$1000 per occurrence ("**Minor Maintenance and Repair**"). For maintenance and repair costing \$1000 or more per occurrence, Operator shall contact Manager for further instruction and authorization.

Operator further agrees to maintain the Facilities, the equipment provided by City, and all parts thereof, in good condition and repair and in as safe condition as its operation will reasonably permit, and make all repairs thereto that may be reasonably necessary for this purpose including, but not limited to, the following:

1. Maintain all signage, pavement markings, curbs, bumper guards, and wheel blocks.

2. Maintain all PARCS equipment.
3. Where an equipment warranty requires maintenance and/or repair by a manufacturer's authorized technician, Operator shall obtain services from an authorized technician. When a piece of equipment subject to warranty malfunctions or breaks down, and an authorized technician is not expected to be available within a time defined by City as reasonable, Operator shall notify and consult with Manager.
4. Maintain the Parking Facilities in a clean, presentable condition and not allow dirt, paper, or trash of any kind to accumulate in or upon the Parking Facilities.
5. Maintain and keep in good working order all electrified and non-electrified directional, informational, and advertising signs located within, on the exterior of, or associated with the Parking Facilities.
6. Snow removal from all off-street Parking Facilities.

City shall use maintenance standards of the NPA Maintenance Manual, or other recognized parking industry maintenance standards acceptable to City and Operator, as a guide in monitoring Operator's performance.

Prior to execution, Operator shall submit to Manager for review any contract with an independent contractor to supply the services enumerated in this Section 505, which has a contract value of more than \$5000, including but not limited to repair, maintenance and inspection services and public works construction. Manager shall have the right to approve the contractor selected by Operator to provide these services, which approval shall not be unreasonably withheld.

Operator shall comply with applicable procurement requirements in the Idaho Code that apply to City whenever City funds are being used either directly or indirectly for procurement of public works construction, personal property, or personal or professional services.

F. [§ 306] Finance Procedure

"**Gross Revenues**" shall include all revenues collected by Operator or City from the parking of vehicles. Operator shall deposit Gross Revenues in a bank account as soon as practical but no later than the next banking day following receipt of any Gross Revenues.

By the 20th day of each month Operator shall prepare and submit final monthly profit and loss statements for the prior month as well as any incidental

financial or operating statements as deemed necessary by City or as the normal course of operation shall dictate.

All source records of Gross Revenues, which shall include but not be limited to parking tickets, cash register tapes, shift reports, master reports, daily revenue reports, whether computer generated or manually generated, shall be kept by Operator at all times. These records are owned by City but shall be maintained by Operator for one year from the date the annual financial report is delivered to and accepted by City. At the end of the one-year period, these records shall be delivered to City for further disposition. City shall provide and maintain such storage facilities as necessary to facilitate the storage of the above records and shall provide reasonable access to such records. All databases for such purpose shall be maintained by Operator. Operator shall assure that adequate hard copies and data backups are made on a routine basis and stored on an approved media for a period of time requested by City.

Operator shall pursue payment and collect parking revenues from past due accounts and unpaid fines, fees and other charges consistent with City's collections policy and the target for collections established in the Annual Program as provided in Section 302.

G. [§ 307] Performance Requirements and Assessment

Operator shall submit to Manager proposed performance measures for the initial term within 30 days of the effective date. Manager and Operator shall establish mutually agreed upon performance measures within 60 days of the effective date. Operator shall submit a written report to Manager providing an assessment of its performance relative to the agreed upon performance measures by June 1, 2024, and each subsequent June 1 this Agreement is in effect. Manager shall provide to Operator by August 1, 2024, and each August 1 this Agreement is in effect, an initial performance assessment and recommended performance objectives and improvements for the City's following fiscal year, if City exercises its option to extend the Agreement, which shall assess:

1. Operator's compliance under the terms of this Agreement with specific emphasis on the requirements set forth in Sections 301, 302, 305, 306, 307, 403, 506 and 509.
2. Operator's performance relative to the performance measures established for the immediately preceding twelve months.
3. Other items appropriate under the terms of this Agreement.

The results of this performance review will inform the negotiation of the management fee and any merit increase included in City's budget for the subsequent fiscal year.

During each extension exercised by City, Operator and City shall conduct an informal performance conference no later than June 1 to discuss Operator's performance including accomplishments relative to agreed-upon performance measures and operational standards and any need for performance improvements. City may create a written summary of this conference, and if needed, an action plan shall be included and provided to Operator.

Operator and Manager shall conduct periodic on-site tours of the Parking Facilities as needed to identify items needing attention or improvement and shall create by mutual agreement a checklist of action items for Operator and City to address.

H. [§ 308]Alterations

Operator shall make no alterations or additions to the Parking Facilities and appurtenances without prior written consent of City. It is expressly agreed that all appurtenances, presently or hereafter located in and upon the Parking Facilities, whether affixed thereto or not, are and shall remain the property of City.

I. [§ 309]Authority to Contract Limited

No employee or agent of Operator shall contract directly or indirectly, either as an owner, employee, or agent of City, for services over and above Operator's obligations under this Agreement, except with the prior written approval of City.

J. [§ 310]Damage by Operator

Operator shall pay for and repair any damage to the Parking Facilities, appurtenances, and equipment therein caused by the negligence of Operator's employees. Such cost and repair shall not be a reimbursable Operating Expense.

K. [§ 311]Agreement Not a Tenancy

Nothing in this Agreement shall be construed as creating a tenancy between City and Operator, nor shall Operator be deemed to have the right of occupancy to the Parking Facilities or any part thereof.

L. [§ 312]Independent Contractor

The Parties agree that Operator shall render services to City as an independent contractor and not as an employee of City. Operator, including its employees and contractors, is and shall be treated by City as, an independent contractor (statutory non-employee) and not an employee for state, tax and for all

other purposes. Operator hereby acknowledges that it has been advised by City that as an independent contractor (non-employee) affiliated with City it is responsible for the payment of all its own federal income taxes, self-employment taxes (FICA), and all corresponding state, county and local taxes, if any, and Operator hereby agrees to comply with those responsibilities. Operator hereby waives any claims it has or may have against City now or in the future respecting such taxes or the right of City not to withhold, not to pay or not to contribute to such taxes on behalf of Operator.

IV. [§ 400] PERSONNEL

A. [§ 401] Selection and Salaries

Operator agrees to secure, furnish, train, and pay for all personnel as are reasonably necessary to be employed in the successful operation of the Facilities under this Agreement and the Parking Facilities Annual Program. Such personnel shall include a full-time, on-site general manager (“**General Manager**”) for the Facilities, the selection and salary being subject to the approval of the City. Any and all employees of Operator, or other persons, while engaged in the performance of any work or services required by Operator under this Agreement, shall be considered employees or agents of Operator only, and not employees of City nor have any contractual relationship with City. Any and all claims that may or might arise under the worker’s compensation laws of the State of Idaho on behalf of said employees or other persons while so engaged in any work or services provided to be rendered herein, shall be the sole obligation and responsibility of Operator.

B. [§ 402] Equal Opportunity and Americans with Disabilities Act

All persons employed or applying for employment with Operator shall: (a) have and be entitled to the full and equal benefit of all laws and proceedings for the security of persons and properties; (b) have and be entitled to equal employment opportunities devoid and free from bias, discrimination, harassment, or intimidation because of race, color, religion, national origin, sex, sexual orientation, gender identity/expression, age, physical/mental handicap, marital status, disability, or veterans status; and (c) be subject to like punishments, penalties, licenses, and exactions of every kind.

Operator shall also be familiar with and adhere to the specific provision of the Americans with Disabilities Act of 1990 relating to Title I - Employment and Title II - Public Services. Additionally, Operator will ensure that any suppliers or subcontractors functioning under this Agreement shall also be in compliance with the aforementioned Titles.

C. [§ 403] Personnel Guidelines

Operator further agrees to:

1. Select staff with attention to meeting the objectives and standards set by City for the Facilities.
2. Provide an on-going comprehensive orientation and training program for its employees assigned to the Facilities, and for any staff supplied by an independent contractor for operation of the Facilities. Such program shall be submitted in writing to City no later than the time set forth in Section 302 of this Agreement.
3. Establish a performance review process for staff which includes, at a minimum, setting annual performance goals, an annual performance assessment and periodic feedback on how staff is meeting its performance goals.
4. Educate staff as to the objectives and standards contained in the Annual Program for the Facilities and include how staff performs relative to these objectives and standards in staff performance reviews.
5. Maintain a close watch over staff to ensure that they discharge their duties in a safe, courteous, and efficient manner and maintain a high standard of safety and service to the public.
6. Ensure staff wears appropriate uniforms and present a neat and clean appearance at all times. Operator shall obtain approval from City as to color and design of the uniforms. City may require uniforms to bear the logo established by City for the Parking Facilities and not Operator's logo.
7. Ensure staff furnishes customer service on a fair, equal, and non-discriminatory basis to all users of the Facilities.
8. Background Checks: For each employee, Operator agrees that it will:
 - i. verify social security number;
 - ii. check motor vehicle record;
 - iii. check criminal background;
 - iv. perform drug screening in compliance with state, local and federal law; and

- v. Any additional screening must be communicated in writing by the City to Operator and must be paid for by the City.

V. **[§ 500] PAYMENTS TO OPERATOR, BUDGET, ANNUAL REPORTS, BOOKS, AND RECORDS**

A. **[§ 501] Fees and Insurance Costs**

1. **[§ 502] Fee for the Facilities**

City shall pay to Operator an annual management fee as stated in **Exhibit B**. This fee shall be divided into twelve (12) equal monthly installments. The fee is intended to cover all administrative costs and expenses incurred by Operator as well as any and all Operating Expenses not defined as reimbursable Operating Expenses in Section 505 and not defined as indirect costs in Section 506 of the Agreement.

The amount of the fee for City's subsequent fiscal years i.e., FY 2025, 2026, 2027 and 2028 (if City exercises its option to extend the Agreement) shall be negotiated each year no later than June 1 and prior to City's approval of its subsequent fiscal year's annual operating budget.

At the conclusion of the initial term and any extension exercised by City, Operator shall be eligible for a performance bonus ranging from 0-7.5% of the management fee for the fiscal year just ending. The performance bonus percentage shall be based on Operator's annual performance review for the fiscal year just ending. The performance review shall be based on performance measures previously established by City and Operator and shall be conducted as described in Section 307 of this Agreement. City shall pay Operator's performance bonus in a lump sum payment no later than ninety (90) days after the end of the fiscal for which the bonus is earned.

B. **[§ 503] Operating Expenses**

1. **[§ 504] Reimbursement for Operating Expenses**

Operator shall pay all Operating Expenses as they come due.

City shall reimburse Operator for its monthly cost of operation in the following manner: Operator will deliver to City on or before the twentieth (20th) day of the following month the financial reports and costs to operate the Facilities. Reports shall be in a format and at a level of detail acceptable to City, with supporting documentation as required by City. Costs shall only include items defined in direct and indirect Operating Expenses in Sections 505 and 506, and as further defined in Operator's approved annual operating budget. If the Gross Revenue for any month is insufficient to cover the Operating Expenses, City will

reimburse Operator within thirty (30) days following receipt and acceptance of the financial reports for the balance due and owing to Operator.

2. [§ 505] Operating Expenses Defined

“**Operating Expenses**,” as defined in this Section, means and is limited to the cost of the following items at rates set forth in the approved Budget:

- Salary of General Manager;
- Salaries of employees working in the Facilities;
- Social Security and Medicare taxes;
- Unemployment taxes;
- Workers’ Compensation and Employer’s Liability insurance;
- Operator’s portion of Medical/Dental/Vision premium payments for employees;
- Pension plans or 401-K;
- Payroll processing and accounts receivable processing expense;
- Uniforms and laundry;
- Office supplies;
- Credit card and gateway fees;
- Licenses and permits;
- Enforcement units, software;
- Office space rental;
- Advertising, marketing, and promotion, as approved in advance by Manager;
- Routine Maintenance and Repair (as described in Section 305);
- Operational supplies required to operate the Parking Facilities (including, but not limited to, tickets, hang-tags, access cards and other customer access devices; permits, validation stamps, etc.);

- Recruiting employees and employee orientation and training;
- Purchasing signs (when approved in advance by Manager);
- Utilities (including telephone, cellphones, gas, water, electricity, sewer, and trash collection)
- Premiums for insurance coverage required under Section 600 of this Agreement.
- Voluntary settlement of patrons' claims for vehicle damage or loss of contents provided that the same has been authorized by the City and approved by Operator;
- Snow removal for all off-street Facilities.

City may, from time to time through the term of this Agreement and any extensions thereof, directly provide reimbursable goods or services that are included in the budget or were previously approved by City in writing, and which City determines would be best provided by City directly.

Notwithstanding the foregoing, unless Operator is notified in writing by City that the Operating Expense associated with the purchase or performance of certain goods or services will be incurred by City, all Operating Expenses consistent with the budget shall be reimbursed by City to Operator. By the 20th of each month, Operator shall submit a monthly expense invoice, certified by an officer of Operator. City staff have the right to use such methods as they deem necessary and appropriate to verify amounts claimed on expense invoices.

3. [§ 506] Accounting for Direct and Indirect Operating Expenses

Operator shall keep specific records and accounts for the Gross Revenues and Operating Expenses directly related to the operation of each Parking Facility and which expenses are associated with operation of the Parking Facilities generally. Operator shall report those expenses by budget category.

C. [§ 507] **Taxes**

It is the intention of City and Operator that the Facilities and their operation be exempt from taxation. In the event that any unit of government having taxing authority establishes its right to tax the Facilities or its operation, then, and in that event, all taxes which are assessed shall be considered Operating Expenses within the meaning of Section 505.

D. [§ 508] Budget

For the initial term of this Agreement, the operating budget, management fee, and merit increase for Operator shall be as shown in **Exhibit B**, attached and incorporated by this reference.

Thereafter, if City exercises the extensions provided for in this Agreement, Operator shall prepare an annual operating budget and submit same to City by June 1 for City's next fiscal year commencing October 1. (Operator shall also prepare an Annual Program as described in Section 302 and submit same to City by June 1.)

After submittal of the budget, City and Operator shall meet for the purpose of reviewing the budget and for inclusion of the budget described in this Section in City's overall budget. (The Annual Program shall also be included in City's overall budget as described in Section 302.) Operator acknowledges that the Annual Operating Budget described herein shall be effective only when included within City's overall budget.

E. [§ 509] Accounts, Reports, and Audits

Operator shall prepare and submit monthly profit and loss statements as well as any incidental financial or operating statements as deemed necessary by City or as the normal course of operation shall dictate. Such statements shall clearly delineate between direct and indirect costs of operation attributable to the Facilities and any costs incurred by Operator for managing other properties for which Operator is responsible.

Such books, accounts, and statements shall also be subject to inspection under the provisions of Section 816 of this Agreement. City may conduct an annual audit of the Facilities operations. Operator agrees to provide City's auditors such information as may be needed to conduct such annual audit and to cooperate fully with City's auditors.

VI. [§ 600] INDEMNITY AND INSURANCE,

A. [§ 601] Property Damage or Injury Indemnification

Operator shall defend, indemnify and hold City harmless from and against any and all actions, costs, claims, losses, expense and/or damages, sustained by City attributable to the recklessness, carelessness, or negligence of Operator or any of its agents, servants or employees from any cause, including, without limitation by specification, property damage and/or injury or death to any person or persons. City shall defend, indemnify and hold Operator harmless from and against any and all actions, costs, claims, losses, expense and/or damages,

sustained by Operator attributable to the recklessness, carelessness, or negligence of City or any of its agents, servants or employees from any cause, including, without limitation by specification, property damage and/or injury or death to any person or persons. With respect to City, nothing in the foregoing is intended, nor may it be interpreted or construed to increase the limits of liability of City as capped by the Idaho Tort Claims Act (Idaho Code § 6-901 through § 6-929), or to otherwise lessen the protections afforded City under said Act.

City expressly acknowledges that the Operator's obligations in connection with the management, operation and promotion of the Parking Facilities, and employment of persons in connection therewith, do not include the rendition of service, supervision, or furnishing of personnel in connection with the personal safety and security of employees, tenants, customers, or other persons within and about the Parking Facilities. Operator does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do Operator's employees undertake the obligation to guard or protect customers against the intentional acts of third parties. City shall determine, at City's discretion, whether and to what extent any precautionary warnings, security devices, or security services may be required to protect patrons in and about the Parking Facilities.

B. [§ 602] Insurance

Operator shall procure and maintain continuously in effect, during the term of this Agreement, policies of insurance of the kind and amount, as follows:

1. Worker's compensation coverage and employer's liability coverage as required by Idaho law.
2. Commercial general liability insurance, in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate combined single limit for personal injury, including death, and for property damage. Coverages thereunder shall include premises liability, facilities and operations liability, contractual liability, personal injury, owner's and contractors' protection, elevator liability, products, and completed operations coverage. This policy shall be endorsed to name City, including its respective officers, agents, or employees, as additional insureds.
3. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name City, including its respective officers, agents, or employees, as additional insureds.

4. Robbery and holdup insurance (inside and outside) with \$25,000 limit per occurrence.

The foregoing insurance coverage, to the extent such coverage is triggered and/or applicable, shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by City. All insurance provided by Operator under this Agreement shall include a waiver of subrogation by the insurers in favor of City.

C. [§ 603] General Insurance Requirements

All insurance required in this Agreement shall be taken out and maintained by insurance companies licensed in the State of Idaho with no less than an "A" rating by A.M. Best. Operator shall furnish City a certificate or certificates of the responsible insurers, stating that such insurance is in full force and effect. All policies or certificates of insurance are subject to City's approval.

The insurance coverage herein required may be provided by a blanket insurance policy or policies.

VII. [§ 700] DEFAULTS, REMEDIES, TERMINATION, AND ALTERNATIVE DISPUTE RESOLUTION

A. [§ 701] Surrender of Facilities

Upon termination of this Agreement, by lapse of time or otherwise, Operator shall surrender and turn over possession of the Facilities to City in the same manner and condition as it received the Facilities, excepting reasonable wear and tear.

B. [§ 702] Effect of Default

It is expressly agreed between the Parties hereto that in the event any Parking Facility is deserted, vacated, or abandoned, or if Operator shall sell, assign, or pledge this Agreement except as provided herein; or if default be made in the performance of any of the covenants and agreements to be performed by Operator; or if Operator shall fail to comply with any of the statutes, ordinances, rules, orders, regulations, or requirements of the federal, state, or city governments; or if Operator shall file a petition in bankruptcy or make an assignment for the benefit of creditors or take advantage of any insolvency act, City may elect to terminate this Agreement and the terms hereof. In the event City elects to terminate this Agreement because of a violation of this Agreement, upon such termination, Operator shall compensate City for the loss in revenue suffered by reason of such termination.

Should City at any time terminate this Agreement for any breach, City may recover from Operator for any direct damages incurred by reason of such breach, including the costs of recovering the Facilities, the loss in revenue suffered by reason of such termination, and reasonable attorney fees. In the event of such termination, City may withhold any future payments to Operator, on a pro-rated basis, in settling all accounts.

No payment of money by City to Operator after default, cancellation, or expiration of this Agreement or any extension thereof, shall reinstate, continue, or extend the term of this Agreement or affect any notice given to Operator by City or operate as a waiver of any right of City.

C. [§ 703] Legal Actions

1. [§ 704] Institution of Legal Actions

In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement.

2. [§ 705] Applicable Law

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

3. [§ 706] Alternative Dispute Resolution

In the event that a dispute arises between City and Operator regarding application or interpretation of any provision of this Agreement, the aggrieved Party shall promptly provide written notice to the other Party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties may first endeavor to settle the dispute in an amicable manner by mediation. If the Parties elect to mediate their dispute, the Parties will select a mediator by mutual agreement and agree to each pay half of the mediator's costs and fees. The mediation will take place in Caldwell, Idaho unless otherwise agreed by the Parties in writing. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity. If the Parties do not mutually agree to mediate the dispute, either Party may pursue any rights or remedies it may have at law.

D. [§ 707] Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or

more of such rights or remedies shall not preclude the exercise by it at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. [§ 708] Attorney Fees

In the event of any action or proceeding at law or in equity, including arbitration, between City and Operator to enforce any provision of this Agreement or to protect or establish any right or remedy of either Party hereunder, the unsuccessful Party to such action shall pay to the prevailing Party all costs and expenses, including reasonable attorney fees incurred therein by such prevailing Party (including such costs and fees incurred on appeal), and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, and attorney fees shall be included in and as a part of such judgment or award. The provisions of this Section shall apply to any termination of this Agreement and shall survive such termination.

VIII. [§ 800] MISCELLANEOUS

A. [§ 801] Notice

All notices, demands, or other communications required to be in writing by this Agreement shall be deemed given when personally delivered, delivered by courier, or sent by certified or registered mail, postage prepaid, with proper address as indicated below. City and Operator may, by written notice given to each to the other, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Agreement.

Until otherwise provided by the respective Parties, all notices, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective Parties, all notices, demands, and communications to each of them shall be addressed as follows:

To City:
Attn: City Clerk
City of Caldwell, Idaho
411 Blaine St.
Caldwell, Idaho 83605
Phone: 208-455-3000
E-mail: dgeyer@cityofcaldwell.org

To Operator:
Jeff Wolfe, Chief Executive Officer
The Car Park, LLC
702 W. Idaho Street, Suite 400
Boise, Idaho 83702
Phone: 208-336-6597
E-mail: jwolfe@thecarpark.com

Telephone numbers and E-mail addresses are for convenience and not to be used for notices required to be in writing. Informal notices and communication may be delivered in person or by telephone, U.S. Mail, courier or E-mail. Either Party may, by written notice, change the address, telephone number, or E-mail address listed above.

B. [§ 802] Compliance with Laws and Ordinances

Operator agrees to operate the Facilities in compliance with this Agreement and all laws and ordinances in effect or which may hereafter be adopted, including, but not limited to, federal law and regulation, laws of the State of Idaho.

C. [§ 803] Rules and Regulations

City may, at its discretion, adopt reasonable rules and regulations relating to the operation and use of the Facilities, and Operator agrees to abide by such rules and regulations.

D. [§ 804] Assignability by Operator

The rights, obligations and duties of Operator under this Agreement shall not be assigned or transferred, in whole or in part, without the prior written permission of City.

E. [§ 805] Damage, Destruction, or Sale

If during the term of this Agreement all or any part of any Parking Facility which is part of the Facilities shall be destroyed or materially damaged from any cause, City shall have the option to repair, replace, and restore the damaged portion of the Parking Facility to its former condition or to discontinue all or any part of the operations of the Parking Facility. In either case, City may, at its option, cancel, modify, or suspend the operation of this Agreement as it related to such Parking Facility upon thirty (30) days' written notice to Operator. In such instance, Operator's expenses and Operator's fees shall be adjusted accordingly.

Likewise, such adjustment shall be made in the event City sells or transfers any Parking Facility which constitutes part of the Facilities.

F. [§ 806] Handicapped Parking

In order to comply with applicable standards established by federal, state, or local law, parking spaces for access by the handicapped shall be designated in each Parking Facility by mutual agreement of City and Operator as may be required.

G. [§ 807] Option to Add Parking Facilities / Option to Delete Parking Facilities

City may add to this Agreement additional Parking Facilities which shall be managed by Operator under the same terms and conditions of this Agreement. Likewise, City may delete from this Agreement those Parking Facilities which may be closed or conveyed to others.

H. [§ 808] Free or Reduced Fee Use of Parking Facilities

City may allow free or reduced fee parking in its Parking Facilities for certain events or programs. If City permits reduce fee parking in Parking Facilities, Operator shall manage the operation of the Parking Facility or lot as directed by City. Any expenses incurred will be reimbursed as an Operating Expense as defined in Section 505 but will not be included as an Operating Expense for net revenue, which are Gross Revenues under Section 306 less Operating Expenses under Section 505.

I. [§ 809] Event Parking

City intends that the Facilities will be open for events throughout the area. Operator shall manage the Facilities to accommodate these events and set event rates as directed by City and shall provide any accounting for the individual events as required by City. Operating Expenses incurred to accommodate event parking shall be included in the reimbursable expenses, and revenues shall be included in total gross revenues per Parking Facility. Operator shall perform all prepaid event parking marketing as directed by City.

J. [§ 810] City's Right to Inspect and Make Repairs

City shall have the right, at such times as may be reasonable under the circumstances, and with as little interruption to Operator's operations as is reasonably practicable, all as determined by City to:

1. Inspect the Parking Facilities at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether

Operator has complied and is complying with the terms and conditions of this Agreement.

2. Perform maintenance and make repairs and replacements in any case where City determines that it is necessary or desirable to do so in order to preserve the structural safety of the Facilities or of individual Parking Facilities or to correct any condition likely to cause injuries or damages to persons or property.
3. The City agrees to maintain the sidewalks and curb cuts adjacent to the Parking Facilities in accordance with the applicable state and City requirements. The City shall also be responsible for all Parking Facility repairs of a structural nature including, but not limited repairs of walls and floors of the Parking Facility, sinkholes, potholes, and maintenance of the ventilation system, fire and safety systems, and elevators.
4. All structural, mechanical, electrical other installations or any alterations required by statutes or regulations pertaining to air quality, environmental protection, provisions for persons with disabilities or other similar governmental requirements shall be the sole responsibility of the City.

K. [§ 811] Descriptive Headings

The headings used herein are for description only and for the convenience of identifying the provisions hereof and are not determinative of the meaning or effect of any of the provisions of this Agreement.

L. [§ 812] Severability

If any provision of the Agreement shall be invalid or unenforceable, the remainder hereof shall nevertheless continue in full force and effect.

M. [§ 813] Parties in Interest

All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and by their respective successors in interest.

N. [§ 814] Not a Lease

The Parties acknowledge that this Agreement does not constitute a lease of any Parking Facility or of the Facilities in total and Operator assumes no responsibility for taxes, repairs, or upkeep of the Facilities, except as provided in Sections 301 and 305 of this Agreement.

O. [§ 815]Governmental Action

In the event any governmental authority takes any action that inhibits or adversely affects vehicle ingress to or egress affecting a Parking Facility or the Facilities generally, whether by threat of eminent domain or any other government power, or if any governmental authority takes any action relating to the parking, fueling, or use of motor vehicles which causes or substantially contributes to a reduction in the use of a Parking Facilities or the Facilities generally, Operator shall have the right to terminate this Agreement by giving one hundred twenty (120) days' written notice to City or continue its operations in the remainder of the Facilities, if any, with an appropriate negotiated adjustment to Operator's compensation.

P. [§ 816]Inspection of Books and Records

City has the right during normal business hours without need for notice to inspect the books and records of Operator pertaining to the Facilities as pertinent to the purposes of this Agreement.

Q. [§ 817]Identity and Authority of City

Each of the persons executing this Agreement on behalf of City does hereby covenant and warrant that City has full right, power, and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of City and no consent, authorization, or approval of any person, board, or other entity is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding, and enforceable obligation of City. Upon Operator's request, City shall provide Operator with evidence reasonably satisfactory to Operator confirming the foregoing covenants and warranties.

R. [§ 818]Identity and Authority of Operator

Each of the persons executing this Agreement on behalf of Operator does hereby covenant and warrant that Operator has full right, power, and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of Operator; that no consent, authorization, or approval of any person, board, or other entity is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding, and enforceable obligation of Operator. Upon City's request, Operator shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

IX. [§ 900] COUNTERPARTS

This Agreement may be executed in any number of counterparts, and once so executed by all Parties hereto, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one (1) Agreement.

X. [§ 1000] ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement includes:

- Exhibit A: Map of the Project Facilities;
- Exhibit B: Approved Operator Budget & Management Fee

Attachment 1: Public Parking Management Plan to be submitted to the City by Operator no less than ninety (90) days after the effective date.

Exhibits A, B and Attachment 1 attached hereto are incorporated herein by reference, all of which constitute the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Operator, and all amendments hereto shall be in writing and signed by the appropriate authorities of City and Operator.

XI. [§ 1100] STATUTORY COMPLIANCE

Idaho Code 67-2346: Consultant certifies that it is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under its control.

Idaho Code 67-2359: Consultant certifies that it is not currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China.

XII. [§ 1200] EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be October 17, 2023.

IN WITNESS WHEREOF, City and Operator have caused this Agreement to be executed in their respective corporate names.

THE CITY OF CALDWELL, IDAHO
"City"

By: *[Signature]*
Jarrett Waggoner, Mayor

Date: October 17, 2023

Attest:

[Signature]
City Clerk



Approved as to Form:

(see attached)
_____, Attorney at Law

THE CAR PARK, LLC
"Operator"

By: (see attached)
Jeff Wolfe, Chief Executive Officer

Date: _____

XII. [§ 1200] EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be October 17, 2023.

IN WITNESS WHEREOF, City and Operator have caused this Agreement to be executed in their respective corporate names.

THE CITY OF CALDWELL, IDAHO
"City"

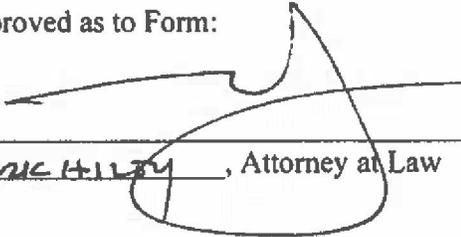
By: _____

Date: _____

Attest:

City Clerk

Approved as to Form:



MARIE HILMY, Attorney at Law

THE CAR PARK, LLC
"Operator"

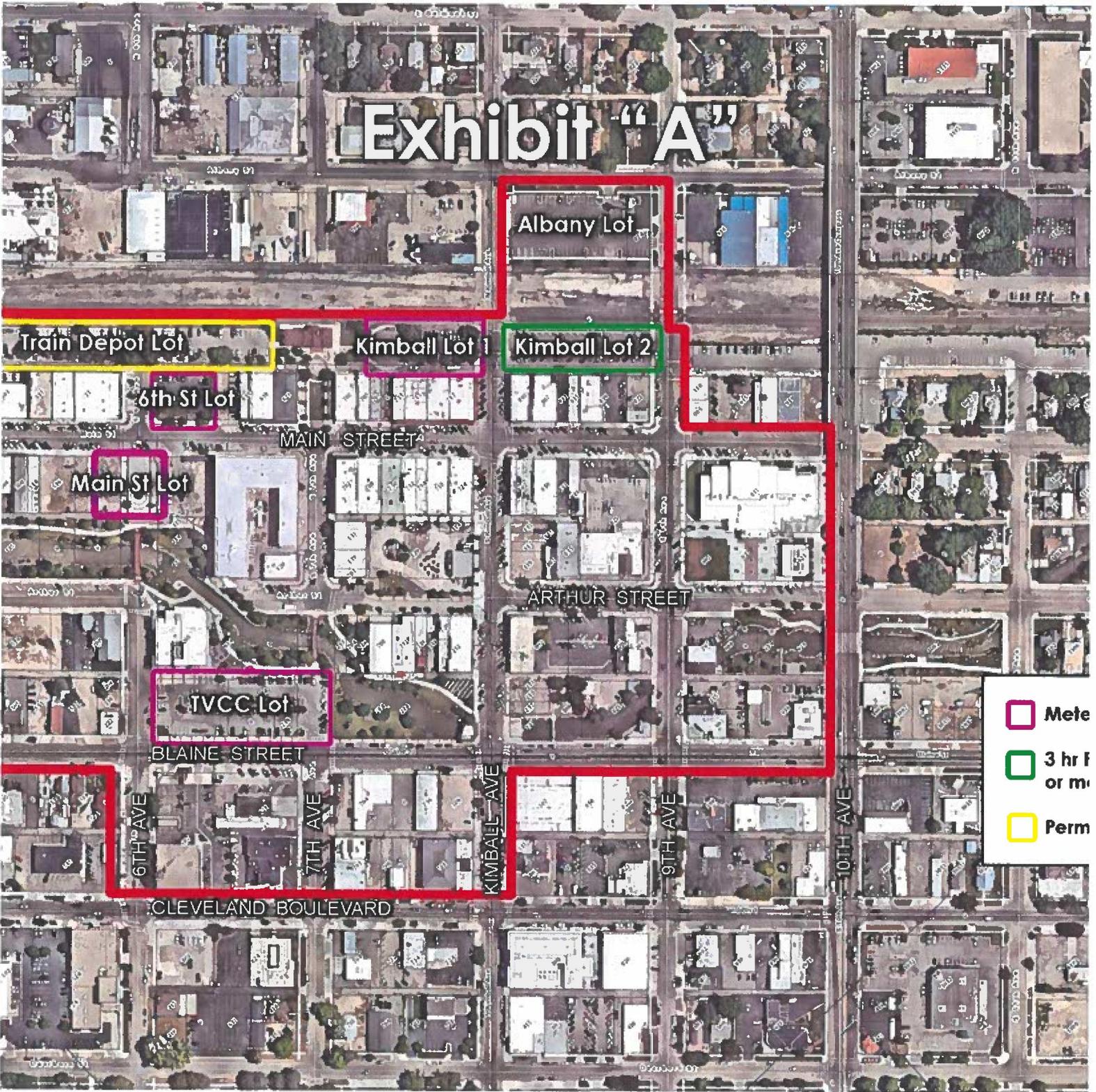
By: 

Jeff Wolfe, Chief Executive Officer

Date: October, 18, 2023

Exhibit A
City Parking Facilities

Exhibit "A"



Albany Lot

Train Depot Lot

Kimball Lot 1

Kimball Lot 2

6th St Lot

MAIN STREET

Main St Lot

ARTHUR STREET

TVCC Lot

BLAINE STREET

6TH AVE

7TH AVE

KIMBALL AVE

9TH AVE

10TH AVE

CLEVELAND BOULEVARD

- Mete
- 3 hr F or m
- Perm

Exhibit B
Approved Operator Budget & Management Fee

1. Operating Budget

The budget from the effective date through September 30, 2024 for the Operator shall be set forth in the Public Parking Management Plan to be appended as Attachment 1 within 90 days. Subsequent Operating Budgets shall be set forth in the Parking Facilities Annual Program developed pursuant to Section 302.

Payments shall be made by City to Operator on a monthly basis in accordance with Section 508 of this Agreement.

2. Management Fee plus Merit Increase

The total management fee plus merit increase due to the Operator for the term from the effective date through September 30, 2024 shall not exceed:

FORTY-TWO THOUSAND DOLLARS (\$42,000)

The management fee shall be divided over twelve equal monthly installments in accordance with Section 502 of this Agreement. The amount of the management fee plus merit increase is included in, and not in addition to, the Operating Budget.

3. Performance-Based Incentives

At the conclusion of the initial term and any one-year extension exercised by City, Operator shall be eligible for a performance bonus as described in Section 502 of this Agreement.

Attachment 1
Public Parking Management Plan

[To be attached within ninety (90) days.]