



CITY OF DELRAY BEACH  
100 NW 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444

AMENDMENT NO. 1 TO  
PARKING FACILITY MANAGEMENT AGREEMENT

AMERISTAR PARKING SOLUTIONS, LLC

CITY OF DELRAY BEACH  
AMENDMENT NO. 1 TO  
PARKING FACILITY MANAGEMENT AGREEMENT

THIS AMENDMENT NO. 1 to the Parking Facility Management Agreement dated October 15, 2015, by and between City of Delray Beach, a municipal corporation of the State of Florida (City), and Ameristar Parking Solutions, LLC, organized and existing under the laws of the State of Florida and authorized to do business in the State of Florida (Second Party), is entered into this 30<sup>th</sup> day of September, 2016.

WITNESSETH:

**WHEREAS**, on December 22, 2015, City entered into an Agreement with Second Party for parking facility management services with a termination date of September 30, 2016; and

**WHEREAS**, Second Party agrees to continue to provide services to City in accordance with the terms and conditions of the Agreement for a period of ninety (90) days.



**NOW, THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties do agree that the Agreement is amended as follows:

1. The above recitals are true and correct and are incorporated herein.
2. This Amendment No. 1 renews the Agreement, under the same terms and conditions, for the period of October 1, 2016 through December 31, 2016.
3. Except as provided herein, all other terms and conditions of the Agreement remain in full force and effect and are hereby confirmed. The Agreement and this Amendment No. 1 represent the entire understanding between the parties on the issues contained herein, either written or oral, and may only be amended by written instrument signed by both parties.

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IN WITNESS WHEREOF, the parties hereto have set their hands and corporate seals on this 30<sup>th</sup> day of September, 2016.

**CITY OF DELRAY BEACH**

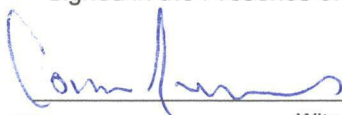
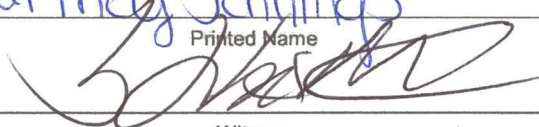
ATTEST:  BY:   
City Clerk Donald B. Cooper, City Manager


Address: 100 N.W. 1<sup>st</sup> Ave.  
Delray Beach, FL

Approved as to form for legal sufficiency::  
BY:   
Janice Rustin, Interim City Attorney

**AMERISTAR PARKING SOLUTIONS, LLC**

Signed in the Presence of:

  
Witness  
Courtney Jennings  
Printed Name  
  
Witness  
SCOTT HARTLEY  
Printed Name

BY:   
Signature  
President  
Title  
Jon England  
Printed Name  
2016 Sea Ave.  
Printed Address  
Indianapolis IN, 46203  
City/State/Zip

AGREEMENT  
BETWEEN  
THE CITY OF DELRAY BEACH  
AND  
AMERISTAR PARKING SOLUTIONS  
FOR  
PARKING FACILITY MANAGEMENT

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

And

Ameristar Parking Solutions, a Florida limited liability company, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Environmental Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services



and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

## ARTICLE 3

### TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 **TERM.** All duties, obligations, and responsibilities of Second Party required by this Agreement shall commence on October 15, 2015 and shall terminate on September 30, 2016.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party shall be compensated for the service at the rate in effect when the extension is

invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

#### ARTICLE 4

#### COMPENSATION

- 4.1 City will pay Second Party, in the manner specified in Section 4.3, the total amount of Two Hundred Fifty Three Thousand Dollars (\$253,000.00) for work actually performed and completed pursuant to this Agreement. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

#### 4.3 METHOD OF BILLING AND PAYMENT

- 4.3.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "B"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the form, explaining the good cause why payment has not been made.
- 4.3.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.
- 4.3.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within

thirty (30) days following receipt of payment of retained amounts from City.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Second Party at:

Ameristar Parking Solutions  
2016 Sea Avenue  
Indianapolis, FL 32903

## ARTICLE 5

### INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

## ARTICLE 6

### INSURANCE

6.1 Second Party shall maintain at its sole expense, at all times during the term of

this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.

- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for convenience by City of Delray Beach within sixty (60) days after receipt by Second Party of written notice from the City to terminate such agreement. This Agreement may also be terminated for convenience by the Commission. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City,

which termination date shall be not less than sixty (60) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective sixty (60) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual



orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of

termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

## 9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- 9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Second Party.
- 9.2.5 If Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

## 9.3 INSPECTOR GENERAL

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and



consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

#### 9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

#### 9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other

provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

#### 9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

#### 9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set

forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager  
City Hall  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

For Second Party:

Ameristar Parking Solutions  
Attn: Jon England  
2016 Sea Avenue  
Indialantic, FL 32903

#### 9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

#### 9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

#### 9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to

terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other

jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### 9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the



annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank.)



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 8th day of December, 2015 and Second Party, signing by and through its \_\_\_\_\_, duly authorized to execute same.

ATTEST:

Charles D. Nisben  
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By [Signature]  
Gary D. Glickstein, Mayor  
2nd day of December, 2015.

APPROVED AS TO FORM:

[Signature] 12/7/15  
City Attorney

**EXHIBIT B**

**CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS**

RFP/RLI/Bid/Contract No. \_\_\_\_\_

Project Title \_\_\_\_\_  
\_\_\_\_\_

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or  
Supplier's name  
and address

Date of disputed  
invoice

Amount in  
dispute

_____	_____	_____
_____	_____	_____
_____	_____	_____

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated \_\_\_\_\_, 20\_\_\_\_

Amirshah Rahay Solberg  
Contractor

By [Signature]  
(Signature)

By Don England - owner  
(Name and Title)

STATE OF )  
 ) SS.  
COUNTY OF )

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Name of officer taking acknowledgment)  
typed, printed, or stamped

(Serial number, if any)

## EXHIBIT C

### **INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH**

Second Party shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course and scope of their employment.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party operations to include all owned, non-owned and hired vehicles.  
  
The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.
- D. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above. If any of the above coverages expire during the term of this Agreement, Second Party will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn, Risk Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

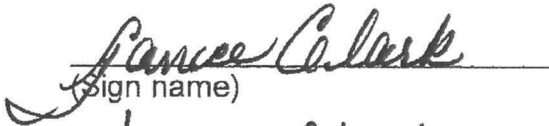
AMERISTAR PARKING SOLUTIONS

WITNESS:

  
(Sign name)

Melissa Thorn  
(Print name)

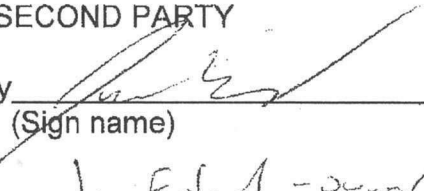
WITNESS:

  
(Sign name)

Janice Clark  
(Print name)

SECOND PARTY

By

  
(Sign name)

Don England - Owner  
(Print name, Title)

16<sup>th</sup> day of December, 2015

(SEAL)

## EXHIBIT A

### SCOPE OF SERVICES

The terms of this agreement shall be from October 10, 2015 to September 30, 2016. Termination of such agreement by the City requires sixty (60) days written notice to Contractor. Contractor shall provide professional, capable employees to perform duties as provided for in this Request For Proposal, (RFP) as they relate to the Old School Square, (OSS), and Federspiel Garages. These responsibilities include, but are not limited to, opening and closing facilities at prescribed times, provide light maintenance and cleaning duties, confirm and report elevator malfunctions, collection of fees and associated reporting on weekends and select special events, prepare inventories of vehicles staying overnight, and provide valet parking services in the OSS Garage. These tasks may be modified from time to time, at the City's discretion, at the direction of the Project Manager, (PM).

#### I. PROCEDURES:

- A. A time clock is provided for the purpose of tracking employee attendance. Employees are to be at their assigned posts, prepared to work, at scheduled times to provide consistency to customers. **PLEASE NOTE: Only scheduled times worked constitute billable hours.** Payment to employees for time prior to a shift to prepare the work station and subsequent close-out duties, (preparing reports, storing signs, workstations, etc.) following shifts are the responsibility of the selected vendor
- B. Upon arrival attendants must call the Police Department, non-emergency phone, at 561-243-7800 and provide a cellular phone number for immediate contact with attendant in the case of a customer needing to retrieve a vehicle after closing hours or other matters.
- C. Close garages nightly at 3:00 AM, (or other designated time as may be directed from time to time), securing all doors and gates. A physical examination of all floors, stairwells, elevators, and corridors shall be done nightly to assure no person(s) remain in a facility after closing; Persons not leaving, when politely asked, shall be reported to the Police Department at the non-emergency phone, 561-243-7800. Employees are not to confront un-obliging or irresponsible people.
- D. Post and remove appropriate signs during operating hours. All signs must be removed and properly stored in designated storage area(s) upon completion of each shift, special event or other associated time. When staffed, "Elevator Out of Service" notices must be placed at each elevator landing upon confirmation of a malfunction and removed once elevators are back in service.
- E. Barricades, cones or other traffic control devices, (supplied by the City), may be required from time to time, and shall be installed/removed as necessary to maintain optimal service controlling traffic flow protecting the public and staff from

potential hazards, secure facilities from illegal entry, or other purpose(s) deemed necessary and as may be instructed from time to time.

- F. Uniforms shall be worn by employees, at all times while on duty. Uniforms shall consist of polo or button down shirts, displaying the company name and logo, traditional slacks or shorts, (no denim please).
- G. A photo ID badge, including employee's full name, company name and identifying logo, in legible print or font must be worn at all times and be prominently displayed. Embroidered names on uniforms, while permitted, shall not replace the requirement for photo ID's noted above.
- H. Contractors' **employees and/or agents shall be bonded** in the amount of one hundred thousand dollars (\$100,000). A certificate(s) evidencing proof of bonding must be provided to the City, by contractor, at time of execution of this Agreement, for each new employee at the time of employment and updated from time to time as necessary to maintain compliance with this provision.
- I. If the successful Bidder is not registered to perform work in the City of Delray Beach, a Business Tax Receipt shall be obtained prior to commencement. Business Tax Receipts are available at the Community Improvement Department in City Hall, North Wing, 100 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444
- J. The parking facilities shall be available for use by the public at all times, unless otherwise designated by the PM, Contractor shall not reserve or otherwise utilize any spaces for reasons other than use by the public without prior written consent/instruction from the PM or his/her designee.

## II. **REPORTING:**

The following reports, Shift Report, (reconciliation form), Monthly Summary Report, Vehicle Counts and, Inventories shall be provided as specified below. Please see sample reports attached hereto:

- A. Shift report, (reconciliation form), must be completed for each shift during which fees are collected. Revenue shall be reconciled to shift reports and verified by shift manager, completed at the end of each shift and remain on site for collection and/or inspection, (in the event a shift manager is unavailable, a second employee, when available, shall confirm reported revenue.
- B. Prepare an inventory of vehicles remaining in facilities after closing or end of event coverage. Each facility shall have an Inventory completed including facility name, day, date, time inventory is taken and name of employee taking the inventory. Inventory shall include vehicle make, color, license plate number, location parked and, where applicable, ticket color and number for vehicles entering while fees were collected. Inventories must be maintained and available in the OSS Garage office;



- C. In addition to reports noted above, Valet Attendants shall maintain vehicle counts of cars entering the facility hourly and submit with the corresponding days shift reports.

### III. INVOICING:

- A. Invoices for services will be presented monthly for services rendered in the preceding month and must include the following supporting documentation: Facility name; breakdown of hours by function, invoice period, rate of pay; total cost.
- B. The Federspiel and Old School Square Garages and Valet Service shall be invoiced independently of one another.
- C. Employees providing services between both garages, (i.e. Shift Manager, Porter) shall have time equally divided between the Federspiel and OSS facilities.
- D. All ancillary costs, (back office administration, office supplies, etc.), are to be included in the proposed hourly wages. Additional costs for items other than hourly rates, unless previously approved, will not be considered.

### IV. STANDARD SCHEDULED HOURS / DUTIES – SELF-PARKING

Old School Square & Federspiel Garages – Self Park								
	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Total
<b>Porter</b>	12	12	6	6	6	6	12	60
<b>Attendant</b>					16	16	16	48
<b>Manager</b>					8	8	8	24
							<b>Total</b>	<b>132</b>

- A. Tuesday through Friday require only one (1) porter to perform duties in both the Federspiel and Old School Square Garages. Invoicing for these hours shall be equally divided between the two facilities.
- B. Saturday through Monday the garages each require one (1) porter Midnight to 6:00 A.M. Invoicing for these hours shall be applied to the respective facility.
- C. Manager duties are shared between facilities. Invoicing for these hours shall be shared equally between the Federspiel and OSS Garage invoices.
- D. In the case of events where the vendor is providing both event and non-event staffing, Supervisor duties are shared among the facilities.

Maintenance/Cleaning Schedules							
	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.
Federspiel	Mid – 6A	Mid – 6A	Mid – 3A	Mid – 3A	Mid – 3A	3AM – 6A	Mid – 6A
OSS Gar	Mid – 6A	Mid – 6A	3A – 6A	3A – 6A	3A – 6A	Mid – 3A	Mid – 6A

The following duties shall be completed daily or when needed, as directed by the PM or his designee. Cleaning supplies are provided by the City.

E. Mop elevator floors, clean interior elevator walls and door panels and outer elevator doors on each floor.

F. Check trash receptacles, replacing bags emitting odors or ½ - ¾ full.

G. Police paper and debris from throughout the facility including parking levels stairwells, elevators, ramps, etc.

H. Report malfunctioning light fixtures, exit lights, missing or discharged fire extinguishers,

I. Keep surfaces free of black dust inherent to parking structures. Examples include the tops of trash receptacles, fire extinguisher cases, handrails, clearance bars, bollards, etc.

J. Check all doors to assure proper closing, (doors not propped open, locks with hasps not altered, etc.)

K. Facilities shall be opened by 6:00 AM daily

L. Facilities shall be closed at 3:00 AM. Facilities may be locked down as early as 1:00 AM on the condition that no cars are present.

M. OSS Bathroom facilities are to be cleared of patrons and closed upon closing of facility, or other time(s) as directed by the PM or his/her designee.

N. Any loiterers should be politely asked to leave the premises. Noncompliance shall be reported to the Police Department at the non-emergency number, 561-243-7800. Attendants are not to argue with those refusing to leave.

Fee Collection Schedule / Self – Park							
	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.
Federspiel	CURRENTLY NO COLLECTION				4P – Mid	4P – Mid	4P – Mid
OSS Gar					4P – Mid	4P – Mid	4P – Mid
Manager					4P – Mid	4P – Mid	4P – Mid

- O. Attendants must collect parking fees on Thursday, Friday and Saturday nights. The fee is currently \$5.00 flat rate, collected upon entry. No in and out parking privileges are permitted.
- P. Contractor is responsible for providing operational change fund for cashiers to provide change to customers.
- Q. Contractor shall issue sequentially numbered claim checks provided by the City. The three part ticket shall be issued with the bottom portion, (claim check), to the customer as proof of parking in the facility, the top stub, (larger number) on the dashboard to facilitate audits and the third portion, center stub, retained by attendant to be remitted with the corresponding shift report. Tickets should be remitted in numerical sequence as sold.
- R. Shift Manager shall make incremental cash drops (\$400.00) from attendants to minimize cash on hand at facilities during times of collection. Money drops are to be recorded on reconciliation report, verified by both attendant and shift manager, and deposited in the OSS Garage safe using envelopes provided by the City.
- S. All drops shall contain the following information: facility name; day, date, drop number, currency increments and total amount. Drops must be placed in drop envelopes provided by the City.
- T. Persons with disabilities, producing a valid handicapped parking hang tag or license plate shall be permitted to park free of charge

<b>OSS Valet Schedule – Peak Season Schedule</b>								
	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Total
Attendant	10A–Mid	10A–Mid	10A–Mid	10A–Mid	10A–Mid	10A – 2A	10A – 2A	102
Attendant		Noon–8P	Noon–8P	Noon–8P	Noon–8P	Noon–8P	Noon–8P	48
Attendant	Noon–9P	2P – 9P	2P – 9P	2P – 9P	2P – 11P	2P – 11P	2P – 11P	57
Sample schedule for high season. Off Season staffing will be lower.							Total	207

In addition to the duties noted above, the following shall apply to valet parking attendants:

- U. Attendants must possess a valid driver's license and be capable of operating both standard shift and automatic transmission vehicles.
- V. A time clock is provided for time stamping customer tickets in and out.
- W. Attendants must possess basic math skills for calculating time vehicles are parked to calculate proper rates to be charged.

X. Schedules subject to change based on utilization, event or special circumstance seasonal and non-seasonal. The schedule above represents high season utilization.

#### **EVENT PARKING:**

**Please note, the City, at its sole discretion, may advertise for the provision of parking services for special events.** However, if services for special events are requested in accordance with this agreement, the following shall apply.

- A. All Contractor employees scheduled to work at the South County Courthouse Garage **must** obtain approval from Palm Beach County to staff the Court House Garage. Approval includes fingerprinting and background checks performed by Palm Beach County in accordance with the County's Criminal History Records Check Ordinance.
- B. Parking attendants must wear uniform shirt with photo ID badge including employee name (can be a polo shirt) with uniform slacks or shorts (no blue jeans or other denim products).
- C. Parking attendants must have radio and/or cell phone/communications with supervisory personnel.
- D. Tickets, shift reconciliation reports and combined reconciliation reports per facility to be turned in to the City
- E. Handling of revenue for event parking: Contractor agrees to remit final billing with net revenue to the City within five (5) business days from the culmination of the event.
- F. Contractor will provide parking stand with locked drawer at said parking lots.
- G. Insurance certificate may be required to list Palm Beach County as an additional insured for event coverage at the County Courthouse Garage.

#### **EVENT PARKING FACILITIES:**

The following list identifies parking lots which may be available for special event parking. Utilization and staffing shall be determined by the City Manager or his/her designee(s).

A.	Community Center	45 spaces
B	CRA Lot-NW 1 <sup>st</sup> Avenue, (Monterey Lot)	90 spaces
C	North City Hall Lot	185 spaces
D	City Attorney (Paved)	60 spaces
E	City Attorney (Grass)	60 spaces
F.	OSS Parking Garage	500 spaces
G	Library Surface Lot	165 spaces
H	South County Courthouse	320 spaces

**V. INSURANCE:**

A. Contractor shall, during the term of this agreement, maintain in full force and effect General Liability Insurance, Workers Compensation Insurance, Garage Keepers Legal Liability Insurance and Automobile Liability Insurance in the amounts provided below:

General Liability Insurance of at least \$1,000,000 combined single limits per occurrence to protect the City against all risk of injury to persons (including death) or damage to property wherever located resulting from any action or operation under contract or in connection with the work described herein. This policy is to provide coverage for premises/operations including auto liability, independent contractors, broad from contractual liability, products/completed operations.

- i. Workers' Compensation per Statutory Limits of the State of Florida to include Employer's Liability Insurance with limits of at least 100,000/\$500,000/\$100,000.
- ii. Garage Keepers Insurance with limits of no less than \$60,000 per auto, with an annual aggregate of \$500,000.
- iii. Automobile Liability of at least \$300,000 combined single limits per occurrence for owned/non-owned/hired automobiles connected to the business.
- iv. The City of Delray Beach must be named as additional insured on the liability policies; and it must be stated on the certificate of insurance.
- v. Thirty (30) days written cancellation notice required.
- vi. Best's guide rating B+, VIII or better, latest edition.

**VI. MEETING DATES:**

Bid Advertisement	March 16, 2014
Mandatory Pre Bid Meeting	March 26, 2014, 10:30 A.M.
Questions Received by	April 2, 2014 (by 2:00 P.M. Eastern Time)
Questions Answered	April 7, 2014 (by close of business day)
Bid Opening	April 14, 2014, 10:30 A.M.
Review Committee (Instruction)	April 14, 2014, 2:00 P.M.
Review Committee (Review)	April 21, 2014, 9:00 A.M.

**VII. REVIEW COMMITTEE:**

The review committee will consist of one, (1) member from each of the City

Manager's Office, Environmental Services Department and Community Redevelopment Agency.

**VIII. SCORING CRITERIA:**

	Category	Maximum Points
A	FEES	30
B	GARAGE VALET	25
C	GARAGE OPERATIONS	25
D	EVENT PARKING	20
	<b>TOTAL AVAILABLE</b>	<b>100</b>

**IX. RESPONSE TO RFP:**

Consistency in responses is an important component of the review process so that review committee members are seeing somewhat identical responses allowing for a more comprehensive comparison. Please format your responses in the following manner.

If providing a cover letter, please insert as the first page of the response.

- A. The price quote page provided must be used for listing hourly costs and extending annual totals for each of the positions listed.
- B. Garage Valet – Please describe how your company provides these services giving examples of similar experiences
- C. Garage Operations: Please describe your company's experience in maintaining and cleaning similar facilities.
- D. Event Parking – Please describe your company's experience with Event Parking

Space has been provided for a brief explanation on how your company meets the criteria listed in the scoring sheet. Please limit these responses to the space provided.

Any additional information felt to be integral to your proposal should be placed at the very end of the response packet and shall be tabbed as "**ADDITIONAL INFORMATION**". Please note, additional information may or may not be considered in evaluating proposals.