



Date March 21, 2022

ACCEPTING PROPOSAL FOR THE PROVISION OF MUNICIPAL PARKING FACILITIES MANAGEMENT SERVICES FROM ABM INDUSTRY GROUPS, INC. AND AUTHORIZING EXECUTION OF AGREEMENT FOR MANAGEMENT SERVICES WITH ABM INDUSTRY GROUPS, INC.

WHEREAS, pursuant to a Request for Proposals, the City has solicited proposals from companies interested in providing management services for the operation of the municipal parking facilities; and,

WHEREAS, in response to the Request for Proposals the City received one proposal for the provision of parking management services from ABM Industry Groups, Inc.; and,

WHEREAS, the City staff has evaluated the submitted proposal and recommended the selection of ABM Industry Groups, Inc. as manager of the City's parking facilities; and,

WHEREAS, an Agreement for Management Services between the City and ABM Industry Groups, Inc. providing for an Agreement term extending to June 30, 2025 and potential option extending the Agreement term for an additional period to June 30, 2028 has been prepared which Agreement is on file in the Office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the proposal submitted by ABM Industry Groups, Inc. for the provision of municipal parking facilities management services is hereby accepted.

BE IT FURTHER RESOLVED that the municipal parking facilities Agreement for Management Services between the City and ABM Industry Groups, Inc. on file in the Office of the City Clerk is hereby approved and the Mayor is authorized and directed to sign the Agreement and the City Clerk is authorized and directed to attest to the Mayor's signature.



Roll Call Number

Agenda Item Number

38

Date March 21, 2022

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized and directed to take all necessary actions on behalf of the City to administer and make payments in accordance with the terms of the municipal parking facilities Agreement for Management Services

Moved by _____ to adopt. Second by _____.

(Council Communication No. 22- 142)

FORM APPROVED:



Lawrence R. McDowell
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

**AGREEMENT FOR MANAGEMENT SERVICES
MUNICIPAL PARKING FACILITIES
DES MOINES, IOWA**

This Agreement, made this 21st day of March, 2022, between the CITY OF DES MOINES, IOWA, (hereinafter referred to as "OWNER") and ABM Industry Groups, LLC, a Delaware limited liability company qualified to do business in the State of Iowa (hereinafter referred to as "OPERATOR").

WITNESSETH:

WHEREAS, OWNER owns the Des Moines Municipal Parking System and, incidental thereto, controls the parking facilities known as the Municipal Parking Facilities, in the City of Des Moines, Iowa, which the OWNER desires to be operated advantageously as paid public parking; and

WHEREAS, in response to the City's "Request for Proposal #N22-25, Parking Management Services for Municipal Parking Facilities", OPERATOR has submitted a proposal dated October 20, 2021 ("Proposal") and OPERATOR is able and experienced in operating and managing commercial parking facilities, and is ready, willing and able to undertake and manage the Municipal Parking Facilities; and,

WHEREAS, Brian G. Bush, Vice President of Parking for the OPERATOR and duly authorized to represent OPERATOR regarding this Agreement, possesses the necessary professional skill and requisite individual ability and will provide general supervision of OPERATOR'S performance of the terms of this Agreement.

NOW, THEREFORE, and in consideration of the respective agreements, mutual undertakings and mutual covenants, herein contained, the parties mutually agree as follows:

ARTICLE I

PURPOSE AND DESCRIPTION

A. OWNER hereby employs and engages OPERATOR to manage and operate the following described Municipal Parking Facilities:

1. A fully automated five-level parking structure with 750 stalls known as the Third and Court Parking Garage (210 2nd Avenue; built in 1994), located on the north side of Court Avenue between Second Avenue and Third Street. This facility includes Skywalk corridors along the north and east sides, with Skywalk bridges north across the alley and east across Second Avenue. OPERATOR is not responsible for surface maintenance nor revenue collection for 102 stalls on the ground level, nor for revenue collection for 42 stalls on the second level, all of which are dedicated to the Federal General Services Administration (GSA), and which are included in the above total number of stalls. The facility includes Level 1 and 2 electric vehicle charging electric stations. OPERATOR is not responsible for snow removal or maintenance for the surrounding sidewalks which are maintained by the GSA.

2. A fully automated seven-level structure with 1,061 stalls known as the Fourth and Grand Parking Garage (400 Grand Avenue, built in 1980 and expanded in 1984), located on the south side of Grand Avenue between Third Street and Fifth Avenue. This facility includes a Skywalk corridor across the west end with Skywalk bridges south across the alley and north across Grand Avenue. The facility includes Level 1 and Level 2 electric vehicle charging electric stations.
3. A fully automated eight-level parking structure with 600 stalls known as the Fifth and Keo Parking Garage (525 5th Avenue, built in 1985), located on the east side of Fifth Avenue south of Watson Powell Jr. Way. This facility includes a Skywalk vertical access and corridor along the east side, with Skywalk bridges south across the alley and north across Watson Powell Jr. Way. The facility includes four Level 1 and 2 electric vehicle charging electric stations.
4. A fully automated five-level parking structure with 1,824 stalls known as the Seventh and Center Street Park and Ride Parking Garage (830 6th Avenue, built in 1999), located on the block between Sixth Avenue and Seventh Street, and from Center Street to Crocker Street. This facility includes a Day Care Center and Shuttle Bus Transit Station with multiple authorized users. The western portion of this facility, with 869 stalls, is leased to Principal Mutual Life Insurance Company for private parking with separate entrance and exit gates, while the eastern portion has 955 stalls used for daily and monthly public parking. The OPERATOR is responsible for surface maintenance (including maintenance to the Shuttle Station and responding to Day Care maintenance concerns) and operating services for the entire facility in accordance with the terms of the lease. The facility includes Level 2 electric vehicle charging electric stations for OWNER vehicles.
5. A fully automated seven-level parking structure with 1,130 stalls known as the Ninth and Locust Parking Garage (801 Locust Street, built in 1991), located on the block between Eighth Street and Ninth Street, and from Locust Street to Grand Avenue. This facility includes Skywalk corridors on the western and southern sides, with Skywalk bridges east across Eighth Street, west across Ninth Street and north across Grand Avenue. The OPERATOR is not responsible for maintaining or collecting for the 105 (+/-) parking meters for meter regulated spaces located on the east and west sides of the ground level, which are included in the above total number of stalls. However, the OPERATOR is responsible for maintenance of the entire ground level area including the electric vehicle charging stations. The facility includes Level 2 electric vehicle charging electric stations.
6. A fully automated, six-level parking structure with 475 stalls known as the East Second Parking Garage (402 East Second Street, built in 2017), located on the west side of East Second Street between East Grand Avenue and East Locust Street. The facility provides parking on a portion of the first level for OWNER vehicles. On the sixth level gated parking only for OWNER employees is provided. The facility includes Level 2 electric vehicle charging electric stations.
7. A fully automated OWNER leased 133 stall ground level of the private parking structure known as the East Fourth and Des Moines Parking Garage (555 East 4th Street, built in 2019), located on the east side of East Fourth Street and south of Des Moines Street. The OWNER leased ground level operates independently of the other parking levels and has a separate entrance/exit. The private owner of the parking structure is responsible for

maintenance, cleaning, and security of the entire structure. The OPERATOR is responsible for operations and revenue control and collection for the leased ground level. The facility includes one Level 2 electric vehicle charging electric station.

8. A fully automated parking structure with 11 and one-half levels with 625 stalls known as the Fifth and Walnut Parking Garage (235 5th Avenue, built in 2020), located on the east side of 5th Avenue between Mulberry and Walnut Streets. Retail space is provided at the ground level for which the OPERATOR will not be responsible to control or maintain. At commencement of the term of this Agreement, only the lower six levels are open to vehicle parking with the upper levels closed. The upper levels will be opened as the demand for parking increases over time. The OPERATOR shall be responsible for maintenance, monitoring operation and security for all levels of the parking structure. This parking structure will be connected to the Skywalk system with Skywalk corridor and a Skywalk vertical access point in the future. The facility includes Level 2 electric vehicle charging electric stations.

The Municipal Parking Facilities include all adjoining sidewalks and buffer areas within the street curbs, with the exception noted above for the Third and Court Garage and all skywalk corridors and vertical access facilities within and adjacent to the Facilities and skywalk bridges connected to the Facilities.

The OWNER has installed SKIDATA Parking Access Revenue Control System (PARCS) equipment in all parking garages including ticket spitters, card readers, ethernet devices, parking gates, fee computers, pay-in-lane devices, and automatic pay stations. The OWNER has contracted with the Baker Group for PARCS preventative maintenance services, and the OPERATOR shall coordinate and assist in the performance of such preventative maintenance services.

- B. No alterations or additions to the Municipal Parking Facilities shall be made by the OPERATOR except at the direction of and with the written approval of OWNER.
- C. OWNER reserves the right to construct or add additional Facilities, parking areas or structures, and to change the existing parking Facilities to accommodate additional parking provided by the OWNER and the right to add off-street surface parking facilities in and around the downtown entertainment districts, downtown special event parking, other off-street parking areas in the East Village area of downtown, and other fringe or remote parking facilities, as may be determined at the sole discretion of OWNER all of which may result in additional management and operation services required under this Agreement. OWNER further reserves the right to demolish, withdraw or reduce the size of all or any part of the Facilities, parking areas or structures or any of the additional Facilities, parking areas or structures hereinafter made available, as may be determined at the sole discretion of OWNER all of which may result in reduced management and operation services required under this Agreement. All such rights may be exercised by OWNER at any time during the term of this Agreement by giving OPERATOR a thirty (30) day notice in writing of OWNER'S intended changes. In the event additional management and operation services are required, by amendment to this Agreement the OWNER shall increase compensation to the OPERATOR for such additional management and operation services at an agreed upon reasonable increase to monthly fee that shall not exceed the monthly fees charged for commensurate services provided at an existing parking Facility set forth in Article III, Paragraph A. In the event reduced management and operation services are required, by amendment to this Agreement the OWNER

shall decrease compensation to the OPERATOR to reflect such reduced management and operation services at an agreed upon reasonable decrease to monthly fees reflecting a pro rata reduction to the fees set forth in Article III, Paragraph A.

**ARTICLE II
TERM OF AGREEMENT**

The term of this Agreement shall be for a three (3) year and three (3) month period beginning at 12:01 AM on April 1, 2022, and ending at 12:00 Midnight on June 30, 2025. The OWNER, with mutual agreement from OPERATOR, shall have the option to extend the term for one (1) additional three (3) year period by approval of the City Council. The option to extend may be exercised by the OWNER by delivery of written notice to OPERATOR at least thirty (30) days prior to expiration of the current term.

**ARTICLE III
COMPENSATION TO OPERATOR**

A. **COMPENSATION.** As compensation for the services hereunder, the OWNER shall pay OPERATOR the monthly fees shown below for the period April 1, 2022 - June 30, 2023 in accordance with Article X.

	April 1, 2022 - June 30, 2023 Fee/Mo.
3rd & Court	\$3,578
4th & Grand	\$5,062
5th & Keo	\$2,863
5th & Walnut	\$2,982
E. 2nd & E. Grand	\$2,266
E. 4 th & Des Moines	\$635
9th & Locust	\$5,391
MONTHLY SUBTOTAL	\$22,777
7th & Center Park & Ride	\$5,248
MONTHLY TOTAL	\$28,025

The monthly fees for years July 1, 2023 – June 30, 2024; July 1, 2024 – June 30, 2025; and for each year during the three year option term (July 1, 2025 - June 30, 2026; July 1, 2026 - June 30, 2027; July 1, 2027 - June 30, 2028) shall be equal to the monthly fees for the period April 1, 2022 - June 30, 2023 multiplied by the Consumer Price Index for all Urban Consumers (CPI-U): U.S. City Average, All Items, 1982-84 = 100, published by the U.S. Department of Labor - Bureau of Labor Statistics (hereinafter "CPI") for April immediately prior to the next year, and divided by

the CPI for April, 2022. If the CPI is not available for use in the above calculation for any reason, the OWNER may use any reasonable replacement index that is generally recognized as an accurate measure for the general rate of inflation.

- B. UNACCOUNTED TICKETS - LIQUIDATED DAMAGES. After any findings of non-compliance, OWNER shall provide to OPERATOR a checklist showing non-compliance items. OWNER reserves the unlimited right to inspect the Municipal Parking Facilities and to inspect the OPERATOR's records, upon reasonable notice and during regular business hours, and give notice of contract violations as stipulated herein.

Non-compliance relating to unaccounted tickets for which no revenues have been collected and that is caused by OPERATOR'S failure to follow the procedures set forth in the operations manual, negligence, misconduct or other fault of OPERATOR, its officers, employees, subcontractors, agents or others for which the OPERATOR is legally responsible shall result in OPERATOR being responsible for liquidated damages in the amount of ten dollars (\$10) for each unaccounted ticket by Facility exceeding one percent (1%) of the total tickets for daily parkers for each day at such Facility. This requirement shall not be in effect for any Facility during the time such Facility is unattended, and the gates are raised for a portion of the day, such as overnights and weekends, pursuant to a Facility operations plan approved by the OWNER. However, the OPERATOR shall still operate the Facility in a manner that minimizes any unaccounted tickets and shall provide the OWNER a listing of the daily unaccounted tickets in each Facility on a monthly basis. For vehicles that enter and exit the Facility during the period of the day that the gates are in operation, the liquidated damages provision shall be in effect.

OPERATOR acknowledges that the damages to OWNER relating to unaccounted tickets are uncertain and difficult to quantify and that the liquidated damage set forth herein are reasonable and roughly approximate the likely damages to OWNER for unaccounted tickets. OPERATOR agrees that OWNER may deduct all liquidated damages for non-compliance relating to unaccounted tickets from the monthly management fee payments to the Operation and Maintenance Fund Accounts made to OPERATOR in accordance with Article X.

OPERATOR covenants and agrees that the payment or assignment of a liquidated damage for non-compliance relating to unaccounted tickets does not rectify the violation and OPERATOR shall make every effort to immediately correct the causes of such violation and prevent such violation from occurring in the future.

ARTICLE IV

RATES AND HOURS OF OPERATION

- A. RATES. Parking rates to be charged by the OWNER will be determined by the City Council of the City of Des Moines. The current parking rates, in effect as of April 1, 2022 are as follows:

	Seventh and Center Parking Garage	Fifth and Keo Parking Garage	Fourth and Grand Parking Garage	Ninth and Locust Parking Garage	Third and Court Parking Garage	Fifth and Walnut Parking Garage	East Second Parking Garage	East Fourth and Des Moines Parking Garage ⁽²⁾
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Hourly Rate (first hour)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Hourly Rate (each additional hour)	\$0.50	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
12 Hour Maximum	\$5.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00
24 Hour Maximum	\$6.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Floater Rate (per month)	\$63.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00
Preferred Rate (per month)	\$75.00	\$140.00	\$140.00	\$140.00	\$140.00	\$140.00	\$140.00	\$140.00
Reserved Rate (per month)	N/A	\$160.00	\$160.00	\$160.00	\$160.00	\$160.00	N/A	N/A
Resident Floater (per month)	N/A	\$63.00	\$63.00	N/A	N/A	N/A	N/A	N/A
Resident Preferred (per month)	N/A	\$73.00	\$73.00	N/A	N/A	N/A	N/A	N/A
Floater Rooftop Night ⁽¹⁾	N/A	N/A	N/A	N/A	N/A	N/A	\$60.00	N/A
Prepaid Special Event	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00	\$5.00 - \$10.00
Prepaid Saturday (after 4:00 p.m.)	N/A	N/A	N/A	N/A	\$5.00	\$5.00	N/A	N/A
Parking Meters (per hour)	N/A	N/A	N/A	\$1.25	N/A	N/A	N/A	N/A

⁽¹⁾ Floater Rooftop Night rate allows parking between 5:00 p.m. and 8:00 a.m., Monday through Friday, and all-day Saturdays, Sundays and holidays.

⁽²⁾ Applies to ground floor, City-leased spaces only.

- B. **VALIDATION (Conventions).** Parking validation programs for patrons attending special events at the Iowa Events Center or other public or private convention or events facilities may be arranged through agreements between the sponsoring organization and OPERATOR, which are subject to approval by the OWNER.
- C. **VALIDATION (Business).** Parking validation programs for businesses may be arranged through agreements between the business and OPERATOR, which are subject to approval by the OWNER.

- D. MISCELLANEOUS. Parking validation programs for appropriate civic functions and other activities deemed appropriate by the OWNER with or without charge, parking lot inspections by the OWNER, parking lot maintenance and services performed on behalf of the OWNER, may be established by the OWNER at the discretion of the OWNER.
- E. HOURS OF OPERATIONS. The Municipal Parking Facilities shall be kept open by the OPERATOR for public parking as directed by the OWNER.
- F. PARKING FEE CHANGE. OWNER reserves the right to change on a permanent or temporary basis the rates charged at any of the Municipal Parking Facilities as set forth in Paragraph A and as directed by the Des Moines City Council.

ARTICLE V

USE OF ASSIGNED OPERATING AREA

- A. OPERATOR shall operate and manage the Municipal Parking Facilities for and on behalf of OWNER for the principal purpose of providing parking spaces for passenger vehicles and the charging and collecting of fees therefore, provided, however, that without charging a fee therefore, OPERATOR may provide parking spaces for its employees, during the hours such employees are engaged in performing duties hereunder for OPERATOR.
- B. No merchandise or equipment shall be sold by OPERATOR upon the Municipal Parking Facilities nor shall any services be furnished by OPERATOR other than to provide for the parking of passenger vehicles and the charging and collecting of fees therefore in accordance with the terms and requirements of this Agreement except as may be otherwise expressly provided in this Agreement or except as expressly provided by separate written agreement by the parties.
- C. OPERATOR shall be permitted, at no cost to OPERATOR, the use of an area in a Municipal Parking Facility, as assigned by OWNER's City Manager or designated representative, for storage of materials and for administrative use of OPERATOR in connection with the operation of the Municipal Parking Facilities.

ARTICLE VI

MANAGEMENT SERVICES

- A. OPERATIONS MANUAL. Within ninety (90) days after initiation of operations under this Agreement, OPERATOR shall prepare and obtain OWNER's approval of a written operations manual describing the specific procedures used to manage and operate the Municipal Parking Facilities under the terms of this Agreement. As a minimum, the procedures to be included are: Accident and Security Violation Reports, Accounting Procedures, Annual Budget Procedures, Cash Control, Cleaning and Maintenance Schedules, Comprehensive Maintenance Programs of Housekeeping, Preventative Maintenance and Repairs, Customer Complaint Procedures, Customer Courtesy Program, Customer Service and Sensitivity Training and Procedures, Emergency Plans and Procedures for each Facility, OPERATOR's Employee Parking, OPERATOR's Employee Pay Classifications, OPERATOR's Employee Benefits, OPERATOR's Employment Procedures (including fair employment practices, employee rules, policies and evaluation and disciplinary

procedures), OPERATOR's Employee Training, Health and Life Insurance Coverage, Insurance Coverage Certificates, Job Descriptions, Marketing Plan, Monthly Reports, Nightly Vehicle Inventory, Operational Schedules, Parking Validation Programs, Police and Fire Information, Safety Program, Security Plan, Returned Check Procedures, Ticket Inventory, Storage and Distribution, Abandoned Vehicle Policy and such other procedures set forth in the Proposal. OWNER may from time to time require modifications to the procedures set forth in the operations manual to promote efficient operation and increased customer service and convenience. OPERATOR agrees to promptly make such amendments to the operations manual during the term of this Agreement as may reasonably be requested by OWNER. OPERATOR shall diligently comply with the procedures set forth in the operations manual.

- B. **MINIMUM BASIC SERVICES.** The management and operation services to be provided by OPERATOR and addressed in the operations manual include: providing assistance to customers of the Facilities who may have problems entering and exiting the Facilities and locating parking spaces within the Facilities; providing at all times a uniformed attendant at the exit at each Facility during the normal hours of operation, unless such Facility has been equipped and approved by the OWNER for operation as a fully automated Facility; providing for monitoring to reasonably prevent unauthorized persons from loitering in the Facilities; providing for periodic drive through or walk through of the Facilities; and providing such other services reasonably required by the OWNER that are necessary to maintain and operate the Facilities in accordance with the standards set forth in Article IX.

OPERATOR shall be responsible for recommending and coordinating security in the Facilities. OWNER shall review the recommendations of the OPERATOR on security levels and determine the level of security appropriate for each Facility. If requested by OWNER, OPERATOR shall work cooperatively with the Downtown Self-Supported Municipal Improvement District and Downtown Community Alliance, Inc. to provide enhanced security.

OPERATOR agrees to provide and perform the services required for operation of the Seventh and Center Street Park and Ride Parking Garage set forth in the Operating and Maintenance Plan attached to the Facility Parking Lease Agreement dated December 22, 1997 between the OWNER and Principal Life Insurance Company (provided to OPERATOR in the Request for Proposal), as may be amended.

OPERATOR shall coordinate the performance of its service obligations set forth herein with the Operation Downtown project services provided by the Downtown Self-Supported Municipal Improvement District pursuant to the terms of the Parking Garage Service Agreement between the OWNER and Downtown Self-Supported Municipal Improvement District dated June 24, 2019 or any successor agreement.

- C. **CONSULTANT SERVICES.** OPERATOR shall provide consulting services to OWNER for Facility parking modifications, operation procedure changes, rate changes, parking related equipment purchases, customer service, marketing and revenue enhancement. Said consultant services shall not be charged as an item of operation expense as provided for in Article XV of this Agreement and shall be provided by OPERATOR as part of the management services compensated for in Article III, Paragraph A of this Agreement and at no additional cost to OWNER and not charged as an operating expense as provided for in Article XV except for any out-of-pocket expenses approved by OWNER in advance.

ARTICLE VII

MAINTENANCE AND REPAIR OF MUNICIPAL PARKING FACILITIES

- A. **TRASH REMOVAL.** OPERATOR shall, at least daily, collect and place all trash and debris in containers provided by OWNER. OPERATOR shall remove collected trash before each container is full and such removal shall occur at least once each week.
- B. **PARKING EQUIPMENT.** All parking garage equipment is to be furnished by OWNER. All Facilities are equipped with SKIDATA Parking Access Revenue Control System (PARCS) equipment. OPERATOR shall keep and maintain the Municipal Parking Facilities, its fixtures and equipment, including parking control equipment, at all times in good condition and repair. OPERATOR shall perform preventative maintenance on all equipment. OPERATOR shall coordinate and assist the Baker Group in the performance of PARCS preventative maintenance in accord with manufacturer's recommendations. OPERATOR is responsible for first response to any problems that occur with PARCS to include, but not be limited to, preventative maintenance, restocking of tickets, replacement of gate arms, resetting on-site processors, the exchange of system components to include transports, omega controllers, parkers, bursters, printers, data caps, passport controllers and power pads. Expenses for maintenance and repair incurred by OPERATOR shall be charged as an item of operating expense as provided for in Article XV of this Agreement. In determination of what shall or shall not constitute maintenance or repair expense, as distinguished from replacement or addition to the property or capital investment, standard principles of accounting shall govern. Any maintenance and repair which is made necessary as a result of the negligence, carelessness, misconduct or other fault of OPERATOR, its officers, employees, subcontractors, agents, or others for which the OPERATOR is responsible, shall be the exclusive responsibility of and be repaired or replaced by OPERATOR at no cost to OWNER and shall not be charged as an item of operating expense as provided for in Article XV. OPERATOR shall make available to OWNER all discounts available to OPERATOR pertaining to the purchase of parking lot equipment and repair parts. OWNER is responsible for all replacements or additions to the parking equipment except those made necessary as a result of the negligence, carelessness, misconduct or other fault of OPERATOR.
- C. **MAINTENANCE.** OPERATOR shall perform all snow removal, sweeping, and cleaning activities for the Municipal Parking Facilities as hereinafter described. OPERATOR shall provide all necessary vehicular equipment for these maintenance duties described herein at its own expense and not charged as an operating expense as provided for in Article XV, with the exception of a Tennant Model 385 Sweeper and a Tennant Model 8410 Sweeper/Scrubber, which the OWNER shall provide for OPERATOR's performance of maintenance duties. OPERATOR is responsible for any damage to the Sweeper and Sweeper/Scrubber caused by negligence, carelessness, misconduct or other fault of OPERATOR, its officers, employees, subcontractors, agents or others for which the OPERATOR is responsible.

OPERATOR shall remove and dispose of all snow, ice and slush from steps and from the sidewalks adjoining the Municipal Parking Facilities (except the Third and Court Parking Garage and the east Fourth and Des Moines Parking Garage) in accord with appropriate City Ordinances. OPERATOR shall also remove and dispose of all snow, ice and slush that interfere with the movement or parking of cars from the driveways, entrance and exit areas, roof or other areas of each Facility including application of sand and snow and ice removal chemicals. Snow and ice removal will be completed by 6:00 a.m. or as soon as possible, but in no case more than 24 hours, after the precipitation ends.

If freezing precipitation begins during or continues into normal hours of operation, snow and ice removal will begin and continue as necessary to prevent excessive accumulation of snow, ice, and slush, and to alleviate any dangerous conditions in high pedestrian traffic areas. The top parking level of each Facility, including all exposed parking areas, shall be cleared after precipitation ends. Necessary storage of snow may temporarily reduce the number of parking spaces available for use on the top parking level of each Facility. The OPERATOR shall use its best efforts to minimize the temporary loss of parking spaces for storage of snow on the top parking level of each Facility. To remove snow from the Facilities, OPERATOR may use an SUV or pickup truck with a blade or a small industrial or farm-type rubber-tired tractor equipped with a blade or front-end loader. No vehicle with a gross weight exceeding two (2) tons shall be used within the Facilities. The application of snow and ice chemicals will be done in such a manner and with such a quantity as to provide ice and snow removal but not damage pavement, equipment or other City of Des Moines parking facility property. Damage resulting from the over application of ice control chemicals will be the responsibility of the OPERATOR to repair at OPERATOR'S expense.

OPERATOR shall sweep all floors of each Facility at least once every two months with a power sweeper equipped with rotating brushes and a vacuum system. OPERATOR shall clean stairways, waiting rooms, restrooms, and other public areas of the facilities daily. Steam cleaning or high pressure washing of the stairways shall be done at least twice each contract year (July 1 to June 30).

OPERATOR shall clean all floors of each Facility (except any surface lot) by washing with a hose with a minimum diameter of 1 1/2 inches at least three times each contract year, in the spring, summer and fall time periods. With prior approval of the OWNER, OPERATOR may substitute a thorough cleaning of any Facility using the Sweeper/Scrubber for the summer and/or fall required washing, but OPERATOR must perform the spring washing to remove the winter accumulation of salt and sand. To the extent practical, all sweeping and cleaning shall be performed at times that will minimize the disruption of the use of each Facility. All drains will be cleaned at least twice each contract year and shall be monitored and maintained so that the grates remain clear and clean to provide adequate drainage for the facility and to prevent corrosion to the drain casting and pan.

OPERATOR shall maintain all necessary utilities in the Facilities at reasonable control levels.

OPERATOR shall continuously maintain the landscaping of each Facility by trimming shrubs and trees, cutting and fertilizing grass, servicing any fountains, and providing such other regular maintenance as shall be required for a pleasing appearance of the landscaping.

OPERATOR shall maintain skywalk corridors and skywalk vertical access facilities within and adjacent to the Facilities and shall maintain the skywalk bridges connected to the Facilities in accordance with the terms and provisions of the City of Des Moines Skywalk Ordinance and applicable Skywalk Agreements, unless otherwise directed by the OWNER. Expenses for Skywalk operation and maintenance shall be identified as line items in the operating budget separate from expenses for parking facility operation and maintenance.

OPERATOR shall maintain all sidewalks and buffer areas within the street curbs that adjoin the Municipal Parking Facilities (except the Third and Court Parking Garage and East Fourth and Des Moines Parking Garage). This duty shall include the obligation to keep such sidewalks and buffer areas clear of snow, ice, slush, debris, weeds, and obstructions. OPERATOR shall promptly notify

OWNER of the need, of which OPERATOR is actually aware, to repair or replace any sidewalks or curb cuts adjacent to the Municipal Parking Facilities.

In addition to the OPERATOR's maintenance and repair obligations set forth herein, OPERATOR shall perform all maintenance to the Seventh and Center Street Park and Ride Garage set forth in the Operating and Maintenance Plan attached to the Facility Parking Lease Agreement dated December 22, 1997 between the OWNER and Principal Life Insurance Company (provided to OPERATOR in the Request for Proposal), as may be amended, shall perform all regular and routine maintenance to the Shuttle Station required under the Shuttle Service Agreement between the OWNER and Des Moines Metropolitan Transit Authority (n/k/a DART) dated April 5, 1999, and shall respond to and perform all Day Care facility maintenance concerns.

OPERATOR shall coordinate the performance of its maintenance and cleaning obligations set forth herein with the Operation Downtown project cleaning and maintenance services provided by the Downtown Self-Supported Municipal Improvement District pursuant to the terms of the Parking Garage Service Agreement between OWNER and Downtown Self-Supported Municipal Improvement District dated June 24, 2019 or any successor agreement.

ARTICLE VIII

RIGHT TO INSPECT AND MAKE REPAIRS

OWNER shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to the operations of the Facilities as reasonably practicable) to:

- A. Inspect the Municipal Parking Facilities at reasonable intervals to determine whether OPERATOR has complied and is complying with the terms of this Agreement.
- B. Perform maintenance and make repairs and replacements in any case where OPERATOR is obligated so to do hereunder and where OPERATOR has failed, after 15 days written notice (unless the failure to maintain or repair has created a safety hazard, in which case, after such reasonable shorter notice), to do so, in which event OPERATOR shall reimburse OWNER for the cost thereof, promptly upon demand. Said reimbursement shall not be charged as an item of operating expense as provided for in Article XV of this Agreement. In the event OPERATOR does not reimburse OWNER in a prompt manner, OPERATOR agrees that OWNER may deduct the cost incurred from the monthly management fee compensation payments to OPERATOR'S Operation and Maintenance Fund Accounts made in accordance with Article X of this Agreement.
- C. Perform maintenance and make repairs and replacements in any case where OWNER determines that it is necessary or desirable to do so, to extend the useful service life of the Facilities, preserve the safety of the Facilities or to correct any condition likely to cause injury or damage to persons or property.

ARTICLE IX

STANDARDS OF SERVICE AND PERSONNEL

- A. **SERVICE STANDARDS.** It is the policy of OWNER that the Municipal Parking Facilities shall be operated in an efficient manner, giving the best possible service to all customers using the Facilities. OPERATOR understands that customer service and convenience are an important

aspect of the operation of the Facilities and OPERATOR agrees to cooperate at all times in support of this policy and to operate the Municipal Parking Facilities and to manage its employees and its programs in accordance with the representations and procedures set forth in the Proposal, the terms and conditions of the Request for Proposal and this Agreement, and under the rules, regulations and policy directives of OWNER's City Manager or designated representative in order to provide a high level of customer service. If requested by OWNER, OPERATOR shall work cooperatively with the Downtown Self-Supported Municipal Improvement District and the Downtown Community Alliance, Inc. to provide customer service enhancements or amenities.

- B. OPERATOR'S REPRESENTATIVES. In entering into this Agreement, OWNER has relied upon the knowledge, experience and expertise of Brian G. Bush, Vice President of Parking and Scott Houck, Parking Branch Manager and the representation of OPERATOR that such individuals will provide overall supervision of OPERATOR's performance of the terms of this Agreement.
- C. MANAGER. OPERATOR shall employ as part of the management services compensated for in Article III, Paragraph A of this Agreement and at no additional cost to OWNER and not charged as an operating expense as provided for in Article XV, a qualified employee designated as local General Manager to supervise, on an exclusive full-time basis, the operation of the Municipal Parking Facilities. Such Manager and any successor must be approved by the OWNER. Such Manager shall be delegated sufficient authority and responsibility by OPERATOR to ensure proper management and operation of the Municipal Parking Facilities in compliance with this Agreement. When the local General Manager is not on duty, a qualified employee shall be delegated the responsibility to supervise the management and operation of the Municipal Parking Facilities. This employee, when acting in the absence of the local General Manager, shall average less than half the employee's time performing their regularly assigned duties.
- D. EMPLOYEE QUALIFICATIONS. OPERATOR shall select honest, professional, qualified, competent and courteous personnel to be employed at the Municipal Parking Facilities, and it shall be the duty of OPERATOR to train, supervise and maintain proper surveillance over all its employees to ensure their professionalism, integrity, and maintenance of an honest and high standard of service to the public, which standard will be determined at the sole discretion of OWNER.

OPERATOR shall comply with Des Moines Municipal Code Section 62-71.1 relating to criminal record inquiry for employment purposes and shall in compliance with this Section follow its hiring process and employment policies set forth in its Proposal. Following the application process and extension of a conditional offer of employment, OPERATOR shall perform reasonable pre-employment screening including criminal background checks, driving record checks and drug screening for each prospective new employee. Employment shall not become final until passing results of these tests have been ascertained.

OPERATOR shall conduct the employee development programs set forth in its Proposal, including programs for the comprehensive orientation and training of new employees and the ongoing development of existing employees. OPERATOR shall control the actions of its employees and terminate from employment at the Municipal Parking Facilities any employee whose conduct OWNER's City Manager or designated representative finds detrimental to the best interests of the City of Des Moines or the general public as allowed by law or any collective bargaining agreement. Payroll costs for employees of OPERATOR, except the General Manager and the time of any other employees devoted to supervisory activity, shall be charged as operating costs as provided for in

Article XV, Paragraph A of this Agreement. OPERATOR's employees, while on duty, shall wear neat, clean and properly cared for uniforms approved by OWNER. The cost of the uniforms shall be charged as an operating expense as provided for in Article XV, Paragraph A of this Agreement. A plan for supplying uniforms and expected costs thereof shall be submitted to the OWNER for approval. OPERATOR shall cause every employee, while on duty, to wear a badge containing the employee's name.

E. EMPLOYEE SPECIFICATIONS. The number, the duties to be performed, and hourly wage or salary range of each employee OPERATOR hires, including such part-time employees as may be required to effectively operate the Municipal Parking Facilities during peak periods of activity, shall be subject to written approval by OWNER's City Manager or designated representative. Personnel currently employed by the OPERATOR at the Municipal Parking Facilities shall be evaluated by the OPERATOR and given consideration for continued employment by OPERATOR with OWNER's approval. Any future increase in staff size or changes in job positions shall be subject to written approval of OWNER's City Manager or designated representative. Within ninety (90) days of the date of this Agreement, OPERATOR shall, based on a Des Moines metropolitan area survey of salaries or wages of employees of parking facilities, or the service industry, recommend a comparable salary or wage structure to the OWNER, which recommendation for employee salaries or wages shall be subject to written approval by OWNER's City Manager or designated representative.

F. EMPLOYEE BENEFITS.

1. All applicable health insurance, life insurance, retirement and other employee benefits, and OPERATOR's per employee cost of applicable health insurance, life insurance, retirement and other employee benefits shall be comparable in all respects to the benefits and per employee costs provided to employees of OPERATOR who are involved in operation of other public parking facilities managed by OPERATOR under separate management agreements. Applicable health insurance, life insurance, retirement, and other employee benefits, including eligibility standards, shall be subject to written approval by OWNER's City Manager or designated representative.
2. Health insurance, life insurance, retirement and other employee benefits as described herein shall be charged as an operating expense as provided for in Article XV, Paragraph A of this Agreement.
3. OPERATOR shall provide OWNER's City Manager or designated representative with documentation, upon commencement of the term of this Agreement and prior to April 1 of each year thereafter, that verifies the employee insurance and benefits and per employee cost of the insurance and benefits and any cost increases thereto applicable for the next contract year consistent with this Paragraph F.

ARTICLE X

BANK ACCOUNTS, ADVANCES

- A. The parking management and operation covered by this Agreement shall be carried on for OWNER under the name of "Municipal Parking Facilities." OWNER shall establish the Municipal Parking System Revenue Fund Account and a separate Park and Ride Facility Revenue Fund Account in

compliance with OWNER's investment policy and amendments thereto in a Des Moines bank approved by OWNER's Director of Finance. All income, revenues and receipts of the Municipal Parking Facilities (other than the Seventh and Center Street Park and Ride Parking Garage) shall be deposited daily in the Municipal parking System Revenue Fund Account and all income, revenues and receipts of the Seventh and Center Street Park and Ride Parking Garage shall be deposited daily in the Park and Ride Facility Revenue Fund Account. OPERATOR shall bear full responsibility for depositing daily income, revenues and receipts and providing for their safekeeping and OPERATOR shall reimburse OWNER for all lost income, revenues and receipts caused by failure to follow the procedures set forth in the operations manual, negligence, misconduct or other fault of OPERATOR, its officers, employees, subcontractors, agents, or others for which OPERATOR is responsible.

- B. OPERATOR will establish an annual budget for approval by OWNER, in accordance with the procedures set out in Article XIV. OWNER shall remit to OPERATOR payment of budgeted current operating expenses and payment of the monthly management fee compensation for services earned within twenty (20) days subsequent to receipt of the OPERATOR's monthly detail report substantiating the payments. In the event that OPERATOR is compliant with the terms of this Agreement and OWNER fails to remit payment within the twenty (20) day period subsequent to receipt of a report in proper form and content, and OWNER does not remedy such failure within ten (10) days of written notice from OPERATOR, then OPERATOR shall have the right to terminate this Agreement with immediate effect.
- C. Upon termination of this Agreement, OPERATOR shall deposit all outstanding income, revenues and receipts along with any advances that may have been made by OWNER to OPERATOR. Any funds advanced to the OPERATOR by the OWNER and interest earned thereon belong to and remain property of the OWNER. The OPERATOR's expenses and records related thereto shall be available for review upon request and may be audited at any time by the OWNER's representatives, including, but not limited to, the City Manager and Finance Director and their designees upon reasonable notice and during normal business hours.

ARTICLE XI

BOND REQUIREMENTS

OPERATOR shall acquire and maintain throughout the term of this Agreement and the option term at its own expense and shall not charge as an operating expense as provided for in Article XV the following types of bonds. The bonds shall be in a form satisfactory to OWNER and written by a surety company or companies approved by OWNER and licensed to do business in the State of Iowa. If OWNER deems it necessary, OPERATOR shall furnish OWNER with Certificates of Authority from the State of Iowa Insurance Division, indicating that the aforementioned surety company or companies are licensed to do business in the State of Iowa.

- A. SURETY BOND. OPERATOR shall furnish to OWNER, before the effective date hereof, a surety company bond in the penal sum of Five Hundred Thousand Dollars (\$500,000), for the faithful performance of this Agreement, including payment of all contractual indebtedness. Two executed certified copies of such bond shall be furnished to OWNER.
- B. BLANKET POSITION BOND. Operator shall furnish to OWNER, before the effective date hereof, blanket position bond(s) bonding the employees of OPERATOR in the amount of Two

Hundred Thousand Dollars (\$200,000) for each employee. Two executed original certified copies of such bond(s) shall be furnished to OWNER.

ARTICLE XII

INDEMNIFICATION

OPERATOR agrees to defend, pay on behalf of, indemnify, and hold harmless the OWNER, its elected and appointed officials, employees and volunteers and others working on behalf of the OWNER and Principal Life Insurance Company as more particularly provided in Attachment 1 hereto.

ARTICLE XIII

INSURANCE REQUIREMENTS

OPERATOR, at its own expense, shall purchase and maintain the insurance coverages set forth in Attachment 1 hereto, with amounts, coverages, limits, exclusions, and endorsements as therein provided to protect OPERATOR and OWNER at all Municipal Parking Facilities covered by this Agreement, and Principal Life Insurance Company at the Seventh and Center Street Park and Ride Parking Garage only, throughout the duration of this Agreement. The costs to purchase and maintain insurance shall not be charged as an operating expense as provided for in Article XV.

ARTICLE XIV

ACCOUNTING AND RECORDS

- A. OPERATOR agrees to install and maintain at its own expense and shall not charge as an operating expense as provided for in Article XV, a bookkeeping, accounting, and control system approved by the OWNER covering said Municipal Parking Facilities, which books and accounts shall be prepared in accordance with the procedures set forth in the operations manual and, at all reasonable times, be open to the inspection of OWNER and its representatives. Such bookkeeping, accounting and control system shall provide separate detailed books, records and accounts for all income, revenues, and receipts and for all operating and maintenance expenses of the Seventh and Center Park and Ride Parking Garage. A record of all receipts and disbursements for the Facilities shall be contained in such books, with copies of same being maintained in Des Moines. The bookkeeping, accounting and control system including schedules for all such work must be satisfactory to the OWNER's Finance Director and must incorporate the financial reporting and auditing procedures set forth in the Proposal. In addition to the internal and third-party audits to be performed by OPERATOR, the OWNER may, after reasonable notice and during normal business hours, perform reviews or audits of the OPERATOR's financial records and operations to determine compliance with the terms of this Agreement.
- B. The bookkeeping, accounting and control system must contain but is not limited to the following features:
 - 1. Numerical accountability of pre-numbered parking tickets on a daily basis for parking at each Facility. OPERATOR will purchase and store the pre-numbered tickets and will issue same to parkers on an as needed basis, logging the issuance of these tickets for accountability.

2. Daily reconciliations of ticket revenues by rate and class of user to the total collections.
 3. Control and safeguarding of cash and other property assets of OWNER.
 4. Surprise cash counts and periodic audit of amounts charged customers based on time clock readings from parking tickets.
 5. Control of parking revenues.
 6. Control of payroll costs, including use of time clocks or time sheets, and other expenditures.
 7. Proper classification of revenues and expenditures and compliance with other accounting requirements as may be specified by OWNER.
 8. Such other reports and statements to be provided by OPERATOR as directed by OWNER.
- C. As part of the management services compensated for in Article III, Paragraph A of this Agreement, OPERATOR shall perform for the Municipal Parking Facilities the following services at no additional cost to OWNER and not charge as an operating expense as provided for in Article XV:
1. All posting, billing and collections of Accounts Receivable.
 2. Furnishing statement forms, envelopes, and postage in connection with Subparagraph C(1) above.
 3. Maintenance of Accounts Payable records and supplies inventory control.
 4. Administer payroll, social security filings, withholding of payroll taxes, workers' compensation, and related personnel obligations.
 5. Auditing deposits and reconciling bank accounts.
 6. Preparing and holding for review by OWNER the following records for said Municipal Parking Facilities:
 - a. Weekly payroll summary on forms for that purpose, showing names of employees, hours worked each day, hourly rate or salary, and gross pay for the week; these summaries to be completed within three (3) calendar days after the end of the week and retained in OPERATOR's assigned administrative office.
 - b. Substantiating records for payrolls, payroll taxes, and other expenditures, as may be required for review and audit purposes by OWNER, to be submitted within ten (10) days after OWNER has made a request.
 - c. A recent (less than 1 week old) backup copy of the revenue and expense data shall be maintained off-site for each Municipal Parking Facility for:
 - (1) Gate count files summed by month.
 - (2) Revenue reports summed by month.

- (3) Card counts summed by month.
 - (4) Auditor transactions summed by month.
 - (5) System activities summed by month.
 - (6) PARCS files summed by month.
 - (7) Ticket validations summed by month.
7. Preparing and submitting to OWNER the following reports for the Municipal Parking Facilities:
- a. A written report on each damage, theft, and/or injury claim arising from the operation of the Municipal Parking Facilities to be submitted to OWNER within two (2) working days of the occurrence.
 - b. A monthly report, to be submitted to OWNER within thirty (30) calendar days after the end of each month, containing information on parking activity for each Facility, including but not limited to:
 - (1) Monthly parkers, including numbers and daily activity.
 - (2) Daily parkers, including numbers.
 - (3) Average hourly entrance and exit activity.
 - (4) Average hourly Facility occupancy, including information on occupancy of monthly parkers.
 - c. A monthly report, to be submitted to OWNER within thirty (30) calendar days after the end of each month, containing information on revenues and expenses for each Facility, including a breakdown of expenses by type as designated by OWNER. In addition, weekly information shall be submitted to OWNER on revenues for each Facility.
 - d. A monthly report on maintenance activity performed by date for each Facility.
 - e. A monthly or daily numerical parking ticket report showing date and time each parking ticket was dispensed and the date, time and charges for vehicles exiting each Facility, as requested.
 - f. A monthly written report listing the drive outs (i.e., those individuals who have failed to pay their parking fees as agreed for any reason). Said report shall list the person by name and address (if known) and amount due.
8. Preparing and submitting to OWNER all other reports, statements and audits set forth in the Proposal.
- D. OPERATOR shall exercise proper care in the preparation of accurate reports and records required herein.
- E. OPERATOR shall keep and preserve for at least five (5) years all sales slips, cash register tapes, sales books, bank books, or duplicate deposit slips, parking tickets and other evidence of gross receipts and business transacted for each year during the term of this Agreement and, as applicable, the option term. OPERATOR shall furnish to OWNER copies of any such records upon request.

- F. OPERATOR shall prepare and submit to OWNER a proposed annual budget, including expenses by type and projected revenues for each Facility for approval by the OWNER. The proposed annual budget shall be submitted in December of each year and shall cover the following contract year (July 1 to June 30 which coincides with OWNER'S fiscal year) during the term of this Agreement and, as applicable, the option term. The budget for the initial fifteen-month period of operation under this Agreement (including contract year July 1, 2022 to June 30, 2023) shall be submitted to OWNER no later than 30 days after the beginning of the term of the Agreement. The OPERATOR shall promptly submit to OWNER modifications to the proposed budget for the following contract year as requested by OWNER.
- G. OPERATOR shall submit to OWNER a budget report on a monthly basis, comparing actual contract year-to-date expenses and revenues with the approved annual budget for each Facility.

ARTICLE XV

PAYMENT OF EXPENSES

- A. OPERATING EXPENSES. Unless otherwise specified in this Agreement, all operating expenses for the operation of the Municipal Parking Facilities, such as employee payrolls, applicable employee health insurance, life insurance, retirement and other employee benefits, light, heat, water, tickets, equipment maintenance, advertising, cleaning supplies and employee uniforms charged by OPERATOR, and licenses and permits, and costs and expenses incurred with respect to the Municipal Parking Facilities on behalf of OWNER pursuant to OWNER's written request, shall be paid from the Municipal Parking System Operation and Maintenance Fund Account or the Park and Ride Facility Operation and Maintenance Fund Account referred to in Article X, as appropriate. Any proposed expense over \$1,000 other than employee payroll or any proposed expense that is not budgeted must be submitted to OWNER in writing and approved in writing by OWNER's City Manager or designated representative. OPERATOR shall in good faith attempt to secure the advantage of any savings which may result by reason of other operations of OPERATOR and OPERATOR shall pass on to OWNER the benefit of any savings which may result by reason of block purchasing of forms, equipment and supplies.
- B. MISCELLANEOUS EXPENSES. The following costs shall be absorbed as part of the management services compensated for in Article III, Paragraph A and OPERATOR shall pay such costs from its own funds, and shall not charge such costs as operating expenses as provided for in this Article from the Municipal Parking System Revenue Fund Account, the Park and Ride Facility Revenue Fund Account, the Municipal Parking System Operation and Maintenance Fund Account or the Park and Ride Facility Operation and Maintenance Fund Account:
 - 1. The costs of all services listed in Article XIV including those for a bookkeeping, accounting, and control system and for the reports, records and services specified, and all costs for telephone and internet, computers, printers and networking equipment, postage, and office supplies.
 - 2. The costs of the supervisory activity required of OPERATOR under the terms of this Agreement, which includes the salary and benefits of the local General Manager. The scope of the term "supervisory activity," as herein intended, includes the performance of duties which, by way of illustration and not limitation, consists of employing and supervising parking garage employees; supervising and setting up and carrying out work schedules; training and

discipline of employees; recommending operating procedures and policies and effectuating approved procedures and policies; supervising the handling of customers' complaints and damage claims; arranging for and supervising the preparation of the required operating reports; maintaining a close liaison between OPERATOR and OWNER's City Manager or designated representative.

3. The costs and fees for acquisition and maintenance of bonds and costs, fees and premiums for insurance, including workers' compensation insurance, required in Article XI and Article XIII

ARTICLE XVI

ASSIGNMENT

- A. OPERATOR shall not, at any time, assign this Agreement or any part hereof, without the prior written consent of OWNER. Failure to obtain said approval shall be cause for immediate cancellation of this Agreement.
- B. A change to or transfer of membership in the OPERATOR shall be considered an assignment of this Agreement and OWNER's written approval of such transfer is required. Failure to obtain said approval shall be cause for immediate cancellation of this Agreement.
- C. OPERATOR shall not subcontract for the provision of any management or operation services under this Agreement without the prior written consent of OWNER.

ARTICLE XVII

COMPETING PARKING OPERATION PROHIBITION

In the event the OWNER, in its sole discretion, determines that the OPERATOR directly or indirectly owns, operates or otherwise has an interest in, to the detriment of the Municipal Parking Facilities, a competing parking facility within the area bounded by the East Seventh Street/Pennsylvania Avenue on the east, M. L. King, Jr. Parkway on the south, Seventeenth Street on the west, and I-235 on the north, the OWNER shall have the right at any time to cancel this Agreement upon giving OPERATOR thirty (30) days' notice in writing of such intention.

ARTICLE XVIII

DEFAULT; CANCELLATION

- A. **DEFAULT.** In addition to such specific remedies available to the City as provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party may by written notice of default to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within twenty (20) days after receipt of such notice. In the event that such notice of default is given, an action to cure or remedy the default is not promptly taken or not diligently pursued, or the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in breach of its obligations and for damages for breach of contract.
- B. **CANCELLATION.** In the event OPERATOR shall not adequately cure or remedy its default in accordance with paragraph A and such breach of this Agreement is deemed by OWNER to constitute unsatisfactory management or operation of the Municipal Parking Facilities, OWNER in addition to all other remedies available, shall have the right to cancel this Agreement upon giving OPERATOR thirty (30) days' notice in writing of such intention.

In the event any Municipal Parking Facility is required for any other purpose than attendant controlled public parking, or for any reason the Municipal Parking Facilities, or substantial portion thereof, are deemed by OWNER as inoperable under this Agreement, then the OWNER shall have the right to cancel this Agreement by giving the OPERATOR thirty (30) days' notice in writing of such intention.

- C. **BANKRUPTCY.** If a petition in bankruptcy or a petition for receiver is filed by or against OPERATOR, then OWNER may immediately terminate this Agreement.
- D. **FINAL DECISION ON CANCELLATION.** The decision of OWNER to exercise its rights of cancellation hereunder shall be final and conclusive and OWNER shall not be liable for any loss or damage to OPERATOR by reason thereof, nor for the payment of any compensation to OPERATOR following such termination of this Agreement.
- F. **NO WAIVER.** Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights or to deprive the party of limit such rights in any way. No waiver in fact made by either party with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of such party with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by such party.

ARTICLE XIX

GENERAL PROVISIONS

- A. **RULES, REGULATIONS, AND ORDINANCES.** OWNER shall adopt reasonable rules, regulations, and ordinances, which OPERATOR agrees to observe and obey, with respect to the use and operation of the Municipal Parking Facilities. OPERATOR shall not violate, or knowingly permit its agents, contractors, or employees acting on OPERATOR's behalf to violate any such rules, regulations or ordinances.
- B. **COMPLIANCE WITH LAW.** OPERATOR shall comply, at all times during the term of this Agreement, at its own cost and expense, with all applicable present and future ordinances, laws and regulations of the City of Des Moines, Polk County, State of Iowa or the United States governments, and of any political subdivision, agency, authority or commission thereof which may have jurisdiction with respect to the operation and uses of the Municipal Parking Facilities. In addition, OPERATOR shall not knowingly allow any illegal activity to be conducted, to be operated, or to occur in any of the Municipal Parking Facilities.
- C. **FAIR EMPLOYMENT PRACTICES; DISCRIMINATION.** OPERATOR agrees that, in the performance of this Agreement, it will not fail or refuse to hire, discharge any individual, or otherwise discriminate against any individual with respect to such individual's compensation, terms, conditions or privileges of employment, or limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability; nor will it permit or tolerate sexual harassment in the workplace. Further, OPERATOR shall not commit any of the illegal discriminatory practices set forth in Chapter 62 "Human Rights" of the Des Moines Municipal Code or successor Code Chapter.
- D. **RESERVATION OF RIGHTS.** Any and all rights and privileges not granted to OPERATOR by this Agreement are hereby reserved for and to OWNER.
- E. **SUCCESSORS AND ASSIGNS BOUND BY COVENANTS.** All the terms, covenants, conditions and agreements herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.
- F. **GOVERNING LAW.** This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Iowa.
- G. **NONWAIVER OF RIGHTS.** No waiver of default by either party of any of the terms, covenants, conditions and agreements hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained, to be performed, kept, and observed by the other party.
- H. **SEVERABILITY.** If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, the remainder of this Agreement shall not be affected thereby.

- I. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- J. FORCE MAJEURE. Neither party will be liable for delays in performance caused by acts of God, strikes, or labor disputes, or other cause beyond the reasonable control of that party.
- K. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto. OPERATOR acknowledges that this Agreement supersedes and cancels any and all previous agreements, on this matter between the OPERATOR and OWNER.
- L. RELATIONSHIP OF PARTIES. The relationship created by this Agreement is one of independent contract. Nothing herein shall create a partnership or joint venture relationship between the OWNER and OPERATOR. The OPERATOR'S employees shall not be deemed to be employees of the OWNER. The OPERATOR shall be deemed the OWNER'S agent for performance of the operation and maintenance responsibilities assumed by OPERATOR under this Agreement. However, OPERATOR'S status as an agent for OWNER does not authorize OPERATOR to make policy decisions on behalf of OWNER nor authorize OPERATOR to represent OWNER beyond the performance of its assumed operation and maintenance responsibilities set forth in this Agreement.
- M. ALTERATIONS. OPERATOR shall make no changes, alterations, additions or improvements, or do any work in connection therewith in, on, or about the Municipal Parking Facilities without the prior written consent of the OWNER.
- N. LICENSE, FEES, AND TAXES. OPERATOR shall obtain all licenses and permits required by Federal, State, or local law. OPERATOR shall pay any and all lawful taxes and assessments attributable to its operations which during the term of this Agreement may be levied by any governmental entity upon any part of the Municipal Parking Facilities or upon any taxable property owned by OPERATOR in or about said the Municipal Parking Facilities, but deferment of payment of any tax by OPERATOR shall not constitute a default or breach of this Agreement during the time OPERATOR is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest. OPERATOR is not responsible for any taxes and assessments levied against the real estate. The OPERATOR is acting as OWNER'S agent for performance of the operation and maintenance responsibilities assumed herein in connection with OWNER'S sale and furnishing of parking services in its Municipal Parking Facilities to the public which are understood by the parties to be exempt from sales taxes. Sales taxes levied by the State, if any, with respect to specific operating expenses incurred for the operation of the Municipal Parking Facilities referred to in Article XV, Paragraph A shall be considered additional operation expenses to be paid from the Municipal Parking System Operation and Maintenance Fund Account or the Park and Ride Facility Operation and Maintenance Fund Account referred to in Article X, as appropriate.
- O. SUBORDINATION TO BOND RESOLUTION. This Agreement shall be subordinate to and conform with the provisions of any current or future general obligation or revenue Bond Resolutions enacted by OWNER that finance all or a portion of the Des Moines Municipal Parking System. In the event of any conflicts between this Agreement and such Bond Resolutions, the

Bond Resolutions shall govern. OPERATOR agrees to approve any amendment to this Agreement that is necessary to conform with the Bond Resolutions.

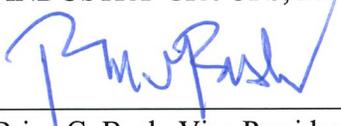
- P. AMERICANS WITH DISABILITIES ACT. OPERATOR agrees to comply with the Americans with Disabilities Act and any amendments and regulations thereto applicable to OPERATOR's operations of the Municipal Parking Facilities. OPERATOR shall forward to OWNER all notifications relating to such Act and coordinate all responses with OWNER, however, OPERATOR shall not be responsible for any physical changes to the structure of the Facilities required by such Act, except for re-stripping of parking spaces to provide adequate width and access aisles and installation of proper signage at the direction of OWNER in compliance with the Act.
- Q. AGREEMENT CONSTRUCTION. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.
- R. NOTICES. Notices required herein shall be given by regular and certified mail by depositing the same in the United States mail, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee three (3) calendar days after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

- 1. OWNER: City Traffic Engineer
Engineering Department
Traffic & Trans. Division
City Hall
400 Robert D. Ray Dr.
Des Moines, IA 50309-1881
- 2. OPERATOR: ABM Industry Groups, LLC a/k/a ABM Parking Services
Brian G. Bush, Vice President of Parking
1459 Hamilton Avenue
Cleveland, OH 44114

If notice is given in any other manner or at any other place, to be effective it shall also be given at the place and in the manner specified above.

- S. COVID-19 PRECAUTIONS. OPERATOR and its employees and sub-contractors shall comply with all COVID-19 safety precautions, requirements and restrictions imposed by directive of the OWNER'S Mayor or City Manager, including the proper usage of personal protective equipment within the Facilities

ABM INDUSTRY GROUPS, LLC

By 
Brian G. Bush, Vice President

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

On this 11th day of March, 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Brian G. Bush, to me personally known, and who, being by me duly sworn did state that he is a Vice President of ABM Industry Groups, LLC, the Delaware limited liability company executing the within and foregoing instrument; and that Brian G. Bush, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of said company, by him and by it voluntarily executed.


Notary Public in and for the State of Ohio



KAREN M HITCHCOX
Notary Public, State of Ohio
My Commission Expires:
8/26/2025

ATTACHMENT 1

City of Des Moines, Iowa (“OWNER”) Standard – Garagekeepers Major Insurance & Indemnification Requirements

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the OWNER City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The OPERATOR shall purchase and maintain insurance to protect the OPERATOR and CITY throughout the duration of this Agreement. Said insurance shall be provided by insurance companies “admitted” or “non-admitted” to do business in the State of Iowa having no less than an A. M. Best Rating of “B+.” All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance accompanying adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. **COMMERCIAL GENERAL LIABILITY:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable).

Waiver of Subrogation in favor of the CITY is required as per paragraph 2.K below.

Any General Liability Insurance policy shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. **AUTOMOBILE LIABILITY W/ GARAGEKEEPERS LIABILITY INSURANCE:** Garage Liability Insurance including Garagekeepers Liability Insurance coverage. Coverage for each shall be in amounts no less than outlined below:

- I. The Garage Liability coverages shall be written with limits of not less than:
 1. \$1,000,000 Each Accident – Garage Operations – “Auto” only
 2. \$1,000,000 Each Accident – Garage Operations – Other Than “Auto” Only
 3. \$2,000,000 for Aggregate – Garage Operations – Other Than “Auto” Only
- II. The Garagekeepers Legal Liability coverage shall include both Comprehensive and Collision coverage with limits not less than \$1,000,000 per location.

Waiver of Subrogation in favor of the CITY is required as per paragraph 2.K below.

- C. **ON-HOOK LIABILITY INSURANCE:** **If applicable under the terms of the Agreement,** OPERATOR shall procure and maintain during the life of this Agreement, On-Hook Liability insurance providing coverage to private vehicles being towed for storage under the provisions of this Agreement with limits of not less than \$1,000,000 per occurrence.

Waiver of Subrogation in favor of the CITY is required as per paragraph 2.K below.

- D. **UMBRELLA OR EXCESS LIABILITY INSURANCE:** The OPERATOR shall purchase and maintain an Umbrella or Excess Liability Insurance with limits of liability of not less than \$2,000,000 per occurrence and aggregate. If the Umbrella or Excess Insurance policy does not follow the form of the

General Liability Insurance and Auto Liability Insurance policy, the Umbrella or Excess Liability Insurance policy shall include the same endorsements as required of the primary policies.

Waiver of Subrogation in favor of the CITY is required as per paragraph 2.K below.

- E. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, the OPERATOR shall procure and maintain Workers' Compensation Insurance, including Employers' Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the OPERATOR is not required to purchase Workers' Compensation Insurance, the OPERATOR shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22.
Waiver of Subrogation in favor of the CITY is required as per paragraph 2.K below.
- F. CRIME INSURANCE: Crime Insurance on a discovery basis covering Employee Dishonesty for each loss at a limit of not less than \$250,000. Those employees of the OPERATOR who have access to, or who are responsible for, the funds generated under this Agreement shall be covered by this insurance. The policy shall include "third party" or "client" coverage covering funds belonging to or due to the City of Des Moines as set for in this Agreement and shall name the CITY as a "Joint Loss Payee". This insurance shall cover any losses attributable to OPERATOR'S employees acting alone or in collusion with others who are not employees of the OPERATOR. The insurance shall include coverage for theft, disappearance and destruction for loss inside premises and outside of premises. The cost of such Crime Insurance shall be at the sole expense of the OPEARATOR.
- G. PROPERTY INSURANCE: OPERATOR shall procure and maintain during the life of the Agreement, Property Insurance, covering all structural or other improvements installed by OPERATOR in/on the premises, along with all fixtures, furnishings, equipment and decoration kept, furnished or installed by OPERATOR.
- H. ADDITIONAL INSURED ENDORSEMENT: The General Liability Insurance and Automobile Liability Insurance policies shall include the CITY as an Additional Insured. Any General Liability Insurance policy shall include standard ISO endorsements CG 20 10 07 04 and CG 20 37 07 04 or their ISO/non-ISO equivalents. In all cases, the OPERATOR'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- I. GOVERNMENTAL IMMUNITY ENDORSEMENT: The General Liability Insurance, Automobile Liability Insurance and Garage Liability Insurance policies shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. Nonwaiver of Government Immunity: The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage: The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.

3. Assertion of Government Immunity: The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage: The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy: The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

J. CANCELLATION & NONRENEWAL NOTIFICATION: The OPERATOR shall provide the CITY with no less than ten (10) days Advance Written Notice of Cancellation, Nonrenewal and Cancellation due to non-payment of premium. *Written notifications shall be sent to: City of Des Moines, Procurement, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.*

K. WAIVER OF SUBROGATION: To the fullest extent permitted by law, OPERATOR hereby releases the CITY from and against any and all liability or responsibility to the OPERATOR or anyone claiming through or under the OPERATOR by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The OPERATOR'S policies of insurance shall contain either a policy provision or endorsement accompanying the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

L. PROOF OF INSURANCE: The OPERATOR shall provide the following proof of insurance to the CITY:

- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through K above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
- A copy of the Cancellation and Nonrenewal Notification Endorsement or its equivalent language in the COI as required in paragraph 2.J. above.
- Copies of Additional Insured Endorsements ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or their equivalents as required in paragraph 2.H. above.

Mail Certificates of Insurance to: City of Des Moines, Procurement, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

M. AGENTS AND SUBCONTRACTORS: The OPERATOR shall require all its agents and subcontractors who perform work and/or services on behalf of the OPERATOR to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, reasonable attorneys' fees and

court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with OPERATOR'S work or services under this Agreement, including that of its officers, agents; employees, subcontractors and others under the control of OPERATOR.

OPERATOR'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by OPERATOR arising out of or in any way connected or associated with OPERATOR'S work, including that of its officers, agents, employees, subcontractors and others under the control of OPERATOR, except to the extent caused by or resulting from the negligent act of the CITY.

OPERATOR expressly assumes responsibility for any and all damage caused to CITY to the extent caused by OPERATOR'S work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of OPERATOR.

OPERATOR shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and OPERATOR will observe all applicable safety rules.