

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 **34281**

3 THIS AGREEMENT is made and entered, in duplicate, as of May 10, 2016,
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on May 3, 2016, by and between the FOURTH STREET
6 PARKING AND BUSINESS IMPROVEMENT AREA, a California non-profit corporation
7 ("FSPBIA"), with a place of business at 2210 E. 4th Street, Long Beach, California 90814;
8 and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, on February 10, 2009, the City Council authorized a lease
10 ("Lease") of the parking lot at 2000 East 4th Street ("Parking Lot") for public parking
11 purposes at a monthly rental rate of \$2,000, funded through Proposition A funds; and

12 WHEREAS, the FSPBIA funded the maintenance and management of the
13 Parking Lot; and

14 WHEREAS, the Department of Public Works collected the parking revenues
15 and processed credit card transactions related to the Parking Lot and applied the net
16 revenue to reimburse Proposition A funds; and

17 WHEREAS, effective January 1, 2016, FSPBIA assumed the Lease and
18 funds the monthly Lease payment as well as maintenance and management cost of the
19 Parking Lot; as a result Proposition A funds will no longer be used to support the monthly
20 Lease payments; and

21 WHEREAS, FSPBIA has requested the City to continue to collect the
22 revenue and process the credit card transactions from the single pay-station located in the
23 Parking Lot;

24 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
25 conditions in this Agreement, the parties agree as follows:

26 1. CITY RESPONSIBILITIES. According to its current schedule, City
27 shall collect payments to the single pay-station in the Parking Lot. Payments made via
28 credit or debit card shall be processed and collected by City. Parking Lot revenue shall be

1 maintained in a separate fund in the name of the FSPBIA. City shall promptly remit to the
2 FSPBIA revenue collected, less transaction costs and expenses required to process
3 Parking Lot transactions. The City shall have no responsibility for maintenance of the
4 Parking Lot, including pay station equipment.

5 2. FSPBIA RESPONSIBILITIES. FSPBIA shall operate, maintain and
6 manage the Parking Lot.

7 3. TERM. The term of this Agreement shall commence at midnight on
8 January 1, 2016, and shall continue in effect unless sooner terminated as provided in this
9 Agreement.

10 4. TERMINATION. Either party may terminate this Agreement by giving
11 the other party ninety (90) days' prior written notice.

12 5. INDEMNITY.

13 A. FSPBIA shall indemnify, protect and hold harmless City, its
14 Boards, Commissions, and their officials, employees and agents ("Indemnified
15 Parties"), from and against any and all liability, claims, demands, damage, loss,
16 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
17 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
18 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
19 in part, out of or in connection with (1) FSPBIA's breach or failure to comply with
20 any of its obligations contained in this Agreement, including all applicable federal
21 and state labor requirements including, without limitation, the requirements of
22 California Labor Code section 1770 et seq. or (2) negligent or willful acts, errors,
23 omissions or misrepresentations committed by FSPBIA, its officers, employees,
24 agents, or anyone under FSPBIA's control, in the performance of work or services
25 under this Agreement (collectively "Claims" or individually "Claim").

26 B. In addition to FSPBIA's duty to indemnify, FSPBIA shall have a
27 separate and wholly independent duty to defend Indemnified Parties at FSPBIA's
28 expense by legal counsel approved by City, from and against all Claims, and shall

1 continue this defense until the Claims are resolved, whether by settlement, judgment
2 or otherwise. No finding or judgment of negligence, fault, breach, or the like on the
3 part of FSPBIA shall be required for the duty to defend to arise. City shall notify
4 FSPBIA of any Claim, shall tender the defense of the Claim to FSPBIA, and shall
5 assist FSPBIA, as may be reasonably requested, in the defense.

6 C. If a court of competent jurisdiction determines that a Claim was
7 caused by the sole negligence or willful misconduct of Indemnified Parties,
8 FSPBIA's costs of defense and indemnity shall be (1) reimbursed in full if the court
9 determines sole negligence by the Indemnified Parties, or (2) reduced by the
10 percentage of willful misconduct attributed by the court to the Indemnified Parties.

11 D. The provisions of this Section shall survive the expiration or
12 termination of this Agreement.

13 6. FORCE MAJEURE. If any party fails to perform its obligations
14 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
15 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
16 governmental regulations, governmental controls, judicial orders, enemy or hostile
17 governmental action, civil commotion, fire or other casualty, or other causes beyond the
18 reasonable control of the party obligated to perform, then that party's performance will be
19 excused for a period equal to the period of such cause for failure to perform.

20 7. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
21 constitutes the entire understanding between the parties and supersedes all other
22 agreements, oral or written, with respect to the subject matter in this Agreement.

23 8. NONDISCRIMINATION. In connection with performance of this
24 Agreement and subject to applicable rules and regulations, FSPBIA shall not discriminate
25 against any employee or applicant for employment because of race, religion, national
26 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
27 disability. FSPBIA shall ensure that applicants are employed, and that employees are
28 treated during their employment, without regard to these bases. These actions shall

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1 include, but not be limited to, the following: employment, upgrading, demotion or transfer;
2 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of
3 compensation; and selection for training, including apprenticeship.

4 9. LAW. This Agreement shall be construed in accordance with the laws
5 of the State of California, and the venue for any legal actions brought by any party with
6 respect to this Agreement shall be the County of Los Angeles, State of California for state
7 actions and the Central District of California for any federal actions

8 10. THIRD PARTY BENEFICIARY. This Agreement is not intended or
9 designed to or entered for the purpose of creating any benefit or right for any person or
10 entity of any kind that is not a party to this Agreement.

11 IN WITNESS WHEREOF, the parties have caused this document to be duly
12 executed with all formalities required by law as of the date first stated above.

13 FOURTH STREET PARKING AND
14 BUSINESS IMPROVEMENT AREA, a
California non-profit corporation

15 May 24th, 2016

16 By [Signature]
17 Name K. Konsteiner
18 Title CO-CHAIR #SPBIA

19 MAY 24th, 2016

20 By [Signature]
21 Name CHRIS GIACO
22 Title CO-CHAIR 4th ST. BIA

23 "FSPBIA"

24 CITY OF LONG BEACH, a municipal
25 corporation

26 6/21, 2016

27 By [Signature]
28 City Manager

"City"

This Agreement is approved as to form on June 13, 2016.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy