



AGENDA ITEM MEMORANDUM

Town Manager's Office

Department

Bud Bentley & Tony Bryan

Assistant Town Manager / Finance Director

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
April 10, 2012	

<input type="checkbox"/>	Presentation	<input type="checkbox"/>	Reports	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution	<input type="checkbox"/>	Quasi-Judicial	<input checked="" type="checkbox"/>	Old Business	<input type="checkbox"/>	New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY
TOPIC: Efficiency of Town Government

SUBJECT TITLE: Resolution 2012-19 Approving Parking Management Services Agreement – *Final Parking Services Agreement and Resolution 2012-19*

EXPLANATION: As mentioned in the Agenda Memorandum for Agenda Item 13a, Resolution 2012-19 and Exhibit 1 to the Resolution 2012-19 as well as comparison document would be provided the Commission prior to Tuesday's Commission Meeting.

Please find attached:

1. Resolution 2012-19 (Exhibit 1)
2. The final negotiated Parking Services Agreement (Exhibit A to Resolution 2012-19).
3. The comparison document (Exhibit 2), which shows the changes from the draft agreement included in the Agenda Memorandum and the attached Final Agreement.

As we noted in the draft agreement, the text in Section 9.8 was still being developed – the final text in the Agreement is reprinted below. All of the other changes are not considered significant.

9.8 All deductibles or self-insured retentions must be declared to and be approved by the TOWN Manager. TOWN shall reimburse OPERATOR the deductible amount of any third party insurance claims settlement not to exceed the first \$2,500 of any third party injury or damage claim, excluding any claims caused by or resulting from OPERATOR's gross negligence or willful misconduct.

RECOMMENDATION: We recommend approval of Resolution 2012-19.

EXHIBIT: Exhibit 1 – Resolution 2012-19 and Exhibit A to the Resolution (Parking Services Agreement)
Exhibit 2 – The comparison document

The final Parking Services Agreement has been approved
As to form by the Town Attorney's Office

Yes

Town Manager Initials

Exhibit 1

RESOLUTION NO. 2012-19

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4 **A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-**
5 **THE-SEA, FLORIDA, AUTHORIZING AN AGREEMENT**
6 **WITH STANDARD PARKING SERVICES FOR PARKING**
7 **MANAGEMENT SERVICES; DIRECTING THE**
8 **APPROPRIATE TOWN OFFICIALS TO EXECUTE THE**
9 **AGREEMENT; PROVIDING FOR REPEAL OF ANY**
10 **CONFLICTING RESOLUTION; PROVIDING FOR**
11 **SEVERABILITY; AND PROVIDING AN EFFECTIVE**
12 **DATE.**

13
14 **WHEREAS,** the Town of Lauderdale-By-The-sea finds it in the best interest of the Town
15 to outsource parking management services in the Town; and

16 **WHEREAS,** the Town advertised Request for Proposal No. 11-05-01 for parking
17 management services; and

18 **WHEREAS,** the Town Commission concurred with staff's recommendation to negotiate
19 a contract with Standard Parking Corporation for parking management services; and

20 **WHEREAS,** the Town Commission wishes to memorialize and approve the agreement
21 with Standard Parking Corporation for these services.

22 **NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF**
23 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

24 **Section 1.** Each "WHEREAS" clause set forth is true and correct and herein
25 incorporated by this reference.

26 **Section 2.** The Town Manager is hereby authorized to execute, on behalf of the
27 Town, the Agreement with Standard Parking Corporation in the form attached hereto as Exhibit
28 "A", with such non-material changes as may be approved by the Town Manager and Town
29 Attorney, and such other documents necessary to implement the terms of the Agreement.

Exhibit 1

1 **Section 3.** The Town Manager and/or her designee and the Town Attorney are authorized
2 to take all actions necessary to implement the terms and conditions of the Agreement.

3 **Section 4.** All resolutions or parts of resolutions in conflict herewith are hereby repealed
4 to the extent of such conflict.

5 **Section 5.** If any clause, section or other part of this resolution shall be held by any
6 court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid
7 part shall be considered as eliminated and in no way affecting the validity of the other provisions
8 of this resolution.

9 **Section 6.** This resolution shall become effective immediately upon its passage.

10 **PASSED AND ADOPTED** this _____ day of April, 2012.

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Mayor Roseann Minnet

Attest:

June White, CMC, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT A to
Resolution 2012-19

AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA
AND
STANDARD PARKING CORPORATION
FOR PARKING MANAGEMENT SERVICES

RFP No. 11-05-01

This Agreement ("Agreement") is made and entered into the ____ day of April, 2012, by and between the Town of Lauderdale-By-The-Sea, a Florida municipal corporation ("TOWN") and Standard Parking Corporation, a Delaware corporation, hereinafter referred to as "OPERATOR" for the management and operation of the TOWN'S parking system. References in this Agreement to "Town Manager" shall include the Town Manager's designee.

WITNESSETH:

WHEREAS, the TOWN released Request for Proposals No. 11-05-01 for Parking Management Services ("RFP"); and

WHEREAS, on March 13, 2012, the Town Commission concurred with staff's recommendation and directed staff to negotiate a contract with OPERATOR; and

WHEREAS, TOWN and OPERATOR desire to enter into this Agreement wherein the duties and obligations each to the other are set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, TOWN AND OPERATOR AGREE AS FOLLOWS:

DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 "Annual Management Fee" shall mean the annual fee paid by the TOWN to the OPERATOR for the management and operation of the Parking System in accordance with the terms and conditions of this Agreement.

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

- 1.2 **"Citation Management"** shall mean a comprehensive system provided by a third party under contract to OPERATOR that includes handheld ticket writers, software and hardware that downloads the information to the third party's central processing center.
- 1.3 **"Parking Fund Budget"** shall mean the annual fiscal year Parking Fund budget adopted by the TOWN.
- 1.4 **"Equipment/Furnishings"** shall mean equipment and furnishings used by the OPERATOR in the operation of the Parking System. Such items shall include, but are not limited to, bicycles, radios, meter inventory and office equipment. The Equipment/Furnishings owned by the TOWN and to be used by the OPERATOR are identified in Exhibit "C" hereto.
- 1.5 **"Operating Budget"** shall mean the budget for the Parking System operation as described in Section 6 below.
- 1.6 **"Operating Expenses"** shall mean all TOWN approved budgeted expense(s) that are incurred by the OPERATOR in the operation of the Parking System, as well as other expenses not provided for in the Operating Budget, but which are specifically approved, in writing, by the Contract Administrator. Operating Expenses are separate from, and in addition to, the Management Fee. Operating Expenses shall include all costs, charges and expenses that are directly and solely attributable to this Agreement or that are apportioned between OPERATOR'S work under this agreement and OPERATOR'S other business activities and are set forth in the approved Operating Budget; all without any mark-up or added overhead expense by OPERATOR. Operating Expense shall include, but are not limited to the follows:
- A. Bookkeeping and administrative services;
 - B. Compliance with governmental laws and regulations;
 - C. Computerized accounts receivable service;
 - D. Payroll data processing;
 - E. Employee recruitment, training and ongoing employee relations;
 - F. License and permit fees;
 - G. Maintenance and repairs;
 - H. Paper and reporting forms;
 - I. Postage and freight; tickets,
 - J. Charges for insurance required under this Agreement as set forth in the Operating Budget and deductibles as set forth in Section 9 below.
 - K. Salaries and wages (including supervisory allocations for the manager and an off-site senior manager) and associated payroll burden (including, without limitation, payroll taxes and fringe benefits);
 - L. Telephone;
 - M. Tools, uniforms, and supplies; and,
 - N. Utility charges;
- 1.7 **"Parking Revenues"** shall include all parking related charges and fees collected by OPERATOR or TOWN. Parking Revenues includes sales taxes collected from patrons of the Parking System.

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

- 1.8 **"Parking System"** collectively defines the various parking facilities of the TOWN as described in the RFP, which includes surface lots and parking in the right-of-way.
- 1.9 **"TOWN"** shall mean the Town of Lauderdale-By-The-Sea, a body corporate and a political subdivision of the State of Florida or the Town Commission of the Town of Lauderdale-By-The-Sea Broward County, Florida, which is the governing body of the Town of Lauderdale-By-The-Sea, as the context requires.

SECTION 2. SCOPE OF SERVICES

- 2.1 The OPERATOR shall meet the requirements and perform the services described herein, in the manner and as described in the RFP, attached hereto and incorporated herein as Exhibit 1, and as described in the OPERATOR'S Proposal (the **"Proposal"**), attached hereto and incorporated herein as Exhibit 2. The Scope of Services required by Exhibits 1 and 2, in this Agreement and in the Proposal, collectively, shall be referred to as the "Scope of Services".
- 2.2 OPERATOR agrees and acknowledges that OPERATOR did not take any exceptions to the RFP and is prohibited from exempting any provision of the RFP, the Proposal, or this Agreement in any of OPERATOR'S Scope of Services provided pursuant to this Agreement. The provisions and requirements of Exhibits 1 and 2 are hereby ratified and confirmed and are incorporated herein by this reference. OPERATOR shall comply with each and every provision of the RFP and Proposal.
- 2.3 OPERATOR shall manage and operate the TOWN'S Parking System as requested by TOWN.
- 2.4 The TOWN recognizes that certain services included in the Scope of Services may not be available on the Commencement Date, but all services shall be provided no later than June 1, 2012. OPERATOR shall use the TOWN'S existing citation management services until a transition date for the change is agreed upon by the parties.
- 2.5 OPERATOR agrees to give hiring preference to TOWN'S parking employees that meet OPERATOR'S hiring guidelines. OPERATOR understands that the TOWN has approved transitional wages for Town parking employees that become OPERATOR'S employees. OPERATOR agrees to pay the transitional wages as directed by TOWN and both parties agree that these are Operating Expenses.

SECTION 3. OPERATOR'S OBLIGATIONS AND SERVICES; OPERATING EXPENSES

OPERATOR hereby covenants and agrees that it will:

- 3.1. Operate and direct the operation of the Parking System and render the necessary services incidental thereto in a professional, businesslike and efficient manner, and provide supervision and inspection adequate to properly manage the Parking System. TOWN reserves the right to establish the hours of operation, parking enforcement policies, and parking rates for all facilities throughout the Parking System.
- 3.2. Routinely maintain the parking equipment in good operating condition and repair. Purchase, on behalf of TOWN and in accordance to the TOWN Purchasing Policy,

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

equipment and supplies necessary for the operation of the Parking System. Such equipment shall be owned by TOWN, subject to full reimbursement by TOWN or as otherwise expressly agreed to in this Agreement.

- 3.3. Hire, compensate, and supervise sufficient experienced and qualified personnel who will render the services required by this Agreement. Such employees will be neatly uniformed and courteous to the public. All persons so employed shall be employees of OPERATOR and not of TOWN, and shall have no authority to act as agent of TOWN.
- 3.4. Promote, advertise and endeavor to increase the volume, efficiency and quality of the services rendered.
- 3.5. Maintain courteous, businesslike relations with users of the Parking System, whose requests shall be received, considered and promptly acted upon.
- 3.6. Cause the Parking System to be maintained in a clean and orderly manner according to reasonable standards acceptable to TOWN, but OPERATOR shall not be required to make (and shall not be authorized to make, without TOWN'S prior written approval) any structural, mechanical, electrical or other installations, alterations or repairs to the Parking System infrastructure including those required by statutes, regulations or governmental requirements pertaining to air quality, environmental protection or persons with disabilities, which matters shall be the sole responsibility of TOWN.
- 3.7. Promptly notify TOWN of any matter that in OPERATOR'S reasonable judgment requires TOWN'S attention.
- 3.8. Advise and cooperate with TOWN in the development and implementation of rules and regulations applicable to the Parking System.
- 3.9. Obtain, maintain and timely provide to TOWN evidence of the policies of insurance specified herein.
- 3.10. Prepare and file all necessary returns, reports and forms required by law in connection with OPERATOR'S licenses, corporate good standing, authority to do business locally and employees for unemployment insurance, social security taxes, worker's compensation insurance, disability benefits, Federal and state income tax withholding and other similar taxes and all other returns and reports required by any Federal, state or municipal authority and pay or make all deposits required for such taxes.
- 3.11. Within thirty (30) days after the end of each calendar month, mail to TOWN a statement showing all Operating Expenses and the Management Fee for the preceding calendar month.
- 3.12. Obtain and maintain all licenses and permits required by an operator of parking facilities by any governmental body or agency having jurisdiction over OPERATOR at the Parking System and abide by the terms of such licenses and permits. Any license or permit fees incurred by OPERATOR for its operation within the TOWN shall be deemed an Operating Expense.
- 3.13. OPERATOR shall not use all or any part of the Parking System for any use or purpose which is (i) forbidden by or in violation of any law of the United States, any state law or any city ordinance, or applicable regulation, or (ii) may be dangerous to life, limb or property.
- 3.14. Provide only experienced and qualified supervisory personnel to supervise its operations.

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

SECTION 4. TOWN'S OBLIGATIONS.

TOWN shall, at its expense, be responsible for performance of the following:

- 4.1 Repair and maintenance of the Parking System infrastructure (other than as expressly delegated to OPERATOR in this Agreement) including as applicable, air conditioning, ventilating, exhaust, fire protection, alarm, utility, plumbing (including lavatory facilities), sewage, drainage, security and lighting systems; paving; painting; striping; directional signs, fencing; parking booths; landscaping; windows and doors; plate glass; driveways, sidewalks and curbs (including curb cuts); traffic control devices used at or in the Parking System; and all structural repairs.
- 4.2 Alterations, improvements and additions that TOWN deems necessary and/or as may be required by the Americans With Disabilities Act of 1990.
- 4.3 Safety and/or security personnel and equipment. TOWN expressly acknowledges that OPERATOR does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do OPERATOR'S employees undertake the obligation to guard or protect customers against the intentional acts of third parties.
- 4.4 Refrain from hiring OPERATOR'S supervisory personnel in a parking related position during the term of this Agreement and for a period of six (6) months after the date of termination of this Agreement. TOWN and OPERATOR agree that it would be difficult to ascertain the amount of damages that would result in the breach of this covenant. Therefore, the parties stipulate and agree that OPERATOR will be compensated in the amount of \$5,000 per employee as liquidated damages for each and every employee hired by TOWN during the term of this Agreement and prior to the end of the 6-month period agreed to herein.

SECTION 5. TERM

- 5.1 The term of this Agreement is five (5) years, which shall begin on May 15, 2012, (the "Commencement Date") and shall extend until May 14, 2017 ("Term") unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 5.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one-year each ("Renewal Terms"). This provision in no way limits either party's right to terminate this Agreement at any time during the Term or any Renewal Term, pursuant to the provisions of this Agreement.
 - 5.2.1 Each Renewal Term shall be upon the same terms, covenants and conditions as in this Agreement, except that there will be no further privilege of extension for the Term of this Agreement beyond the period referred to above.
 - 5.2.2 TOWN shall exercise its right to an extension of the Term of this Agreement by notifying OPERATOR in writing by certified mail, return receipt requested or by hand delivery with signed proof of delivery, of its election to exercise its option to renew this Agreement. Said notice shall be provided not later than sixty (60) days prior to the expiration of the Term, or any Renewal Term.

SECTION 6. COMPENSATION, BUDGET AND EXPENSES

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

- 6.1 OPERATOR shall prepare and deliver to TOWN a proposed Operating Budget according to TOWN'S budget schedule, for TOWN'S reasonable approval, reflecting the estimated Parking Revenues and Operating Expenses that OPERATOR expects the Parking System to receive and incur, respectively, during TOWN'S forthcoming fiscal year. The Parking Fund Budget for the fiscal year is approved each September by the TOWN Commission and, once approved, the TOWN shall approve the Operating Budget.
- 6.2 If at any time during the fiscal year covered by an approved Operating Budget it appears to OPERATOR that the actual total of all Operating Expenses likely to be incurred will exceed the Operating Budget's total appropriation, OPERATOR shall promptly so advise TOWN, and TOWN shall take appropriate actions, which may include an increase in the Operating Budget or decrease in selective Operating Expenses or a combination of these actions.
- 6.3 TOWN shall, after consulting with OPERATOR, approve an Operating Budget for the period May 15, 2012 to September 30, 2012, prior to the Commencement Date.
- 6.4 As compensation for OPERATOR'S services, TOWN shall pay OPERATOR an Annual Management Fee of \$30,000, payable in monthly installments of \$2,500 per month. These payments shall be paid on the fifteenth day of each calendar month for the current month. Accordingly, the first monthly installment shall be due May 15, 2012. On each anniversary of the Commencement Date, the Annual Management Fee shall automatically increase by three percent (3%) and shall be effective for the twelve months thereafter.
- 6.5 Since OPERATOR deposits Parking Revenue directly into TOWN'S bank account, TOWN agrees to advance to OPERATOR an amount equal to two (2) months of Operating Expenses that will be incurred by OPERATOR. Adjustment may be required each fiscal year due to changes in the amount of the Operating Expenses of the OPERATOR. OPERATOR shall establish an Operating Fund for the advance payment, which shall act as an operating reserve fund to be held by OPERATOR until expiration or earlier termination of this Agreement, at which time OPERATOR shall refund to TOWN any balance, after payment to OPERATOR of any outstanding Operating Expenses and any unpaid Management Fees.
- 6.6 OPERATOR agrees that to the extent possible, reasonable and efficient, the TOWN shall pay vendors directly for expenses incurred under this Agreement.
- 6.7 OPERATOR for Operating Expenses incurred by OPERATOR in the performance of its duties, obligations and services pursuant to this Agreement. Operating Expenses shall be paid monthly in arrears, by invoice, which shall be submitted by OPERATOR to TOWN on the fifteenth day of each calendar month for the preceding month. Each invoice shall contain a breakdown of Operating Expenses for the preceding month and supporting documentation.
- 6.8 Unless specifically agreed to in writing by TOWN, Operating Expenses relating to the manager's salary, bookkeeping and administrative expenses and computerized accounts receivable charges shall not increase by more than the amount in the adopted Operating Budget.
- 6.9 TOWN shall pay OPERATOR monthly in accordance with the Florida Prompt Payment Act; however, payment may be delayed by the Town Manager (upon written notice to OPERATOR), for failure of OPERATOR to comply with a term, condition or requirement of this Agreement.

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

- 6.10** If TOWN disputes any Operating Expense, TOWN shall give OPERATOR written notice specifying the item disputed and the reason therefore and may withhold payment for such Expense until the matter is resolved. Payment for any Operating Expense which is not disputed shall not be withheld. The parties shall, in good faith, diligently pursue resolution of any disputed item within thirty (30) days of said notice.
- 6.11** Notwithstanding any provision of this Agreement to the contrary, Town Manager may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work of OPERATOR that has not been remedied or resolved in a manner satisfactory to Town Manager after OPERATOR's receipt of written notice from TOWN as required under Section 7 below. The amount withheld shall not be subject to payment of interest by TOWN.
- 6.12** Payment to OPERATOR shall be made by check or Electronic Funds Transfer as determined by the TOWN at:
- Standard Parking Corporation
Attn: Chester Escobar, Regional Manager
901 S. Miami Ave., Suite 303
Miami, FL 33130
- 6.13** OPERATOR may, with TOWN'S written approval, purchase and install equipment or improvements for the benefit of the Parking System. Title to equipment and improvements so purchased and installed by OPERATOR shall vest in TOWN upon installation, subject to reimbursement if purchased by OPERATOR. In such event, the total cost thereof (including delivery and installation costs and taxes) shall be reimbursed to OPERATOR as provided herein. OPERATOR agrees that it will not make or construct any improvements, additions or alterations to the Parking System without the prior written consent of TOWN, including for all purchase, installation and all related costs. The parties hereby agree that OPERATOR shall purchase for the Parking System operation, pursuant to this Subsection, a neighborhood electric vehicle (NEV).

In addition, OPERATOR agrees to procure four (4) multi-space parking meters as described in the Proposal (the "Meters"), at its own cost. The total cost of the Meters (including delivery and installation costs and taxes) shall be amortized on a straight line basis over the five-year initial term of this Agreement. Upon expiration of the five-year initial term of this Agreement, title to the Meters shall be conveyed to TOWN. If this Agreement should for any reason terminate prior to expiration of the initial five-year term of this Agreement, then TOWN shall pay to Operator the unamortized balance of the total cost of the Meters. Upon receipt of such payment, which shall be due within ten (10) days of the date of Operator's statement for same, title to the Meters shall be transferred to TOWN.

SECTION 7. TERMINATION

- 7.1** This Agreement may be terminated for cause by TOWN or OPERATOR if a breach by the other party has not been corrected within ninety (90) days after written notice of a non-monetary breach (or thirty (30) days for a monetary breach), and subsequent notice of termination upon failure to cure. Termination of this Agreement for cause shall be for any material breach of the provisions of this Agreement.
- 7.2** This Agreement may be terminated for convenience of the TOWN upon not less than one hundred and twenty (120) days' written notice by TOWN to the OPERATOR.

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

In the event this Agreement is terminated for convenience, OPERATOR shall be paid for any services performed to the date the Agreement is terminated. OPERATOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by OPERATOR, is given as specific consideration to OPERATOR for TOWN'S right to terminate this Agreement for convenience.

- 7.3 Notice of termination shall be provided in accordance with Section 12 of this Agreement.
- 7.4 In the event this Agreement is terminated, any compensation payable to OPERATOR may be withheld by TOWN until all documents and any property belonging to TOWN are provided to TOWN. In no event shall the TOWN be liable to OPERATOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

SECTION 8. INDEMNIFICATION

- 8.1 OPERATOR shall at all times indemnify, and hold harmless and defend, the TOWN of and from any and all fines, suits, claims, demands, penalties, losses and actions (including attorney's fees and costs), including but not limited to, any injury to persons or damage to or loss of property caused by OPERATOR or its agents, employees or subcontractors in the performance of this Agreement, or in any way arising directly or indirectly from any such person's actions, in connection with providing the services hereunder, or failure to provide such services, to the extent permitted by applicable law. This covenant shall survive the expiration or earlier termination of this Agreement. The provisions of this indemnity shall survive the expiration or termination of this Agreement.
- 8.2 To the extent considered necessary by the Town Manager and the Town Attorney, any sums due OPERATOR under this Agreement may be retained by TOWN until all of TOWN'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by TOWN.
- 8.3 In any and all claims against the TOWN (or any of its agents or employees) by any employee of the OPERATOR, any subcontractor of OPERATOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the OPERATOR or any subcontractor under Worker's Compensations Acts, Disability Benefit Acts or other Employee Benefits Acts. Nothing in this section shall affect the immunities of the TOWN pursuant to Chapter 768, Florida Statutes.

SECTION 9. INSURANCE

Throughout the term of this Agreement, OPERATOR shall maintain insurance in the type and amounts and pursuant to the requirements set forth below. The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with a minimum rating of A-, in accordance with the latest edition of A.M. Best's Insurance Guide. The insurance coverage shall be primary insurance with respect to the OPERATOR, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

the OPERATOR'S insurance and shall not contribute to the OPERATOR'S insurance. The insurance coverage shall include a minimum of:

- 9.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws.
- 9.2 **Comprehensive General Liability.** This insurance shall be written in comprehensive form and shall protect the TOWN and the OPERATOR against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the OPERATOR or any of its agents, employees, or subcontractors. The limit of liability shall not be less than combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for Bodily Injury and Property Damage. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations; products liability and independent contractors coverage.
- 9.3 **Garage liability** or commercial general liability insurance (if applicable as determined by the Town Manager) on an occurrence form basis with limits of not less than \$2,000,000 per occurrence with an annual aggregate limit of \$2,000,000 per location.
- 9.4 **Garage keeper's** legal liability insurance (if applicable as determined by the Town Manager) insuring any and all automobiles that are parked at the Parking System by OPERATOR'S attendants or for which a bailment otherwise is created, with limits of liability not less than \$1,000,000 per occurrence.
- 9.5 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the OPERATOR against claims for injuries to members of the public and/or damages to property of others arising from the OPERATOR'S use of motor vehicles or any other equipment and shall cover operations with respect to onsite and offsite operations. Insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence for Bodily Injury and Property Damage and for Hired & Non Owned Auto Liability.
- 9.6 **Comprehensive crime insurance** including employee theft, premise, transit and depositor's forgery coverage with limits as to any given occurrence of \$1,000,000.
- 9.7 **Certificate of Insurance:** Prior to commencement of any services hereunder, OPERATOR shall provide to the TOWN Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically name the TOWN as additionally insured. The TOWN reserves the right to require the OPERATOR to provide endorsements, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services hereunder, renewal Certificates of Insurance or policies shall be furnished prior to the date of their policy expiration. Each policy shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the OPERATOR and the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the TOWN Manager.

OPERATOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured

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Parking Management Services Agreement

or additional insured in the same manner as if separate policies had been issued to each.

- 9.8 All deductibles or self-insured retentions must be declared to and be approved by the TOWN Manager. TOWN shall reimburse OPERATOR the deductible amount of any third party insurance claims settlement not to exceed the first \$2,500 of any third party injury or damage claim, excluding any claims caused by or resulting from OPERATOR's gross negligence or willful misconduct.

SECTION 10. CONDITION AND USE OF THE PARKING SYSTEM.

- 10.1 TOWN warrants and represents that, at the commencement of and throughout the term herein, the Parking System are and shall, at TOWN'S expense, be kept in good condition and repair for use as parking facilities and be maintained and fixtured to comply with all laws, regulations, ordinances and codes now in effect or which become effective during the term hereof including, without limitation, the Americans With Disabilities Act of 1990.
- 10.2 TOWN further warrants and covenants that there are no licenses or permits to be obtained from TOWN except for a business tax license related to managing the Parking System. OPERATOR is responsible for all licenses or permits required by other governments that are or may be a prerequisite to OPERATOR'S performance of its duties hereunder.
- 10.3 TOWN and OPERATOR shall cooperate in the planning and development of additional parking spaces and to modification of any area that has the effect of decreasing the number of public parking spaces. During construction, additions or alterations to the Parking System, OPERATOR shall assist in minimizing or limiting the interference with vehicle and/or patron access to the affected area.

SECTION 11. CITATION MANAGEMENT SYSTEM

- 11.1 The Proposal recommends using COMPLUS DATA INNOVATIONS (CDI) to perform citation management services for TOWN. TOWN agrees to switch from its current citation management provider to CDI at the earliest practical date.
- 11.2 CDI shall be a subcontractor of OPERATOR, and the citation management service shall be provided under the following terms and conditions, which are further described in the Proposal.
- 11.2.1 An inclusive per ticket fee of \$2.36 will be charged to TOWN to process and collect all tickets after the start of the Agreement plus reimbursable expenses for postage and ticket stock. Services include all department of motor vehicles (DMV) holds, in state processing and out-of-state processing. No additional fees shall be charged to the person given a parking ticket.
- 11.2.2 Upon request of TOWN, OPERATOR shall attempt to collect outstanding tickets written prior to the Commencement Date. OPERATOR shall be paid 20% of the amount it collects for each such ticket (including out-of-state).
- 11.2.3 OPERATOR and CDI will process and account for all mail-in payments made to the TOWN. All mail-in payments will be mailed to a post office box and retrieved daily. OPERATOR and CDI will perform all payment processing functions and deposit the funds in a TOWN-designated bank account within 24

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hours of receipt. On a daily basis, a report of each day's receipts will be prepared and transmitted to the Finance Director's office.

- 11.2.4 CDI shall process tickets according to the timeline and penalties set forth in TOWN Code of Ordinances, as may be amended. CDI shall implement changes in the timeline, penalties and procedures in the TOWN Code of Ordinances at the earliest practical date and shall be reimbursed for reasonable costs and expenses incurred in implementing such changes.
- 11.2.5 OPERATOR will provide the necessary hardware and software for the TOWN to accept payments at TOWN Hall and be able to monitor the Parking Ticket Management System, which will include, at a minimum:
- One PC Workstation
 - One Laser Printer
 - One Receipt Printer
 - One Cash Drawer
 - One Barcode Reader
 - Three one-piece handheld ticket writers (including handheld software and all necessary hardware peripherals)
 - Five software licenses to the COMPLUS *FastTrack*TM
- 11.2.6 Access to the COMPLUS *FastTrack*TM System via a web-based interface that utilizes Citrix technology. Access to the public and the TOWN will be around the clock, seven days a week.
- 11.2.7 Manual entry by OPERATOR of tickets into the system should a police officer or other authorized persons issue a manual ticket.
- 11.3 TOWN may at any time and for any reason request the OPERATOR to change the vendor providing the citation management system by providing OPERATOR written notice at least ninety (90) days prior to the effective date of termination.

SECTION 12. MISCELLANEOUS

- 12.1 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of TOWN. Upon termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by OPERATOR, whether finished or unfinished, shall become the property of TOWN and shall be delivered by OPERATOR to the Town Manager within seven (7) days of termination of this Agreement or on the date agreed to by the parties. Any compensation due to OPERATOR shall be withheld until all documents are received as provided herein.
- 12.2 **Audit and Inspection Rights and Retention of Records.** TOWN shall have the right to audit the books, records and accounts of OPERATOR that are related to this Agreement. OPERATOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

OPERATOR shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the

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Parking Management Services Agreement

Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless OPERATOR is notified in writing by TOWN of the need to extend the retention period. Such retention of such records and documents shall be at OPERATOR'S expense. Any such examination or audit shall be conducted at TOWN's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

The OPERATOR understands that the public shall have access at all reasonable times to all documents and information pertaining to TOWN contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosure under all applicable law.

When the Florida Public Records Act is applicable to OPERATOR'S records, OPERATOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by OPERATOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.

- 12.3 **Policy of Non Discrimination.** OPERATOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. OPERATOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
- 12.4 **Public Entity Crime Act.** OPERATOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact any business with TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN'S competitive procurement activities. In addition to the foregoing, OPERATOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether OPERATOR has been placed on the convicted vendor list.
- 12.5 **Independent Contractor.** OPERATOR is an independent contractor under this Agreement. Services provided by OPERATOR pursuant to this Agreement shall be subject to the supervision of OPERATOR. In providing such services, neither

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OPERATOR nor its agents shall act as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of OPERATOR. This Agreement shall not constitute or make the parties a partnership or joint venture.

12.6 Third Party Beneficiaries. Neither OPERATOR nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

12.7 Notices. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR OPERATOR: Standard Parking Corporation
Attn: Legal Department
900 North Michigan Avenue, Suite 1600
Chicago, IL 60611

Copy (by regular mail) to: Standard Parking Corporation
Attn: Steven A. Warshauer, Executive Vice President
900 N. Michigan Ave., Suite 1020
Chicago, IL 60611

FOR TOWN: Town Manager
4501 N. Ocean Drive
Lauderdale-By-The-Sea, FL 33308

Copy (by regular mail) To: Town Attorney
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 640-4200
Fax: (954) 776-1857

Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other party.

12.8 Assignment and Subcontracting. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by OPERATOR, without the consent of TOWN, which consent may be withheld or conditioned in the sole and absolute discretion of TOWN. In addition, OPERATOR shall not subcontract any portion of the services

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Parking Management Services Agreement

required by this Agreement without the prior approval of the Town Manager, which shall be in her sole and absolute discretion, except as documented in the Proposal.

12.9 Performance

12.9.1 OPERATOR represents that all persons delivering the services have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services and to provide and perform such services to TOWN'S satisfaction for the agreed compensation.

12.9.2 OPERATOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

12.9.3 In the event that the Town Manager becomes dissatisfied with the performance of any personnel, which includes employees, independent contractors, or subcontractors, performing services under this Agreement for any reason, the Town Manager shall provide written notification to OPERATOR. Upon receipt of such notification, OPERATOR shall transfer such person out of TOWN service within three (3) days. TOWN retains the right to immediately request a transfer if, in the sole opinion of the TOWN, the person in question is a danger to the health, safety and welfare of the workplace.

12.10 Conflicts. Neither OPERATOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is antagonistic or incompatible with OPERATOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

OPERATOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, OPERATOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude OPERATOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event OPERATOR is permitted to utilize subcontractors to perform any services required by this Agreement, OPERATOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

OPERATOR shall not give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner during the term of this Agreement.

OPERATOR agrees that no officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12.11 Contingency Fee. OPERATOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OPERATOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely

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for OPERATOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 12.12 Materiality and Waiver of Breach.** TOWN and OPERATOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 12.13 Compliance with Laws.** OPERATOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 12.14 Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or OPERATOR elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 12.15 Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 12.16 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the text of this Agreement shall prevail and be given effect. Next in priority shall be the RFP, and last in priority shall be the Proposal.
- 12.17 Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 12.18 Prior Agreements.** This Agreement and its attachments constitute the entire agreement between OPERATOR and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with the provisions herein.

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Parking Management Services Agreement

- 12.19 Drug-Free Workplace.** OPERATOR shall maintain a drug-free workplace.
- 12.20 Incorporation by Reference.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 12.21 Multiple Originals.** This Agreement may be fully executed in two (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 12.22 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 12.23 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 12.24 Public Records.** OPERATOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, and acknowledges the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law. OPERATOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN.
- 12.25 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 12.26 Truth-in-Negotiation Certificate.** Signature of this Agreement by OPERATOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 12.27 Intellectual Property.** OPERATOR hereby grants to TOWN, during the term of this Agreement only, a non-assignable, non-exclusive right and license to use OPERATOR'S intellectual property, including but not limited to its trade names, trademarks and any and all on-site parking amenities programs (the "**Intellectual Property**"), to the extent related to Operator's administration, management and operation of the Parking System. Upon termination of this Agreement for any reason, OPERATOR shall have the right, at its sole cost and expense, to remove the Intellectual Property from the Parking System, and TOWN shall refrain from all further use of the Intellectual Property.
- 12.28 Contract Administrator.** Each party shall appoint a Contract Administrator that shall work together in the management of this Agreement. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators; provided, however, that such instructions and determinations do not change the Scope of Services.

For Town: Finance Director

For OPERATOR: Chester Escobar, Regional Manager

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

Notice of a change in Contract Administrator shall be given according to the notice provisions herein.

- 12.29 **Force Majeure.** Neither party shall be in violation of this Agreement for failure to perform any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, weather conditions, riots, rebellion, accidents, sabotage or any other circumstances for which it is not responsible and which are not within its control. No Management Fee shall be due to OPERATOR if it suspends operations for any such cause or event for the period of such suspension.
- 12.30 **Relationship of The Parties.** No partnership or joint venture between the parties is created by this Agreement, it being agreed that OPERATOR is an independent contractor.
- 12.31 **Approvals.** Whenever the approval of either party is required herein, such approval shall not be unreasonably withheld or delayed, unless specified otherwise herein.
- 12.32 **Authority.** The individual signing this Agreement on behalf of TOWN hereby represents that he or she has been empowered with full authority to act on behalf of TOWN in connection with this Agreement, and that execution of this Agreement has been duly authorized by TOWN. The individual signing this Agreement on behalf of OPERATOR hereby represents that he or she has been empowered with full authority to act on behalf of OPERATOR in connection with this Agreement, and that execution of this Agreement has been duly authorized by OPERATOR.
- 12.33 **Attorneys' Fees.** If either the Town or OPERATOR is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

SIGNATURES APPEAR ON FOLLOWING PAGE

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

TOWN:

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Constance Hoffmann, Town Manager

Attest: _____
June White, CMC, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by **CONSTANCE HOFFMANN** as TOWN Manager and **JUNE WHITE** as TOWN Clerk of the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed, or Stamped)

Commission Number

EXHIBIT A to Resolution 2012-19

Parking Management Services Agreement

OPERATOR:
STANDARD PARKING CORPORATION

By: _____

By: _____
Steven Warshauer, Executive Vice President

WITNESS

Typed Name of Witness

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Steven Warshauer, Executive Vice President of Standard Parking Corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF ILLINOIS

(Name of Acknowledger Typed, Printed, or Stamped)

Commission Number

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AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA
AND
STANDARD PARKING CORPORATION
FOR PARKING MANAGEMENT SERVICES

RFP No. 11-05-01

This Agreement ("Agreement") is made and entered into the ____ day of April, 2012, by and between the Town of Lauderdale-By-The-Sea, a Florida municipal corporation ("TOWN") and Standard Parking Corporation, a Delaware corporation, hereinafter referred to as "OPERATOR" for the management and operation of the TOWN'S parking system. References in this Agreement to "Town Manager" shall include the Town Manager's designee.

WITNESSETH:

WHEREAS, the TOWN released Request for Proposals No. 11-05-01 for Parking Management Services ("RFP"); and

WHEREAS, on March 13, 2012, the Town Commission concurred with staff's recommendation and directed staff to negotiate a contract with OPERATOR; and

WHEREAS, TOWN and OPERATOR desire to enter into this Agreement wherein the duties and obligations each to the other are set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, TOWN AND OPERATOR AGREE AS FOLLOWS:

DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 "Annual Management Fee" shall mean the annual fee paid by the TOWN to the OPERATOR for the management and operation of the Parking System in accordance with the terms and conditions of this Agreement.

- 1.2 "Citation Management" shall mean a comprehensive system provided by a third party under contract to OPERATOR that includes handheld ticket writers, software and hardware that downloads the information to the third party's central processing center.
- 1.3 "Parking Fund Budget" shall mean the annual fiscal year Parking Fund budget adopted by the TOWN.
- 1.4 "Equipment/Furnishings" shall mean equipment and furnishings used by the OPERATOR in the operation of the Parking System. Such items shall include, but are not limited to, bicycles, radios, meter inventory and office equipment. The Equipment/Furnishings owned by the TOWN and to be used by the OPERATOR are identified in Exhibit "C" hereto.
- 1.5 "Operating Budget" shall mean the ~~Operating Expense portion of~~ budget for the Parking Fund Budget System operation as described in Section 6 below.
- 1.6 "Operating Expenses" shall mean all TOWN approved budgeted expense(s) that are incurred by the OPERATOR in the operation of the Parking System, as well as other expenses not provided for in the Operating Budget, but which are specifically approved, in writing, by the Contract Administrator. Operating Expenses are separate from, and in addition to, the Management Fee. Operating Expenses shall include all costs, charges and expenses that are directly and solely attributable to this Agreement or that are ~~readily~~ apportioned between OPERATOR'S work under this agreement and OPERATOR'S other business activities and are set forth in the approved Operating Budget; all without any mark-up or added overhead expense by OPERATOR. Operating Expense shall include, but are not limited to the follows:
- A. Bookkeeping and administrative services;
 - B. Compliance with governmental laws and regulations;
 - C. Computerized accounts receivable service;
 - D. Payroll data processing;
 - E. ~~D.~~ Employee recruitment, training and ongoing employee relations;
 - F. ~~E.~~ License and permit fees;
 - G. ~~F.~~ Maintenance and repairs;
 - H. ~~G.~~ Paper and reporting forms;
 - I. ~~H.~~ Postage and freight; tickets,
 - J. ~~I.~~ Premiums Charges for insurance required under this Agreement; as set forth in the Operating Budget and deductibles as set forth in Section 9 below.
 - K. ~~J.~~ Salaries and wages (including supervisory allocations for the manager and an off-site senior manager) and associated payroll burden (including, without limitation, payroll taxes and fringe benefits);
 - L. ~~K.~~ Telephone;
 - M. ~~L.~~ Tools, uniforms, and supplies; and,
 - N. ~~M.~~ Utility charges;
- 1.7 "Parking Revenues" shall include all parking related charges and fees collected by OPERATOR or TOWN. Parking Revenues includes sales taxes collected from patrons of the Parking System.
- 1.8 "Parking System" collectively defines the various parking facilities of the TOWN as described in the RFP, which includes surface lots and parking in the right-of-way.
- 1.9 "TOWN" shall mean the Town of Lauderdale-By-The-Sea, a body corporate and a political subdivision of the State of Florida or the Town Commission of the Town of Lauderdale-By-The-Sea Broward County, Florida, which is the governing body of the Town of Lauderdale-By-The-Sea, as the context requires.

SECTION 2. SCOPE OF SERVICES

- 2.1 The OPERATOR shall meet the requirements and perform the services described herein, in the manner and as described in the RFP, attached hereto and incorporated herein as Exhibit 1, and as described in the OPERATOR'S Proposal (the "**Proposal**"), attached hereto and incorporated herein as Exhibit 2. The Scope of Services required by Exhibits 1 and 2, in this Agreement and in the Proposal, collectively, shall be referred to as the "Scope of Services".
- 2.2 OPERATOR agrees and acknowledges that OPERATOR did not take any exceptions to the RFP and is prohibited from exempting any provision of the RFP, the Proposal, or this Agreement in any of OPERATOR'S Scope of Services provided pursuant to this Agreement. The provisions and requirements of Exhibits 1 and 2 are hereby ratified and confirmed and are incorporated herein by this reference. OPERATOR shall comply with each and every provision of the RFP and Proposal.
- 2.3 OPERATOR shall manage and operate the TOWN'S Parking System as requested by TOWN.
- 2.4 The TOWN recognizes that certain services included in the Scope of Services may not be available on the Commencement Date, but all services shall be provided no later than June 1, 2012. OPERATOR shall use the TOWN'S existing citation management services until a transition date for the change is agreed upon by the parties.
- 2.5 OPERATOR agrees to give hiring preference to TOWN'S parking employees that meet OPERATOR'S hiring guidelines. OPERATOR understands that the TOWN has approved transitional wages for Town parking employees that become OPERATOR'S employees. OPERATOR agrees to pay the transitional wages as directed by TOWN and both parties agree that these are Operating Expenses.

SECTION 3. OPERATOR'S OBLIGATIONS AND SERVICES; OPERATING EXPENSES

OPERATOR hereby covenants and agrees that it will:

- 3.1. Operate and direct the operation of the Parking System and render the necessary services incidental thereto in a professional, businesslike and efficient manner, and provide supervision and inspection adequate to properly manage the Parking System. TOWN reserves the right to establish the hours of operation, parking enforcement policies, and parking rates for all facilities throughout the Parking System.
- 3.2. Routinely maintain the parking equipment in good operating condition and repair. Purchase, on behalf of TOWN and in accordance to the TOWN Purchasing Policy, equipment and supplies necessary for the operation of the Parking System. Such equipment shall be owned by TOWN, subject to full reimbursement by TOWN or as otherwise expressly agreed to in this Agreement.
- 3.3. Hire, compensate, and supervise sufficient experienced and qualified personnel who will render the services required by this Agreement. Such employees will be neatly uniformed and courteous to the public. All persons so employed shall be employees of OPERATOR and not of TOWN, and shall have no authority to act as agent of TOWN.

- 3.4. Promote, advertise and endeavor to increase the volume, efficiency and quality of the services rendered.
- 3.5. Maintain courteous, businesslike relations with users of the Parking System, whose requests shall be received, considered and promptly acted upon.
- 3.6. Cause the Parking System to be maintained in a clean and orderly manner according to reasonable standards acceptable to TOWN, but OPERATOR shall not be required to make (and shall not be authorized to make, without TOWN'S prior written approval) any structural, mechanical, electrical or other installations, alterations or repairs to the Parking System infrastructure including those required by statutes, regulations or governmental requirements pertaining to air quality, environmental protection or persons with disabilities, which matters shall be the sole responsibility of TOWN.
- 3.7. Promptly notify TOWN of any matter that in OPERATOR'S reasonable judgment requires TOWN'S attention.
- 3.8. Advise and cooperate with TOWN in the development and implementation of rules and regulations applicable to the Parking System.
- 3.9. Obtain, maintain and timely provide to TOWN evidence of the policies of insurance specified herein.
- 3.10. Prepare and file all necessary returns, reports and forms required by law in connection with OPERATOR'S licenses, corporate good standing, authority to do business locally and employees for unemployment insurance, social security taxes, worker's compensation insurance, disability benefits, Federal and state income tax withholding and other similar taxes and all other returns and reports required by any Federal, state or municipal authority and pay or make all deposits required for such taxes.
- 3.11. Within thirty (30) days after the end of each calendar month, mail to TOWN a statement showing all Operating Expenses and the Management Fee for the preceding calendar month.
- 3.12. Obtain and maintain all licenses and permits required by an operator of parking facilities by any governmental body or agency having jurisdiction over OPERATOR at the Parking System and abide by the terms of such licenses and permits. Any license or permit fees incurred by OPERATOR for its operation within the TOWN shall be deemed an Operating Expense.
- 3.13. OPERATOR shall not use all or any part of the Parking System for any use or purpose which is (i) forbidden by or in violation of any law of the United States, any state law or any city ordinance, or applicable regulation, or (ii) may be dangerous to life, limb or property.
- 3.14. Provide only experienced and qualified supervisory personnel to supervise its operations.

SECTION 4. TOWN'S OBLIGATIONS.

TOWN shall, at its expense, be responsible for performance of the following:

- 4.1 Repair and maintenance of the Parking System infrastructure (other than as expressly delegated to OPERATOR in this Agreement) including as applicable, air conditioning, ventilating, exhaust, fire protection, alarm, utility, plumbing (including lavatory facilities), sewage, drainage, security and lighting systems; paving; painting; striping; directional signs, fencing; parking booths; landscaping; windows and doors; plate glass; driveways, sidewalks and curbs (including curb cuts); traffic control devices used at or in the Parking System; and all structural repairs.

- 4.2 Alterations, improvements and additions that TOWN deems necessary and/or as may be required by the Americans With Disabilities Act of 1990.
- 4.3 Safety and/or security personnel and equipment. TOWN expressly acknowledges that OPERATOR does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do OPERATOR'S employees undertake the obligation to guard or protect customers against the intentional acts of third parties.
- 4.4 Refrain from hiring OPERATOR'S supervisory personnel in a parking related position during the term of this Agreement and for a period of six (6) months after the date of termination of this Agreement. TOWN and OPERATOR agree that it would be difficult to ascertain the amount of damages that would result in the breach of this covenant. Therefore, the parties stipulate and agree that OPERATOR will be compensated in the amount of \$5,000 per employee as liquidated damages for each and every employee hired by TOWN during the term of this Agreement and prior to the end of the 6-month period agreed to herein.

SECTION 5. TERM

- 5.1 The term of this Agreement is five (5) years, which shall begin on May 15, 2012, (the "Commencement Date") and shall extend until May 14, 2017 ("**Term**") unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 5.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one-year each ("Renewal Terms"). This provision in no way limits either party's right to terminate this Agreement at any time during the Term or any Renewal Term, pursuant to the provisions of this Agreement.
 - 5.2.1 Each Renewal Term shall be upon the same terms, covenants and conditions as in this Agreement, except that there will be no further privilege of extension for the Term of this Agreement beyond the period referred to above.
 - 5.2.2 TOWN shall exercise its right to an extension of the Term of this Agreement by notifying OPERATOR in writing by certified mail, return receipt requested or by hand delivery with signed proof of delivery, of its election to exercise its option to renew this Agreement. Said notice shall be provided not later than sixty (60) days prior to the expiration of the Term, or any Renewal Term.

SECTION 6. COMPENSATION, BUDGET AND EXPENSES

- 6.1 OPERATOR shall prepare and deliver to TOWN a proposed ~~operating-~~ budget ~~Operating Budget~~ according to TOWN'S ~~Budget~~ budget schedule, for TOWN'S reasonable approval, reflecting the estimated Parking Revenues and Operating Expenses that OPERATOR expects the Parking System to receive and incur, respectively, during TOWN'S forthcoming fiscal year. The Parking Fund Budget for the fiscal year is approved each September by the TOWN Commission and, once approved, the TOWN shall ~~provide OPERATOR~~ approve the Operating Budget.
- 6.2 If at any time during the fiscal year covered by an approved Operating Budget it appears to OPERATOR that the actual total of all Operating Expenses likely to be incurred will exceed the Operating Budget's total appropriation, OPERATOR shall promptly so advise TOWN, and TOWN shall take appropriate actions, which may include an increase in the Operating Budget or decrease in selective Operating ~~Expense~~ Expenses or a combination of these actions.

- 6.3 TOWN shall, after consulting with OPERATOR, approve an Operating Budget for the period May 15, 2012 to September 30, 2012, prior to the Commencement Date.
- 6.4 As compensation for OPERATOR'S services, TOWN shall pay OPERATOR an Annual Management Fee, of \$30,000, payable in monthly installments of \$2,500 per month. These payments shall be paid on the fifteenth day of each calendar month for the current month. Accordingly, the first monthly installment shall be due May 15, 2012. On each anniversary of the Commencement Date, the Annual Management Fee shall automatically increase by three percent (3%) and shall be effective for the twelve months thereafter.
- 6.5 Since OPERATOR deposits Parking Revenue directly into TOWN'S bank account, TOWN agrees to advance to OPERATOR an amount equal to two (2) months of Operating Expenses that will be incurred by OPERATOR. Adjustment may be required each fiscal year due to changes in the amount of the Operating Expenses of the OPERATOR. OPERATOR shall establish an Operating Fund for the advance payment, which shall act as an operating reserve fund to be held by OPERATOR until expiration or earlier termination of this Agreement, at which time OPERATOR shall refund to TOWN any balance, after payment to OPERATOR of any outstanding Operating Expenses and any unpaid Management Fees.
- 6.6 OPERATOR agrees that to the extent possible, reasonable and ~~efficiency~~efficient, the TOWN shall pay vendors directly for expenses incurred under this ~~agreement~~Agreement.
- 6.7 OPERATOR for Operating Expenses incurred by OPERATOR in the performance of its duties, obligations and services pursuant to this Agreement. Operating Expenses shall be paid monthly in arrears, by invoice, which shall be submitted by OPERATOR to TOWN on the fifteenth day of each calendar month for the preceding month. Each invoice shall contain a breakdown of Operating Expenses for the preceding month and supporting documentation.
- 6.8 Unless specifically agreed to in writing by TOWN, Operating Expenses relating to the manager's salary, bookkeeping and administrative expenses and computerized accounts receivable charges shall not increase by more than the amount in the adopted Operating Budget.
- 6.9 TOWN shall pay OPERATOR monthly in accordance with the Florida Prompt Payment Act; however, payment may be ~~withheld~~delayed by the Town Manager (upon written notice to OPERATOR), for failure of OPERATOR to comply with a term, condition or requirement of this Agreement.
- 6.10 If TOWN disputes any Operating Expense, TOWN shall give OPERATOR written notice specifying the item disputed and the reason therefore and may withhold payment for such Expense until the matter is resolved. Payment for any Operating Expense which is not disputed shall not be withheld. The parties shall, in good faith, diligently pursue resolution of any disputed item within thirty (30) days of said notice.
- 6.11 Notwithstanding any provision of this Agreement to the contrary, Town Manager may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work of OPERATOR that has not been remedied or resolved in a manner satisfactory to Town Manager after OPERATOR's receipt of written notice from TOWN as required under Section 7 below. The amount withheld shall not be subject to payment of interest by TOWN.
- 6.12 Payment to OPERATOR shall be made by check or Electronic Funds Transfer as determined by the TOWN at:

Standard Parking Corporation

Attention: _____ Attn: Chester Escobar, Regional Manager

901 S. Miami Ave., Suite 303
Miami, FL 33130

- 6.13 OPERATOR may, with TOWN'S written approval, purchase and install equipment or improvements for the benefit of the Parking System. Title to equipment and improvements so purchased and installed by OPERATOR shall vest in TOWN upon installation, subject to reimbursement if purchased by OPERATOR. In such event, the total cost thereof (including delivery and installation costs and taxes) shall be reimbursed to OPERATOR as provided herein. OPERATOR agrees that it will not make or construct any improvements, additions or alterations to the Parking System without the prior written consent of TOWN, including for all purchase, installation and all related costs. The parties hereby agree that OPERATOR shall purchase for the Parking System operation, pursuant to this Subsection, a neighborhood electric vehicle (NEV). In addition, OPERATOR agrees to procure four (4) multi-space parking meters as described in the Proposal (the "Meters"), at its own cost. The total cost of the Meters (including delivery and installation costs and taxes) shall be amortized on a straight line basis over the five-year initial term of this Agreement. Upon expiration of the five-year initial term of this Agreement, title to the Meters shall be conveyed to TOWN. If this Agreement should for any reason terminate prior to expiration of the initial five-year term of this Agreement, then TOWN shall pay to Operator the unamortized balance of the total cost of the Meters. Upon receipt of such payment, which shall be due within ten (10) days of the date of Operator's statement for same, title to the Meters shall be transferred to TOWN.

SECTION 7. TERMINATION

- 7.1 This Agreement may be terminated for cause by TOWN or OPERATOR if a breach by the other party has not been corrected within ninety (90) days after written notice of ~~the~~ non-monetary breach (or thirty (30) days for a monetary breach), and subsequent notice of termination upon failure to cure. Termination of this Agreement for cause shall be for any material breach of the provisions of this Agreement.
- 7.2 This Agreement may be terminated for convenience of the TOWN upon not less than one hundred and twenty (120) days' written notice by TOWN to the OPERATOR. In the event this Agreement is terminated for convenience, OPERATOR shall be paid for any services performed to the date the Agreement is terminated; ~~however, upon being notified of TOWN'S election to terminate, OPERATOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement unless specifically requested otherwise by TOWN.~~ OPERATOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by OPERATOR, is given as specific consideration to OPERATOR for TOWN'S right to terminate this Agreement for convenience.

~~7.3 This Agreement may be terminated by the Town Manager upon such notice as the Town Manager deems appropriate in the event Town Manager determines that termination is necessary to protect the public health, safety, or welfare.~~

~~7.3 7.4~~ Notice of termination shall be provided in accordance with Section 12 of this Agreement ~~except that notice of termination by Town Manager to protect the public health, safety or welfare may be by verbal notice that shall be promptly confirmed in writing in accordance with Section 12 of this Agreement.~~

~~7.4 7.5~~ In the event this Agreement is terminated, any compensation payable to OPERATOR may be withheld by TOWN until all documents and any property belonging to TOWN are provided to TOWN. In no event shall the TOWN be liable to OPERATOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

SECTION 8. INDEMNIFICATION

8.1 OPERATOR shall at all times indemnify, and hold harmless and defend, the TOWN of and from any and all fines, suits, claims, demands, penalties, losses and actions (including attorney's fees and costs), including but not limited to, any injury to persons or damage to or loss of property caused by OPERATOR or its agents, employees or subcontractors; in the performance of this Agreement, or in any way arising directly or indirectly from ~~this Agreement, including, without limitation,~~ any such person's actions, in connection with providing the services hereunder, or failure to provide such services, to the extent permitted by applicable law. This covenant shall survive the expiration or earlier termination of this Agreement. The provisions of this indemnity shall survive the expiration or termination of this Agreement.

8.2 To the extent considered necessary by the Town Manager and the Town Attorney, any sums due OPERATOR under this Agreement may be retained by TOWN until all of TOWN'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by TOWN.

8.3 In any and all claims against the TOWN; ~~(or any of their~~its agents or ~~employee's~~employees) by any employee of the OPERATOR, any subcontractor ~~of OPERATOR,~~ anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the OPERATOR; or any ~~sub-contractor~~subcontractor under Worker's Compensations Acts, Disability Benefit Acts or other Employee Benefits Acts. Nothing in this section shall affect the immunities of the TOWN pursuant to Chapter 768, Florida Statutes.

SECTION 9. INSURANCE

Throughout the term of this Agreement, OPERATOR shall maintain insurance in the type and amounts and pursuant to the requirements set forth below. The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with a minimum rating of A-, in accordance with the latest edition of A.M. Best's Insurance Guide. The insurance coverage shall be primary insurance with respect to the OPERATOR, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of

the OPERATOR'S insurance and shall not contribute to the OPERATOR'S insurance. The insurance coverage shall include a minimum of:

- 9.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws.
- 9.2 **Comprehensive General Liability.** This insurance shall be written in comprehensive form and shall protect the TOWN and the OPERATOR against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the OPERATOR or any of its agents, employees, or subcontractors. The limit of liability shall not be less than combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for Bodily Injury and Property Damage. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations; products liability and independent contractors coverage.
- 9.3 **Garage liability** or commercial general liability insurance (if applicable as determined by the Town Manager) on an occurrence form basis with limits of not less than \$2,000,000 per occurrence with an annual aggregate limit of \$2,000,000 per location.
- 9.4 **Garage keeper's** legal liability insurance (if applicable as determined by the Town Manager) insuring any and all automobiles that are parked at the Parking System by OPERATOR'S attendants or for which a bailment otherwise is created, with limits of liability not less than \$1,000,000 per occurrence.
- 9.5 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the OPERATOR against claims for injuries to members of the public and/or damages to property of others arising from the OPERATOR'S use of motor vehicles or any other equipment and shall cover operations with respect to onsite and offsite operations. Insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence for Bodily Injury and Property Damage and for Hired & Non Owned Auto Liability.
- 9.6 **Comprehensive crime insurance** including employee theft, premise, transit and depositor's forgery coverage with limits as to any given occurrence of \$1,000,000.
- 9.7 **Certificate of Insurance:** Prior to commencement of any services hereunder, OPERATOR shall provide to the TOWN Manager, Certificates of Insurance evidencing the required insurance ~~coverage's~~ coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically ~~Name~~ name the TOWN as additionally insured. The TOWN reserves the right to require the OPERATOR to provide endorsements ~~or a certified copy of such policies~~, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services hereunder, renewal Certificates of Insurance or policies shall be furnished ~~thirty (30) calendar days~~ prior to the date of their policy expiration. Each policy ~~certificate~~ shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the OPERATOR and the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the TOWN Manager.

OPERATOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each.

- 9.8 All deductibles or self-insured retentions must be declared to and be approved by the TOWN Manager. ~~The TOWN shall pay deductible or self-insured retentions in the event of any settled claim if the claim is not the result of the negligence, in whole or in part, of OPERATOR or a settlement of a claim by the insurance company over the objection of the TOWN. At the earliest practical date, OPERATOR shall inform TOWN of all claims.~~ reimburse OPERATOR the deductible amount of any third party insurance claims settlement not to exceed the first \$2,500 of any third party injury or damage claim, excluding any claims caused by or resulting from OPERATOR's gross negligence or willful misconduct.

Requires further legal review and adjustment

SECTION 10. CONDITION AND USE OF THE PARKING SYSTEM.

- 10.1 TOWN warrants and represents that, at the commencement of and throughout the term herein, the Parking System are and shall, at TOWN'S expense, be kept in good condition and repair for use as parking facilities and be maintained and fixtured to comply with all laws, regulations, ordinances and codes now in effect or which become effective during the term hereof including, without limitation, the Americans With Disabilities Act of 1990.
- 10.2 TOWN further warrants and covenants that there are no licenses or permits to be obtained from TOWN except for a business tax license related to managing the Parking System. OPERATOR is responsible for all licenses or permits required by other governments that are or may be a prerequisite to OPERATOR'S performance of its duties hereunder.
- 10.3 TOWN and OPERATOR shall cooperate in the planning and development of additional parking spaces and to modification of any area that has the effect of decreasing the number of public parking spaces. During construction, additions or alterations to the Parking System, OPERATOR shall assist in minimizing or limiting the interference with vehicle and/or patron access to the affected area.

SECTION 11. CITATION MANAGEMENT SYSTEM

- 11.1 ~~OPERATOR'S RFP proposal~~ The Proposal recommends using COMPLUS DATA INNOVATIONS (CDI) to perform citation management services for TOWN. TOWN agrees to switch from its current citation management provider to CDI at the earliest practical date.
- 11.2 CDI shall be a subcontractor of OPERATOR ~~shall provide CDI, and the~~ citation management service shall be provided under the following terms and conditions, which are further described in the Proposal.
- 11.2.1 An inclusive per ticket fee of \$2.36 will be charged to TOWN to process and collect all tickets after the start of the Agreement plus reimbursable expenses for postage and ticket stock. Services include all department of motor vehicles

- (DMV) holds, in state processing and out-of-state processing. No additional fees shall be charged to the person given a parking ticket.
- 11.2.2 Upon request of TOWN, OPERATOR shall attempt to collect outstanding tickets written prior to the Commencement Date. OPERATOR shall be paid 20% of the amount it collects for each such ticket (including out-of-state).
- 11.2.3 OPERATOR and CDI will process and account for all mail-in payments made to the TOWN. All mail-in payments will be mailed to a post office box and retrieved daily. OPERATOR and CDI will perform all payment processing functions and deposit the funds in a TOWN-designated bank account within 24 hours of receipt. On a daily basis, a report of each day's receipts will be prepared and transmitted to the Finance Director's office.
- 11.2.4 CDI shall process tickets according to the timeline and penalties set forth in TOWN Code of Ordinances, as may be amended. CDI shall implement changes in the timeline, penalties and procedures in the TOWN Code of Ordinances at the earliest practical date ~~without charge to the TOWN~~ and shall be reimbursed for reasonable costs and expenses incurred in implementing such changes.
- 11.2.5 OPERATOR will provide the necessary hardware and software for the TOWN to accept payments at TOWN Hall and be able to monitor the Parking Ticket Management System, which will include, at a minimum:
- One PC Workstation
 - One Laser Printer
 - One Receipt Printer
 - One Cash Drawer
 - One Barcode Reader
 - Three one-piece handheld ticket writers (including handheld software and all necessary hardware peripherals
 - Five software licenses to the COMPLUS *FastTrack*TM
- 11.2.6 Access to the COMPLUS *FastTrack*TM System via a web-based interface that utilizes Citrix technology. Access to the public and the TOWN will be around the clock, seven days a week.
- 11.2.7 Manual entry by OPERATOR of tickets into the system should a police officer or other authorized persons issue a manual ticket.
- 11.3 TOWN may at any time and for any reason request the OPERATOR to change the vendor providing the citation management system by providing OPERATOR written notice at least ninety (90) days prior to the effective date of termination.

SECTION 12. MISCELLANEOUS

- 12.1 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of TOWN. Upon termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by OPERATOR, whether finished or unfinished, shall become the property of TOWN and shall be delivered by OPERATOR to the Town Manager within seven (7) days of

termination of this Agreement or on the date agreed to by the parties. Any compensation due to OPERATOR shall be withheld until all documents are received as provided herein.

- 12.2 **Audit and Inspection Rights and Retention of Records.** TOWN shall have the right to audit the books, records and accounts of OPERATOR that are related to this Agreement. OPERATOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. OPERATOR shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless OPERATOR is notified in writing by TOWN of the need to extend the retention period. Such retention of such records and documents shall be at OPERATOR'S expense. Any such examination or audit shall be conducted at TOWN's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. The OPERATOR understands that the public shall have access at all reasonable times to all documents and information pertaining to TOWN contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosure under all applicable law. When the Florida Public Records Act is applicable to OPERATOR'S records, OPERATOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by OPERATOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.
- 12.3 **Policy of Non Discrimination.** OPERATOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. OPERATOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
- 12.4 **Public Entity Crime Act.** OPERATOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact any business with TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN'S competitive procurement activities. In addition to the foregoing, OPERATOR further represents that there has been no determination, based on

an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether OPERATOR has been placed on the convicted vendor list.

12.5 **Independent Contractor.** OPERATOR is an independent contractor under this Agreement. Services provided by OPERATOR pursuant to this Agreement shall be subject to the supervision of OPERATOR. In providing such services, neither OPERATOR nor its agents shall act as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of OPERATOR. This Agreement shall not constitute or make the parties a partnership or joint venture.

12.6 **Third Party Beneficiaries.** Neither OPERATOR nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

12.7 **Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR OPERATOR: Standard Parking Corporation
Attn: Legal Department
900 North Michigan Avenue, Suite 1600
Chicago, IL 60611

Copy (by regular mail) to: Standard Parking Corporation
Attn: Steven A. Warshauer,
Executive Vice President
900 N. Michigan Ave.,
Suite 1020
Chicago, IL 60611

FOR TOWN: Town Manager
4501 N. Ocean Drive
Lauderdale-By-The-Sea, FL 33308

Copy (by regular mail) To: Town Attorney
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 640-4200
Fax: (954) 776-1857

Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other party.

12.8 **Assignment and Subcontracting.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by OPERATOR, without the consent of TOWN, which consent may be withheld or conditioned in the sole and absolute discretion of TOWN. In addition, OPERATOR shall not subcontract any portion of the services required by this Agreement without the prior approval of the Town Manager, which shall be in her sole and absolute discretion, except as documented in the Proposal.

12.9 **Performance**

12.9.1 OPERATOR represents that all persons delivering the services have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services and to provide and perform such services to TOWN'S satisfaction for the agreed compensation.

12.9.2 OPERATOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

12.9.3 In the event that the Town Manager becomes dissatisfied with the performance of any personnel, which includes employees, independent contractors, or subcontractors, performing services under this Agreement for any reason, the Town Manager shall provide written notification to OPERATOR. Upon receipt of such notification, OPERATOR shall transfer such person out of TOWN service within three (3) days. TOWN retains the right to immediately request a transfer if, in the sole opinion of the TOWN, the person in question is a danger to the health, safety and welfare of the workplace.

12.10 **Conflicts.** Neither OPERATOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is antagonistic or incompatible with OPERATOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

OPERATOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, OPERATOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude OPERATOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event OPERATOR is permitted to utilize subcontractors to perform any services required by this Agreement, OPERATOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

OPERATOR shall not give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner during the term of this Agreement.

OPERATOR agrees that no officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

- 12.11 **Contingency Fee.** OPERATOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OPERATOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for OPERATOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 12.12 **Materiality and Waiver of Breach.** TOWN and OPERATOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. TOWN'S Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 12.13 **Compliance with Laws.** OPERATOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 12.14 **Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or OPERATOR elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 12.15 **Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 12.16 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the text of this Agreement shall prevail and be given effect. Next in priority shall be the RFP, and last in priority shall be the Proposal.
- 12.17 **Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 12.18 **Prior Agreements.** This Agreement and its attachments constitute the entire agreement between OPERATOR and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the

terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with the provisions herein.

- 12.19 **Drug-Free Workplace.** OPERATOR shall maintain a drug-free workplace.
- 12.20 **Incorporation by Reference.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 12.21 **Multiple Originals.** This Agreement may be fully executed in two (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 12.22 **Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 12.23 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 12.24 **Public Records.** OPERATOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, and acknowledges the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law. OPERATOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN.
- 12.25 **Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 12.26 **Truth-in-Negotiation Certificate.** Signature of this Agreement by OPERATOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 12.27 **Intellectual Property.** OPERATOR hereby grants to TOWN, during the term of this Agreement only, a non-assignable, non-exclusive right and license to use OPERATOR'S intellectual property, including but not limited to its trade names, trademarks and any and all on- site parking amenities programs (the "**Intellectual Property**"), to the extent related to Operator's administration, management and operation of the Parking System. Upon termination of this Agreement for any reason, OPERATOR shall have the right, at its sole cost and expense, to remove the Intellectual Property from the Parking System, and TOWN shall refrain from all further use of the Intellectual Property.
- 12.28 **Contract Administrator.** Each party shall appoint a Contract Administrator that shall work together in the management of this Agreement. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators; provided, however, that such instructions and determinations do not change the Scope of Services.

For Town: Finance Director

For OPERATOR: _____ Chester Escobar, Regional Manager

Notice of a change in Contract Administrator shall be given according to the notice provisions herein.

- 12.29 **Force Majeure.** Neither party shall be in violation of this Agreement for failure to perform any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, weather conditions, riots, rebellion, accidents, sabotage or any other circumstances for which it is not responsible and which are not within its control. No Management Fee shall be due to OPERATOR if it suspends operations for any such cause or event for the period of such suspension.
- 12.30 **Relationship of The Parties.** No partnership or joint venture between the parties is created by this Agreement, it being agreed that OPERATOR is an independent contractor.
- 12.31 **Approvals.** Whenever the approval of either party is required herein, such approval shall not be unreasonably withheld or delayed, unless specified otherwise herein.
- 12.32 **Authority.** The individual signing this Agreement on behalf of TOWN hereby represents that he or she has been empowered with full authority to act on behalf of TOWN in connection with this Agreement, and that execution of this Agreement has been duly authorized by TOWN. The individual signing this Agreement on behalf of OPERATOR hereby represents that he or she has been empowered with full authority to act on behalf of OPERATOR in connection with this Agreement, and that execution of this Agreement has been duly authorized by OPERATOR.
- 12.33 **Attorneys' Fees.** If either the Town or OPERATOR is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.

SIGNATURES APPEAR ON FOLLOWING PAGE

TOWN:

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Constance Hoffmann, Town Manager

Attest: _____
June White, CMC, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by **CONSTANCE HOFFMANN** as TOWN Manager and **JUNE WHITE** as TOWN Clerk of the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed, or Stamped)

Commission Number

OPERATOR:
STANDARD PARKING, INC. CORPORATION

By: _____

By: _____
Steve Steven Warshauer, Executive Vice President

WITNESS

Typed Name of Witness

The foregoing instrument was acknowledged before me this ____ day of _____, 2012
by _____. ~~He~~ Steven Warshauer, Executive Vice President of Standard Parking Corporation, who is personally known to me ~~or who has produced _____ as identification.~~
(type of identification)

NOTARY'S SEAL:
_____ ILLINOIS

NOTARY PUBLIC, STATE OF

(Name of Acknowledger Typed, Printed, or Stamped)

Commission Number

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Document 2 ID	file://W:\COMPARISONS\Parking Services Agreement Approved April 10 2012.doc
Description	Parking Services Agreement Approved April 10 2012
Rendering set	Standard

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Moved from	
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Style change	
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Deleted cell	
Moved cell	
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Padding cell	

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