

AN ORDINANCE **2010-06-17-0533**

**ACCEPTING THE BID FROM CTR SYSTEMS, INC. FOR THE PURCHASE OF A PARKING REVENUE CONTROL SYSTEM TO INCLUDE DESIGN, INSTALLATION, IMPLEMENTATION, SPARE PARTS, TRAINING AND MAINTENANCE FOR THE DOWNTOWN OPERATIONS DEPARTMENT LOCATED IN COUNCIL DISTRICT 1 FOR UP TO \$2,950,000.00, FUNDED BY THE PARKING REPAIR AND REPLACEMENT FUND.**

\* \* \* \* \*

**WHEREAS**, In 2008, a Parking Management Program Study for the City of San Antonio determined that the City needed to replace existing equipment in City-owned parking garages and parking lots with an upgraded parking revenue control system that included full access control and a fully manageable parking system; and

**WHEREAS**, A RFCSP was issued on July 24, 2009, with staff recommending award of the contract to CTR Systems, Inc., the highest ranked firm of the proposals submitted; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The proposal of CTR Systems, Inc., for an estimated cost of \$2,950,000.00, to provide the City of San Antonio with a parking revenue control system to include design, installation, implementation, spare parts, training and maintenance, is hereby accepted. The Department Director or her designee is hereby authorized to execute an agreement with CTR Systems, Inc. A copy of the agreement, scoring matrix and Discretionary Contract Disclosure Form are attached hereto and are incorporated by reference as **Attachment 1**.

**SECTION 2.** Payment in the amount not to exceed \$2,200,000.00 in SAP Fund 53099000, General Obligation Capital Projects, SAP Project Definition 19-00010, Parking Technology Upgrade is authorized to be encumbered and made payable to CTR Systems, Inc. for the purchase of a parking revenue control system to include design, installation, implementation, spare parts, training and maintenance.

**SECTION 3.** Payments for future annual maintenance and support services are contingent upon the availability of funds from the City's operating and/or capital budget and City Council approval.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund

JK  
6/17/10  
#6

Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

**PASSED and APPROVED** this 17th day of June, 2010.



**M A Y O R**  
Julián Castro

**ATTEST:**



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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



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Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



**Agenda Voting Results - 6**

<b>Name:</b>	6, 7, 8, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26A, 26B, 26C, 26D, 26E, 27, 29, 30, 32A, 32B, 32D, 32E, 33, 35, 36, 37, 39, 40, 41, 42						
<b>Date:</b>	06/17/2010						
<b>Time:</b>	02:23:40 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance accepting the bid from CTR Systems, Inc. for the purchase of a parking revenue control system to include design, installation, implementation, spare parts, training and maintenance for the Downtown Operations Department located in Council District 1 for up to \$2,950,000.00, funded by the Parking Repair and Replacement Fund. [Sharon De La Garza, Assistant City Manager; Paula Stallcup, Director, Downtown Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

<b>10-001 Parking Revenue Control System Score Summary</b>	<b>Maximum Points</b>	<b>ACS Transport Solutions, Inc. 3100 Medlock Bridge Road, Suite 250, Norcross, GA 30071</b>	<b>Associated Time &amp; Parking Control, Inc 9104 Diplomacy Row, Dallas, TX 75247</b>	<b>CTR Systems, Inc. 555 Keystone Drive, Warrendale, PA 15086</b>	<b>Scheidt &amp; Bachmann 3710 East University Drive, Suite 4, Phoenix, AZ 85034</b>
<b>A - Experience, Background, Qualifications</b>	<b>30</b>	14.63	7.25	14.38	18.13
<b>B - Proposed Plan</b>	<b>20</b>	22.25	11.75	24.88	21.75
<b>B1 - Proposed Plan Information Technology</b>	<b>10</b>	7.50	2.63	7.38	9.75
<b>Sub-Total</b>	<b>60</b>	<b>44.38</b>	<b>21.63</b>	<b>46.63</b>	<b>49.63</b>
<b>C - Price</b>	<b>20</b>	8.68	9.46	20.00	13.48
<b>A - C SUB-TOTAL</b>	<b>80</b>	<b>53.05</b>	<b>31.08</b>	<b>66.63</b>	<b>63.10</b>
<b>D - Local Business Enterprise</b>	<b>10</b>	1.00	4.20	1.70	1.17
<b>D - Historically Underutilized Enterprise</b>	<b>5</b>	0.00	2.35	0.85	0.58
<b>D - Compliance w/SBEDA Policy</b>	<b>5</b>	1.00	3.00	2.00	1.00
<b>Sub-Total</b>	<b>20</b>	<b>2.00</b>	<b>9.55</b>	<b>4.55</b>	<b>2.75</b>
<b>TOTAL SCORE</b>	<b>100</b>	<b>55.05</b>	<b>40.63</b>	<b>71.18</b>	<b>65.85</b>
<b>RANK BASED ON TOTAL SCORE</b>		<b>3</b>	<b>4</b>	<b>1</b>	<b>2</b>

\* = Required fields



# City of San Antonio Discretionary Contracts Disclosure Correction

Office of the  
City Clerk

Please fill out this form online, print completed form and submit with proposal to originating department. All questions must be answered.

For details on use of this form, see [Section 2-59 through 2-61](#) of the City's Ethics Code.

\*This is a  New Submission or  Correction or  Update to previous submission.

\*1. Name of person submitting this disclosure form.

First: Mark M.I. K Last: Pitchford Suffix: \_\_\_\_\_

\*2. Contract information.

a) Contract or project name: 10-001-PC Parking Revenue Control Systems, Downtown Operations

b) Originating department: \_\_\_\_\_

\*3. Name of individual(s) or entity(ies) seeking a contract with the city (i.e. parties to the contract).

CTR Systems Parking, Inc.

\*4. List any business entity(ies) that is a partner, parent, or subsidiary business entity(ies) of the individual or entity listed in Question 3.

Not applicable. Contracting party(ies) does not have partner, parent, or subsidiary business entities.

Names of partner, parent, or subsidiary business entities:

\*5. List any individuals or entities that will be subcontractors on this contract.

Not applicable. No subcontractors will be retained for this contract.

Subcontractors may be retained, but have not been selected at the time of this submission.

List of subcontractors:

Zachman Enterprises, Inc. DBA Fred Clark Electrical Contractor

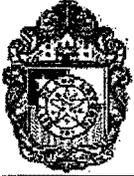
\*6. List any attorneys, lobbyists, or consultants retained by any individuals listed in Questions 3, 4, or 5 to assist in seeking this contract.

Not applicable. No attorneys, lobbyists, or consultants have been retained to assist in seeking this contract.

List of attorneys, lobbyists, or consultants retained to assist in seeking this contract:

\*7. Disclosure of political contributions.

\* = Required fields



## City of San Antonio Discretionary Contracts Disclosure Correction

Office of the  
City Clerk

List any campaign or officeholder contributions made by the following individuals in the past 24 months totaling more than \$100 to any current member of City Council, former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections:

- a) any individual seeking contract with the city (Question 3)
- b) any owner or officer of entity seeking contract with the city (Question 3)
- c) any individual or owner or officer of an entity listed above as a partner, parent, or subsidiary business (Question 4)
- d) any subcontractor or owner/officer of subcontracting entity retained for the contract (Question 5)
- e) the spouse of any individual listed in response to (a) through (d) above
- f) any attorney, lobbyist, or consultant retained to assist in seeking contract (Question 6)

Not applicable. No campaign or officeholder contributions have been made in preceding 24 months by these individuals.

List of contributions:

### Updates on Contributions Required

Information regarding contributions must be updated by submission of a revised form from the date of the submission of this form, up through the time City Council takes action on the contract identified in response to Question 2 and continuing for 30 calendar days after the contract has been awarded.

### Notice Regarding Contribution Prohibitions for "High-Profile" Contracts

Under Section 2-309 of the Municipal Campaign Finance Code, the following listed individuals are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

- a) Legal signatory of a high-profile contract
- b) Any individual seeking a high-profile contract
- c) Any owner or officer of an entity seeking a high-profile contract
- d) The spouse of any of individual listed in response to (a) through (c) above
- e) Any attorney, lobbyist, or consultant retained to assist in seeking a high-profile contract

**Penalty.** A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the contribution "black-out" period, which is the 10th business day after a solicitation has been released until 30 calendar days after the contract has been awarded.

### \*8. Disclosure of conflict of interest.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under Sections 2-43 or 2-44 of the City Ethics Code for any City Council member or board/commission member that has not or will not be raised by these city officials?

I am not aware of any conflict(s) of interest issues under Section 2-43 or 2-44 of the City Ethics Code for members of City Council or a city board/commission.

I am aware of the following conflict(s) of interest:

### \*Acknowledgements

**Updates Required**

I understand that this form must be updated by submission of a revised form if there is any change in the information before the discretionary contract is the subject of action by the City Council, and no later than 5 business days after any change has occurred, whichever comes first. This includes information about political contributions made after the initial submission and up until 30 calendar days after contract has been awarded.



# City of San Antonio Discretionary Contracts Disclosure Correction

Office of the  
City Clerk

**No Contact with City Officials or Staff during Contract Evaluation**

I understand that a person or entity who seeks or applies for a city contract or any other person acting on behalf of that person or entity is prohibited from contacting city officials and employees regarding the contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released.

This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials or employees, the contact will take place in accordance with procedures incorporated into the solicitation documents. Violation of this prohibited contacts provision set out in Section 2-61 of the City Ethics Code by respondents or their agents may lead to disqualification of their offer from consideration.

**\*Contribution Prohibitions for "High-Profile" Contracts**

This is not a high-profile contract.

This is a high-profile contract.

I acknowledge that this contract has been designated as a high-profile contract by the city. I further acknowledge that the following individuals are prohibited from making campaign or officeholder contributions to members of City Council, candidates for City Council, or political action committees that make contributions to City Council elections from the 10th business day after the solicitation has been released until 30 calendar days after the contract has been awarded: legal signatory to contract individual(s) seeking the contract, owner or officer of an entity seeking the contract, the spouse of any of these individuals, and any attorney, lobbyist, or consultant retained to assist in seeking the contract.

I warrant that no contributions have been made by these individuals in violation of Section 2-309 of the Municipal Campaign Finance Code.

**\*Conflict of Interest Questionnaire (CIQ)**

Chapter 176 of the Local Government Code requires contractors and vendors to submit a Conflict of Interest Form (CIQ) to the Office of the City Clerk.

I acknowledge that I have been advised of the requirement to file a CIQ form under Chapter 176 of the Local Government Code.

**\*Oath**

I swear or affirm that the statements contained in this Discretionary Contracts Disclosure Form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Your Name: Mark Pitchford Title: Secretary

Company Name or DBA: CTR Systems Parking, Inc. Date: 05/18/2010

Please fill this form out online, print completed form and submit with proposal to originating department. All questions must be answered.  
 If necessary to mail, send to:  
 Purchasing  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

**AGREEMENT FOR PARKING REVENUE CONTROL SYSTEM**

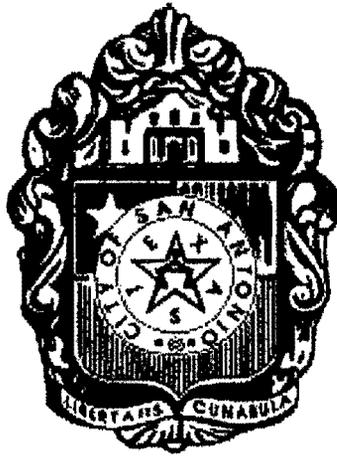
**FOR**

**DOWNTOWN PARKING GARAGES & LOTS BETWEEN**

**THE CITY OF SAN ANTONIO**

**AND**

**CTR SYSTEMS PARKING, INC.**



**AGREEMENT FOR PARKING REVENUE CONTROL SYSTEM**

**FOR**

**DOWNTOWN PARKING GARAGES & LOTS BETWEEN**

**THE CITY OF SAN ANTONIO**

**AND**

**CTR SYSTEMS PARKING, INC.**

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**AGREEMENT  
FOR  
PARKING REVENUE CONTROL SYSTEM, DOWNTOWN OPERATIONS  
BETWEEN THE CITY OF SAN ANTONIO  
AND  
CTR SYSTEMS PARKING, INC.**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 and CTR Systems Parking, Inc ("CTR" or "Vendor"), both of which may be referred to herein collectively as the "Parties".

Subject to the terms and conditions hereof, CTR agrees to sell and license to the City, and City agrees to purchase and license from Vendor, the products and materials described herein (collectively referred to as the "System").

**I. DEFINITIONS**

1.1 DEFINITIONS As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Director" shall mean the Director of City's Downtown Operations Department or her designee.

"PRCS" or "System" shall be mean the Parking Revenue Control System to be designed, installed, procured and maintained by CTR.

"RFCSP" shall mean the Request for Competitive Sealed Proposal For Parking Revenue Control System RFCSP 10-001-PC, issued by the City on July 24, 2009.

"Vendor" or "CTR" is defined in the preamble of this Agreement and includes its successors.

Additional definitions and acronyms shall be specified in the attachments and exhibits to this Agreement.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on \_\_\_\_\_ and terminate upon successful completion of all tasks and warranty periods, as determined by City, with the exception of maintenance agreements which take effect upon completion of the warranty period, which shall be mutually agreed upon prior to such agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation. In the event of such termination by City, CTR shall be entitled to payment in full for all work which CTR has performed in accordance with this Agreement and all equipment which CTR has delivered to City pursuant to this Agreement."

## **III. SCOPE OF SERVICES**

3.1 Each of the Exhibits listed below is an essential part of the Agreement's Scope of Services, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, unless otherwise specified:

Exhibit A Request for Competitive Sealed Proposal For Parking Revenue Control System RFCSP 10-001-PC, issued by the City on July 24, 2009, and Addendums I -V.

Exhibit B Price Schedule.

Exhibit C City of San Antonio Information Technology Services Department Cabling Standards.

Exhibit D City of San Antonio Parking Facilities: Parking Facilities Demarcation Details.

Exhibit E CTR 1-10 PARCS Communications Risers Diagrams

Exhibit F CTR's RFCSP 10-001-PC Attachment A Respondent Questionnaire and Qualifications, CTR's Best and Final Offer of 12/7/2009, CTR's Clarification Response of 4/29/2010 and CTR's Clarification Response of 11/4/2009.

Exhibit G Technical Architecture Submissions for PRCS.

Exhibit H CTR Systems, Inc. PARC/S 4.0.x Software Installation

3.2 CTR agrees to provide the services described in this Article III Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.3 All work performed by CTR hereunder shall conform to the specifications outlined in this Agreement and shall pass the acceptance test criteria set forth in Exhibit "F". The System's acceptance by the City shall be determined by the Director of City's Downtown Operations Department. The determination made by Director shall be final, binding and conclusive on all parties hereto, and shall be based upon the acceptance test criteria described in Exhibit F. City shall be under no obligation to pay for any work performed by CTR, which does not conform to the specifications set forth in Exhibit "F", City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CTR's work fail to conform to the specifications set forth in Exhibit "F"; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.4 New cashier booths shall be installed at the Central Library Garage, Continental Lot, Dolorosa Lot, Marina Garage, Houston Street Garage, St. Mary's Street Garage and Institute of Texas Culture's Lot.

3.5 CTR's Project Manager may be replaced at no additional cost to City if deemed necessary by City. Replacement of CTR's Project Manager shall be a the sole discretion of the City.

3.6 The system will comply with the City of San Antonio Cabling Standards, attached hereto as Exhibit C.

3.7 CTR shall upgrade the PRCS software, system, and all peripheral components as may be necessary to ensure compliance with current PA-DSS standards for no less than 24 months following final system acceptance at no cost to the City.

3.8 The information technology equipment necessary to support the proposed PRCS will be able to be deployed within the City's managed datacenter environment as described in the RFCSP.

3.9 CTR will meet or exceed the requirements of Section 9 (Training) in the Performance Specification document. The minimum proposed number of hours for each of the following training components shall be:

- a) Parking Operations 30 hours
- b) Revenue Management 10 hours
- c) Parking Administration 10 hours

- d) Audit Services 10 hours
- e) Finance 10 hours
- f) Information Technology 25 hours
- g) Maintenance 30 hours
- h) Train the Trainer 15 hours

#### **IV. COMPENSATION TO CTR/WARRANTY/LIMITATION ON LIABILITY**

4.1 In consideration of CTR's completion of PRCS, training and maintenance in accordance with the City-approved acceptance test procedures described in Exhibit A, of all services and activities set forth in the Scope of Services of this Agreement, City agrees to pay CTR the amounts specified in Exhibit B, in an amount not to exceed \$2,573,186.41.

CTR shall invoice the City for 50% of the deliverable price for each Deliverable Location as set forth in Exhibit B upon installation, to be invoiced monthly.

CTR shall invoice 40% of the deliverable price for each Deliverable Location as set forth in Exhibit B after that deliverable location is completed and operational, to be invoiced monthly.

For all line items not part of a Deliverable Location, CTR shall invoice 90% upon acceptance, delivery or completion.

CTR shall invoice the final 10% for all line items in Exhibit B after final acceptance of the entire system is completed according to terms of Exhibit A.

##### **Deliverable Locations**

1. Central Library Garage
2. Continental Lot Parking
3. Dolorosa Lot Parking
4. Marina Garage Parking
5. Market Square Lot Parking.
6. Houston Street Garage Parking
7. Municipal Court Lot .
8. St. Mary's Garage .
9. Institute of Texan Cultures Lot.
10. Training Room.

4.2 Upon final system acceptance of all facilities listed above, CTR shall provide a 12 month system warranty period to include all labor, materials, transportation and on-going support services to maintain the PRCS. Warranty services shall include all parts and labor during the twelve month period.

4.2.1 Should a specific part or piece of PRCS Equipment require repair three (3) or more times within any thirty (30) calendar day period or have accumulated down time of forty-eight (48) or more hours during any thirty (30) calendar day period, that Equipment shall be replaced in its entirety with a new device.

4.2.2 CTR shall return the PRCS to service within twenty-four (24) hours from time of notification. If necessary, CTR shall provide functioning spare replacement units to ensure the repair time guarantee.

4.2.3 Failure to comply with 24 hour service requirement shall result in a \$1,000 per day fee per incident payable to COSA.

4.2.4 Upon the completion of the warranty period, the City may continue maintenance and support (Item 14) at the prices specified in Exhibit B. If City utilizes CTR's Maintenance Program, CTR shall implement the Maintenance Program with CTR Staff (not subcontractors) whose place of business shall be located within the City of San Antonio, Texas.

4.2.5 The above warranties shall not apply to any Equipment, Software or parts thereof in the event of: (i) Damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of components on any boards supplied with the Equipment);(ii) Failure of City to provide and maintain a suitable installation environment; or; (iii) Malfunctions resulting from the use of supplies not approved by CTR.

4.2.6 THE SOFTWARE LICENSED AND EQUIPMENT PURCHASED HEREUNDER DO NOT CONSTITUTE PART OF AN ELEVATOR SYSTEM. IF CITY INCORPORATES THEM INTO AN ELEVATOR SYSTEM, CITY AGREES THAT CTR SHALL NOT BE LIABLE TO CITY OR ANYONE CLAIMING UNDER OR THROUGH CITY FOR FAILURE OF SUCH ELEVATOR SYSTEM.

4.2.7 THE WARRANTIES SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. CTR DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CTR OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR MAKE ANY MODIFICATION, EXTENSION OR ADDITION TO THE EXPRESS WARRANTIES GIVEN IN THIS SECTION 4.

**SECTION 4.2.8.      LIMITATION OF LIABILITY.**

**4.2.8 IN NO EVENT WILL CTR, OR ANY SUBSIDIARY OR AFFILIATE OF CTR, BE LIABLE TO THE CITY FOR ANY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION, IN CONNECTION WITH OR ARISING OUT OF (a) THE NEGOTIATION, EXECUTION, DELIVERY OR PERFORMANCE OF THIS AGREEMENT OR (b) CITY'S USE OF, OR THE PERFORMANCE OF, THE SYSTEM. THE FOREGOING LIMITATION SHALL APPLY WHETHER ANY SUCH DAMAGES ARE ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, AND EVEN IF CTR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS SECTION 4.2.8 SHALL BE CONSTRUED TO LIMIT CTR'S LIABILITY TO THE CITY FOR PERSONAL INJURY, OR PROPERTY DAMAGE TO THE EXTENT SUCH DAMAGES DIRECTLY RESULT FROM THE ACTS OR OMISSIONS OF CTR.**

4.2.9 In the event that the City is required to temporarily use additional personnel to operate a parking garage as a direct result of CTR's breach of the terms of this Agreement, then CTR shall reimburse the City for such added personnel costs until such breach is cured.

4.3 No additional fees or expenses of CTR shall be charged by CTR nor be payable by City, unless agreed to in writing by CITY. The parties hereby agree that all known compensable expenses of CTR have been provided for in the total payment to CTR as specified in section 4.1 above. Total payments to CTR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City Manager or her designee.

4.4 The Institute of Texas Cultures (ITC) Parking Lot shall be the final installation, and City shall notify CTR no later than 180 calendar days after commencement if ITC parking lots shall be removed from III. Scope of Services and VI. Compensation to Vendor.

4.5 CTR shall warehouse all spare parts within Bexar County, Texas.

**V. OWNERSHIP OF INTELLECTUAL PROPERTY**

**5.1 Documents**

5.1.1 Any and all writings, documents or information in whatsoever form and character produced by CTR, other than software pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CTR.

5.1.2 CTR understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to

use all such writings, documents and information as City desires, without restriction.

## 5.2 License of Software

5.2.1 CTR hereby grants the City a non-exclusive, nontransferable (except as permitted in section 5.2.7) license, subject to the terms and conditions set forth in this Agreement, to CTR's PARC/S parking access and revenue control system, and related accessories and software documentation identified on Schedule A attached to this Agreement (the "Software").

5.2.2 City acknowledges that CTR owns the Software and related software documentation and that CTR possesses all right, title and interest in and to the Software and software documentation and any modifications, revision updates, or upgrades thereto, as well as any and all derivative works, ideas and inventions created therefrom by City or its employees, agents or representatives, (including, but not limited to, any and all domestic or foreign intellectual property rights associated therewith including copyrights, trade secrets, trademarks, service marks, patent rights and any other intellectual property rights associated with the Software or software documentation), all of which shall be deemed part of the Software and subject to the terms and conditions of this Agreement. City also acknowledges that the Software and software documentation are protected by United States copyright laws, by the common law, by laws of other nations, and/or by international treaties.

5.2.3 City may not copy the Software, provided, however, that City may make one (1) copy of the Software solely for backup or archival purposes. All copies of the Software or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this Agreement, and all copies of the Software or any part thereof shall include the copyright and proprietary rights notices contained in the Software as delivered to the City.

5.2.4 No rights or licenses to the Software, other than those granted in Section 5.2 are granted, whether expressly, by implication, estoppel or otherwise.

5.2.5 City shall not have the right under this Agreement: (a) to reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the Software or its structural framework; or (b) to use the Software in whole or in part for any purpose except as expressly provided pursuant to this Agreement, unless City has received the source code under the provisions of the software escrow agreement. The City shall not use the source code for any purpose other than for supporting the ongoing use and functionality of the software in the deliverable locations identified in section 4.1 above.

5.2.6 City shall not alter or remove any copyright or other property right notices on or in the Software and/or software documentation. It is expressly understood and agreed by City that the existence of any such copyright notice shall not be construed as an admission by CTR that publication of the Software, software documentation or of any proprietary and/or confidential information relating thereto has occurred.

5.2.7 City may not sell, assign, convey, or otherwise transfer the Software to any third party (that is not an owner or operator of the parking facility through conveyance by license or deed, in which event the new owner shall be bound by these terms) without the prior written consent of CTR.

## **VI. RECORDS RETENTION**

6.1 CTR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 CTR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CTR shall retain the records until the resolution of such litigation or other such questions. CTR acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CTR to return the documents to City at CTR’s expense prior to or at the conclusion of the retention period. In such event, CTR may retain a copy of the documents.

6.3 CTR shall notify City, immediately, in the event CTR receives any requests for information from a third party, which pertain to the documentation and records referenced herein. CTR understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice. In the event of such termination by City, City shall pay CTR for all work executed and materials delivered to City in accordance with this Agreement, and costs incurred by reason of such termination.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either party may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following applicable events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.3.2 City's failure for a period of thirty (30) days to pay CTR for service and/or materials in accordance with Section 4.1 of this Agreement.

7.4 Defaults With Opportunity for Cure. Should CTR default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CTR shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CTR fails to cure the default within such thirty-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with CTR to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with any subsequent vendor against CTR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

7.4.3 Failing to perform or failing to comply with any covenant herein required

7.4.4 Failure to meet acceptance test criteria approval on the third attempt.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, CTR shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CTR, or provided to CTR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CTR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CTR's sole cost and expense. Payment of compensation due or to become due to CTR is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, CTR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CTR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CTR of any and all right or claims to collect moneys that CTR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, CTR shall cease all operations of work being performed by CTR or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CTR for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Attn: Director, Downtown Operations

Downtown Operations Dept.  
400 N. St. Mary's Street Suite 100  
San Antonio, TX 78205

If intended for CTR, to:

CTR Systems Parking, Inc.  
Attn: Mark Pitchford  
555 Keystone Drive  
Warrendale, PA 15086

### **IX. SOURCE CODE ESCROW**

9.1 CTR shall, on or before the occurrence of final acceptance approval of the first deliverable, enroll CITY as a Preferred Beneficiary of the applicable CTR Source Code escrow account with Iron Mountain Intellectual Property Management. A copy of CTR's Master Preferred Escrow Agreement with Iron Mountain is attached as Exhibit I. City shall pay all escrow fees and expenses associated with the Escrow, including but not limited to first year fees, renewal year fees, and fees for additional services, if any, selected by CITY. CTR shall deposit in Escrow twice per year updated Source Code containing (i) all Updates to the CTR Software released during the preceding month and (ii) any CTR Software Modification and/or Interfaces released for live operations during the preceding month. Source Code Escrow shall be kept in effect until (i) CITY gives CTR written notice of termination of the escrow or (ii) this Agreement is terminated. Source Code released under the terms of the Source Code Escrow Agreement shall be deemed part of the CTR Software hereunder, subject to the terms and conditions of this Agreement.

9.2 Source Code shall be released to CITY only upon the occurrence of and only during the duration of one of the following conditions:

9.2.1 CTR's persistent and uncured failure to carry out or provide for the carrying out of material warranty obligations imposed upon it pursuant to this Agreement or any Software Support Agreement between the Parties with respect to the CTR Software, which failure persists for a period of 30 calendar days after written notice from CITY to CTR asserting such failure and the intention to demand a release of Source Code from escrow, or

9.2.2 CTR's failure to continue to do business in the ordinary course without providing an alternate source of warranty or Software Support by a ready, willing and able assignee.

9.3 The escrowed Source Code and other material released to CITY hereunder shall be subject to all of the terms and conditions of this Agreement, including without limitation the Confidentiality provisions herein, except as specifically modified in this

paragraph. Without limiting the generality of the foregoing, the Source Code shall, except for periods of actual use, be kept in a secure, locked container and/or a secure protected computer file with access limited only to those with a need to know for purposes of software maintenance. Any person or entity granted access shall be required to agree in writing to comply with this paragraph. CTR shall, upon request, be provided with a copy of such agreement(s).

9.4 Provided that a release of Source Code is rightfully made hereunder, CITY is granted a license to copy and Use the Source Code for the sole purpose of software maintenance. For purposes of these Source Code Escrow provisions, the term "software maintenance" means correction of software errors and preparation of software modifications and enhancements. If CITY creates new and original computer code not derived from the CTR Software or the ideas, processes, methods of operation, technology or know-how implemented therein, in the process of software maintenance, the intellectual property rights (including copyright, patent and trade secret) in and to that specific new and original code shall be owned by CITY. However, if CITY's enhancements or other modifications result in the creation of a derivative work from the CTR Software, or a work based upon the ideas, processes, methods of operation, technology or know-how implemented therein, the intellectual property rights (including copyright, patent and trade secret) in and to such work shall be owned by CTR and CITY's rights to use such work shall be limited to those granted with respect to the CTR Software in this Agreement. No rights to distribute Source Code or derivative works therefrom are granted hereunder.

## **X. INSURANCE**

10.1 Prior to the commencement of any work under this Agreement, CTR shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Downtown Operations Department, which shall be clearly labeled "Parking Revenue Control System, Downtown Operations" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or

circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 CTR's financial integrity is of interest to the City; therefore, subject to CTR's right to maintain reasonable deductibles in such amounts as are approved by the City, CTR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CTR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence.

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CTR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 calendar days of the requested change. CTR shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Attn: Downtown Operations Department

P.O. Box 839966  
San Antonio, Texas 78283-3966

10.5 CTR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CTR shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CTR's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.7 In addition to any other remedies the City may have upon CTR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order CTR to stop work hereunder, and/or withhold any payment(s) which become due to CTR hereunder until CTR demonstrates compliance with the requirements hereof.

10.8 Nothing herein contained shall be construed as limiting in any way the extent to which CTR may be held responsible for payments of damages to persons or property resulting from CTR's or its subcontractors' performance of the work covered under this Agreement.

10.9 It is agreed that CTR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.10 It is understood and agreed that the insurance required is in addition to and

separate from any other obligation contained in this Agreement.

10.11 CTR and any Subcontractors are responsible for all damage to their own equipment and/or property.

## XI. INDEMNIFICATION

**11.1 VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, vendor or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.1 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

11.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by VENDOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. VENDOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If VENDOR fails to retain Counsel within such time period, City shall have the right to

retain defense counsel on its own behalf, and VENDOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of VENDOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for VENDOR or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 CTR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CTR. CTR, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that CTR intends to use the following subcontractors in the performance of this Agreement: Fred Clark Electrical Contractor. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor. Notwithstanding the foregoing, changes may be made to CTR's Good Faith Effort Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CTR. City shall in no event be obligated to any third party, including any subcontractor of CTR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, CTR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CTR shall remain liable for completion of the services outlined

in this Agreement in the event of default by the successor CTR, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CTR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CTR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CTR shall in no event release CTR from any obligation under the terms of this Agreement, nor shall it relieve or release CTR from the payment of any damages to City, which City sustains as a result of such violation. City reserves the right to assign any and all rights under this agreement to any party subject to the approval of the City Manager or her designee.

### **XIII. INDEPENDENT CONTRACTOR**

CTR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CTR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors; that the doctrine of respondent superior shall not apply as between City and CTR, its officers, agents, employees, contractors, subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and CTR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CTR under this Agreement and that the CTR has no authority to bind the City.

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

14.5 The Good Faith Effort Plan ("GFEP"), that is submitted with CTR's proposal for this project, attached hereto and incorporated herein as "Exhibit J".

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and

14.6.2 The failure of CTR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of CTR or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CTR's GFEP ("Exhibit J") shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.5 CTR shall pay all suppliers and subcontractors identified in its GFEP ("Exhibit J") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to GFEP suppliers and subcontractors

shall be submitted by CTR to the City Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

14.7 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

14.7.1 Failure of CTR to utilize an SE that was originally listed in proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

14.7.2 Modification or elimination by CTR of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or

14.7.3 Termination by CTR of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

14.7.4 Participation by CTR in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

14.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the CTR materially breaches the requirements of the SBEDA Program:

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

14.8.3 Withhold all payments due to the CTR under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

14.8.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts due to the CTR under the Agreement.

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the

SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

14.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

14.10 The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

14.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a CTR violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

14.12 Special Provisions for Extension of Agreements. In the event the City extends this Agreement without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CTR does not meet the SBEDA Utilization Goal; and

14.12.3 the required minimum Good Faith Efforts outreach attempts that CTR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. If this Agreement is extended, CTR shall either meet the SBEDA

Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

- (i) subject CTR to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

## **XV. CONFLICT OF INTEREST**

15.1 CTR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, CTR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CTR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and CTR, and subject to approval by the City Manager or her designee.

## **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of

the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### **XVIII. LICENSES/CERTIFICATIONS**

CTR warrants and certifies that CTR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, including but not limited to compliance with Texas Occupation Code Chapter 1702, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein. No work shall be performed under this agreement until the compliance with Texas Occupation Code Chapter 1702 has been established.

#### **XIX. COMPLIANCE**

CTR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

#### **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXI. PREVAILING WAGE RATES**

Contractor shall comply with the Wage and Labor Standard Provisions and prevailing wage rates attached hereto and incorporated herein for all purposes as Attachment No. 1 and Attachment No. 2, respectively.

After award of contract, Contractor shall contact the City's Labor Compliance office in order to obtain instructions for electronic submission of certified payrolls. This

information may be provided at a pre-construction meeting, if one is arranged. Otherwise, it shall be Contractor's responsibility to obtain the necessary information.

City of San Antonio  
Capital Improvements Management Services Department  
Labor Compliance Office  
114 W. Commerce, 9th Floor  
San Antonio, Texas 78205  
Attention: Thomas Nixon  
Phone: (210) 207-8774 / Fax: (210) 207-5859  
Cell: (210) 215-7033

#### Workers' Compensation Insurance Coverage.

(a) Definitions:

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
  - (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.
  - (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

- (c) The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- (d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- (e) The contractor shall obtain from each person providing services on a project, and provide to the City:
  - (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if

- the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
    - (i) a certificate of coverage, prior to the other person beginning work on the project; and
    - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within thirty days after receipt of notice of breach from the City.

## **XXII . PERFORMANCE BOND**

Contractor shall provide a performance bond made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code in the amount of the contract price less any amount of the contract price which is allocated toward maintenance or warranty services. Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the

obligee for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253. This bond must be executed and delivered to City prior to commencement of work under this contract. Contractor, upon expiration of the warranty period, may replace the original performance bond with a subsequent performance bond in the full amount of the maintenance agreement price for each yearly maintenance period, with said subsequent bond having the same conditions as the original performance bond.

### **XXIII. LAW APPLICABLE**

**23.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

23.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

### **XXIV. LEGAL AUTHORITY**

The signer of this Agreement for CTR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CTR and to bind CTR to all of the terms, conditions, provisions and obligations herein contained.

### **XXV. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

### **XXVI. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

### **XXVII. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

### XXVIII. PROHIBITED CONTRIBUTIONS

28.1 CTR acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. CTR understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

28.2 CTR acknowledges that the City has identified this Agreement as high profile.

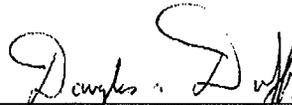
28.3 CTR warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**CTR SYSTEMS PARKING, INC.**

\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: Douglas A. Duff

Title: President

Date: June 3<sup>rd</sup> 2010