

PARKING ENFORCEMENT AGREEMENT

This Independent Contractor Agreement (the “Agreement”) is entered into as of _____, 2017 (the “Effective Date”) by and between SP+ Municipal Services hereby referred to as (SP+) and the City of Placerville, a municipal corporation of the State of California, hereby referred to as (“CITY”). The CITY together with SP+ is hereby referred to as (“Parties”).

RECITALS

WHEREAS, the CITY wishes to engage SP+ as an independent contractor for the CITY for the purpose of completing certain specified tasks on the terms and conditions set forth below; and

WHEREAS, SP+ wishes to provide the Services (as defined below) in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. RESPONSIBILITIES.

(a) Of SP+. SP+ agrees to do each of the following:

- A. Perform the Services set forth in Exhibit A attached hereto and made a part hereof (collectively, the “Services”).
- B. Devote as much productive time, energy, and ability to the performance of its duties hereunder as may be necessary to provide the required Services in a timely and productive manner.
- C. Perform the Services in a safe, good, and workmanlike manner by fully trained, skilled, competent, and experienced personnel using at all times adequate equipment in good working order.
- D. Communicate with the CITY regarding progress SP+ has made in performing the Services.
- E. Supply all tools, equipment, and supplies required to perform the work under this Agreement, except to the extent that SP+’S work must be performed on or with the CITY’S equipment or that of sub contractors, as will be defined in Exhibit A.

- F. Ensure that all materials and equipment furnished to its personnel is of good and merchantable quality, unless otherwise agreed by the CITY.
- G. Provide services (including the Services) and end products that are satisfactory and acceptable to the CITY and free of defects.
- H. Remove, replace, or correct all or any portion of the work or end products found defective or unsuitable, without additional cost or risk to the CITY.

(b) Of the CITY. The CITY agrees to do each of the following:

- A. Engage SP+ as an independent contractor to perform the Services set forth in Exhibit A to this Agreement.
- B. Provide relevant information to assist SP+ with the performance of the Services.
- C. Satisfy all of SP+'S reasonable requests for assistance in its performance of the Services.

2. NATURE OF RELATIONSHIP.

- (a) Independent Contractor Status. SP+ agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. SP+ is and will remain an independent contractor in its relationship to the CITY. The CITY shall not be responsible for withholding taxes with respect to SP+'S compensation hereunder. SP+ shall have no claim against the CITY hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
- (b) Indemnification of CITY by SP+. The CITY has entered into this Agreement in reliance on information provided by SP+, including SP+'S express representation that it is an independent contractor and in compliance with all applicable laws related to work as an independent contractor. If any regulatory body or court of competent jurisdiction finds that SP+ is not an independent contractor and/or is not in compliance with applicable laws related to work as an independent contractor, based on SP+'S own actions, SP+ shall assume full responsibility and liability for all taxes, assessments, and penalties imposed against SP+ and/or the CITY resulting from such contrary interpretation, including but not limited to taxes, assessments, and penalties that would have been deducted from SP+'S earnings had SP+ been on the CITY'S payroll and employed as an employee of the CITY.

3. REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
 - A. Each Party has full power, authority, and right to perform its obligations under the Agreement.
 - B. This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
 - C. Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
- (b) SP+ hereby represents and warrants as follows:
 - A. SP+ has the sole right to control and direct the means, details, manner, and method by which the Services required by this Agreement will be performed.
 - B. The Services shall be performed in accordance with industry standards.
 - C. SP+ or SP+'S staff shall perform the Services required by this Agreement, and the CITY shall not be required to hire, supervise, or pay any assistants to help SP+ perform such services.
 - D. SP+ is responsible for paying all ordinary and necessary expenses of its staff.
 - E. SP+ is responsible for providing insurance coverage for itself and its staff.
 - 1. SP+ will maintain Workers' Compensation insurance as required by the state of California.
 - 2. SP+ will maintain General Liability insurance, including operations, products, and completed operations, as applicable. Coverage will be \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. Insurance will be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.

- (c) The CITY hereby represents and warrants as follows:
 - A. The CITY will make timely payments of amounts earned by SP+ under this Agreement.
 - B. The CITY shall notify SP+ of any changes to its procedures affecting SP+'S obligations under this Agreement at least 45 days prior to implementing such changes.
 - C. The CITY shall provide such other assistance to SP+, as it deems reasonable and appropriate.

4. COMPENSATION.

- (a) Terms and Conditions. The CITY shall pay SP+ in accordance with the terms and conditions set forth in Exhibit A.
- (b) Timing of Payment. Payments shall be made to SP+ on the first of each month per receipt of SP+'S invoice (supported by reasonable documentation) for all Services performed to the CITY'S satisfaction in accordance with Exhibit A.
- (c) No Other Compensation. The compensation set out above shall be SP+'S sole compensation under this Agreement.
- (d) Expenses. Any normal operating expenses incurred by SP+ in the performance of this Agreement shall be SP+'S sole responsibility. Any unforeseen out of the ordinary expenses incurred may become the responsibility of the CITY but must be agreed to by the Parties prior to incurrence of extra expenses.
- (e) Taxes. SP+ is solely responsible for the payment of all income, social security, employment-related, or other taxes incurred as a result of the performance of the Services by SP+ under this Agreement and for all obligations, reports, and timely notifications relating to such taxes. The CITY shall have no obligation to pay or withhold any sums for such taxes.
- (f) Equipment Cost: The City shall provide enforcement handheld equipment including monthly subscription cost for parking enforcement. All other equipment shall be supplied by SP+. All enforcement equipment shall remain property of the City upon termination of the contract.

5. WORK FOR HIRE.

SP+ expressly acknowledges and agrees that any work prepared by SP+ under this Agreement shall be considered “work for hire” and the exclusive property of the CITY unless otherwise specified. To the extent such work may not be deemed a “work for hire” under applicable law, SP+ hereby assigns to the CITY all of its right, title, and interest in and to such work. SP+ shall execute and deliver to the CITY any instruments of transfer and take such other action that the CITY may reasonably request, including, without limitation, executing and filing, at the CITY’S expense, copyright applications, assignments, and other documents required for the protection of the CITY’S rights to such materials.

6. NO CONFLICT OF INTEREST; OTHER ACTIVITIES.

SP+ hereby warrants to the CITY that, to the best of its knowledge, it is not currently obliged under an existing contract or other duty that conflicts with or is inconsistent with this Agreement. During the Term (as defined below, SP+ is free to engage in other independent contracting activities; provided, however, SP+ shall not accept work, enter into contracts, or accept obligations inconsistent or incompatible with SP+’S obligations or the scope of Services to be rendered for the CITY pursuant to this Agreement.

7. TERMINATION.

This Agreement may be terminated:

- (a) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party’s material breach is not cured within (5) days of receipt of written notice thereof. *Initials* () ()

- (b) By the CITY at any time and without prior notice, if SP+ is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the CITY, or is guilty of serious misconduct in connection with performance under this Agreement.

Following the termination of this Agreement for any reason, the CITY shall promptly pay SP+ according to the terms of Exhibit A for Services rendered before the effective date of the termination. SP+ acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement.

8. TERM

The term of this Agreement shall be Two Years from the effective date. The Agreement will terminate or may be extended or renegotiated at the end of the term by mutual written agreement of the Parties. *Initials* () ()

9. RETURN OF PROPERTY

Within 15 days of the termination of this Agreement, whether by expiration or otherwise, SP+ agrees to return to the CITY all CITY products, samples, models, or other property and all documents, retaining no copies or notes, relating to the CITY'S business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material obtained by SP+ during and in connection with its representation of the CITY. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the CITY'S business, whether prepared by SP+ or otherwise coming into its possession, shall remain the CITY'S exclusive property. *Initials* () ()

10. INDEMNIFICATION.

- (a) Of CITY by SP+. SP+ shall indemnify and hold harmless the CITY and its officers, members, managers, employees, agents, contractors, sub licensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of SP+ arising from or connected with SP+'S carrying out of its duties under this Agreement, or (ii) SP+'S breach of any of its obligations, agreements, or duties under this Agreement.
- (b) Of SP+ by CITY. The CITY shall indemnify and hold harmless SP+ from and against all Claims that it may suffer from or incur and that arise or result primarily from (i) the CITY'S operation of its business, (ii) the CITY'S breach or alleged breach of, or its failure or alleged failure to perform under, any agreement to which it is a party, or (iii) the CITY'S breach of any of its obligations, agreements, or duties under this Agreement; provided, however, none of the foregoing result from or arise out of the actions or inactions of SP+.

11. MODIFICATION.

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

12. FORCE MAJEURE.

A Party shall not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "Force Majeure Event"); provided, however, if a Force Majeure Event occurs, the affected Party shall, as soon as practicable:

- (a) Notify the other Party of the Force Majeure Event and its impact on performance under this Agreement; and
- (b) Use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations hereunder.

13. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

14. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the CITY:

Cleve Morris, City Manager
City of Placerville
3101 Center St.
Placerville, Ca. 95667

If to SP+:

Victor Alistar
SP+ Parking Service
520 Capitol Mall, Skuite B3
Sacramento, Ca. 95814

15. GOVERNING LAW.

The laws of the state of California shall govern this Agreement. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

16. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

17. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

18. ENTIRE AGREEMENT.

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

19. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

“CITY”

[City of Placerville]

A Municipal Corporation

By: _____
Name: Cleve Morris
Title: City Manager

“SP+”

[SP+ Parking Services]

By: _____
Name: Victor Alistar
Title: Regional Manager

EXHIBIT A

DUTIES, SPECIFICATIONS, AND COMPENSATION

DUTIES. SP+ will perform the following services.

1. Services to be provided by SP+
 - A. SP+ shall provide full and/or part time personnel, Parking Enforcement Agents, hereby referred to as (PEA's), to patrol designated street and off-street parking areas on foot in the downtown area.
 - B. SP+ will provide parking enforcement services six days a week with a random "ghost day" with one PEA from 8:00 a.m. to 7:00 p.m., and one PEA from 11:00 a.m. to 2:00 p.m. to patrol the areas described in 1-C below.
 - C. PEA's shall patrol on foot and monitor the 200-500 blocks of Main Street, Stagecoach Alley, Old Canal Street and Pacific Street from Main St. to Sacramento St. PEA's shall patrol on foot and monitor the off-street facilities identified as Small Center Street Lot, Town Hall Lot, Mooney Lot, Milton Lot, Tetrault Lot, Fox Lot, Ivy House Lot, Center Street Parking Structure, and Old City Hall Lot.
 - D. PEA's shall monitor the paid status of parked vehicles. PEA's shall issue citations to overtime, unpaid, or other parking violators and vehicles parked in violation of the Placerville Municipal Code.
 - E. PEA's shall patrol leased parking areas in above stated parking facilities and enforce OWNER leased parking regulations.
 - F. SP+ will provide uniforms for personnel to make them visible and recognizable as PEA's
 - G. SP+ will be responsible for recruitment, background checks, screening, training, supervision, payroll, and administration of all personnel of SP+.
 - H. SP+ will make available to OWNER all pre-employment applications and background checks of any SP+ employee applicant. OWNER may review said documents and interview applicants. SP+ will take into consideration any concerns CITY may have with regard to any SP+ employment applicant.

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- I. SP+ shall collect, account for, all cash receipts from off-street parking pay stations in above stated locations on a weekly basis. SP+ shall deposit said cash receipts with a summary by lot and monetary denomination with the City's Finance Department on a weekly basis.
 - J. SP+ will provide and maintain office supplies and equipment; to include typical office supplies necessary to operate management duties and equipment including computer, printer, fax and scanner as necessary.
 - K. City will provide one (1) or two (2) hand held computer (smart phone) and related operating service to enter and retrieve information pertaining to vehicle identification and parking status, and printing of citations. City will be responsible for payments, communications with company providing the smart phone and parking enforcement software application and its related service and maintenance. If any additional units or upgrades to smart phone and software application is desired by OWNER, such upgrades or additions can be negotiated at an extra cost.
 - L. SP+ will operate existing payment collection machines in the patrol areas on a daily basis and perform basic repairs such as clearing paper jams. SP+ will monitor and replace paper supplies in payment collection machines but will NOT be responsible for cost of said paper supplies. SP+ will communicate with OWNER personnel and CALE America regarding use and maintenance of said machines however SP+ will NOT be responsible for any operational repairs and/or costs for maintenance and repairs to said machines.
 - M. SP+ will communicate with a citation processing company agreeable to CITY, providing citation reports, voids, and other documentation necessary to process citation fees and penalties. SP+ will NOT be responsible to make any payment to any citation processing company for its services as SP+ understands said company(s) receives payment for their service directly through the collection of citation fees prior to payment to CITY.
 - N. SP+ will note any unsafe or unsightly conditions in patrol areas and report any such conditions to OWNER in a timely manner.
 - O. SP+ shall invoice the owner on a monthly basis in arrears.

2. CITY to provide to/for SP+ to aide in performance of above stated services.

- A. CITY to provide office/desk space for SP+ to administer and manage the services listed in this agreement.
- B. CITY to provide one phone line service with phone number to match contact number listed on parking information signage.
- C. CITY to provide Internet access for use by SP+ in the performance of services listed in this agreement.
- D. CITY to administer and manage leased parking permit issuances.
- E. CITY to provide to SP+ any information as is reasonably required to perform the services described in this agreement.
- F. CITY to be responsible for expense of receipt paper products of the payment collection machines, citation paper for the hand held computer, and citation envelopes used to deliver citations to parking patrons.

A. **(Optional) SPECIFICATIONS.** The Parties agree to the following additional specifications about the [work][services] to be provided:

B. COMPENSATION.

Year 1: As full compensation for the Services rendered pursuant to this Agreement, the CITY shall pay SP+ the sum of Eight Thousand Four Hundred Forty Seven Dollars and 67 Cents [\$8,447.67] per month for the term of the contract. Amount to be paid monthly at the first of each month upon presentation of invoice.

Year 1: As full compensation for the Services rendered pursuant to this Agreement, the CITY shall pay SP+ the sum of Eight Thousand Four Hundred Forty Seven Dollars and 75 Cents [\$8,526.75] per month for the term of the contract. Amount to be paid monthly at the first of each month upon presentation of invoice.

[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: _____

CITY [City of Placerville]

By: _____

Name: M. Cleve Morris

Title: City Manager

SP+ [SP+ PARKING SERVICES]

By: _____

Name: Ed Frost

Title: owner