

FIRST AMENDMENT TO THE AGREEMENT FOR AIRPORT PARKING GARAGE AND SURFACE LOT MANAGEMENT SERVICES BETWEEN THE CITY OF SAN JOSÉ AND SP PLUS CORPORATION

This First Amendment to the Agreement by and between the City of San José (hereinafter “City”), a municipal corporation, and SP Plus Corporation, a Delaware corporation registered to conduct business in the State of California, (hereinafter “Contractor”), is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on October 29, 2019, the City Council authorized the City Manager to negotiate and execute an agreement with SP Plus Corporation for a two-year initial term with three (3) one-year options to extend; and

WHEREAS, on October 31, 2019, City and Contractor entered into an agreement entitled “Agreement for Airport Parking Garage and Surface Lot Management Services” (“Agreement”) with an Initial Term beginning December 1, 2019 through November 30, 2021; and

WHEREAS, City and Contractor now wish to amend the Agreement to correct a typographical error on option dates in Section 2 and add additional provisions for counterparts, electronic signatures, and wage theft;

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

SECTION 1. Section 2 of the Agreement, entitled “Term of Agreement,” Subsection 2.2 entitled “Options to Extend” is hereby amended to read as set forth below:

2.2 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to one (1) additional fourteen-month period through January 31, 2023 and then two (2) additional twelve-month periods through January 31, 2025 (“Option Periods”). City shall provide Contractor prior written notice in the form of Exhibit F of its intention to exercise its option prior to the end of the then current term.

SECTION 2. Section 30, entitled “Miscellaneous,” is hereby amended to add Subsections 30.5 entitled “Counterparts” and 30.6 entitled “Use of Electronic Signatures” as set forth below:

30.5 Counterparts

This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to

be an original and all of which taken together shall constitute one and the same instrument.

30.6 Use of Electronic Signatures

Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

SECTION 3. The Agreement is hereby amended to add Section 31 entitled, “Wage Theft Provisions,” as set forth below:

31 **Wage Theft Provisions**

31.1 **Definition:** For purposes of this provision, “Wage Theft” means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is "final" if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.

31.2 **Compliance with Wage and Hour Laws:** The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.

31.2.1 **Representations in Wage Theft Disclosure Certification Forms:** The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.

31.2.2 **Contractor Warranty:** By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.

31.2.3 **Listed Subcontractors:** The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:

31.2.3.1 Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement,

- 31.2.3.2 Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
- 31.2.4 **Termination of Subcontractor:** The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.
- 31.3 **Subcontractors Not Listed:** Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within ten (10) calendar days of executing the subcontract.
- 31.3.1 The Contractor cannot use any subcontractor that has one or more Wage Theft violations, or has one (1) outstanding, unpaid Wage Theft violation, within five (5) years before the date it certified the Wage Theft Disclosure Certification Form.
- 31.3.2 The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.
- 31.4 **Occurrence or Discovery of Wage Theft:** The Contractor must notify, in writing, the City's Office of Equality Assurance no more than fifteen (15) calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.
- 31.4.1 **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five (5) calendar days of doing so.
- 31.4.2 **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five (5) calendar days of doing so.

- 31.4.3 **City’s Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.
- 31.4.4 **Material Breach:** Failure to comply with any part of this Section 33 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- 31.4.5 **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 28 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective name below.

City of San José (“City”)
a municipal corporation

SP Plus Corporation (“Contractor”)
a Delaware Corporation

By: _____
× Jennifer Cheng
Jennifer Cheng (11/23/2021)
 Email: jennifer.cheng@sanjoseca.gov
 Jennifer Cheng
 Deputy Director, Finance

By: _____
× Jason Finch
jfinch@spplus.com (11/23/2021)
 Email: jfinch@spplus.com
 Jason Finch
 Senior Vice President

APPROVED AS TO FORM:

By: _____
× Diana Yuan
Diana Yuan (11/23/2021)
 Email: diana.yuan@sanjoseca.gov
 Diana Yuan
 Deputy City Attorney

By: _____
× James C. Burdett
jburdett@spplus.com (11/23/2021)
 Email: jburdett@spplus.com
 James C. Burdett
 Assistant Secretary