C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

February 25, 2014

From: David S. Freeman, AICP Director of General Services

Subject: Acceptance of Bid for a Parking Agreement in the Boush Street Garage

Reviewed: Sabrina Joy-Hogg, Assistant City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: IB-1

I. **Recommendation:** Accept Highest Bid from a Responsible Bidder and Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an Ordinance accepting a bid for a Parking Agreement in the Boush Street Garage, which was initiated by the developer with the intent of providing parking for resident tenants in the building located at 120 Brooke Avenue. The Boush Street Garage has sufficient available capacity to accommodate the 136 parking spaces required by this agreement

IV. **Analysis**

As stated above, sufficient capacity is available in the Boush Street Garage to accommodate the potential demand of up to 136 total spaces. The term of the parking agreement would be ten (10) years to commence on the date the last Certificate of Occupancy is issued for the use of the building to be used by the benefactors of this agreement. Because the term is in excess of five (5) years, the proposed lease must be bid in accordance with the requirements of section 15.2-2100 of the State Code.

V. **Financial Impact**

Under this Parking Agreement, the City would provide a maximum of 136 unreserved parking spaces in the Boush Street Garage at the monthly rate charged for 24/7 residential parking (currently $50.50 per space). The potential revenue to the Parking Fund could be as high as $82,500 per year or potentially as high as $825,000 over the life of the agreement. The rates charged are subject to future rate adjustments.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VI. Environmental

N/A

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, legal notice was posted in *The Virginian-Pilot*. In addition, public notification for the agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of General Services, Department of Development and the City Attorney's Office.

Supporting Material from the Department of General Services:

- Ordinance
- Lease Agreement

2/5/2014-km

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG TERM GARAGE PARKING AGREEMENT, WITH A TERM OF TEN YEARS, FOR RESIDENTIAL PARKING IN THE BOUSH STREET GARAGE.

- - -

WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a long term garage parking agreement with a term of ten years, subject to certain terms and conditions, for residential parking in the Boush Street Garage; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That _____, being the highest responsible bidder, its bid for a long term garage parking agreement, with a term of ten years, in accordance with the terms and conditions set forth in Exhibit A attached hereto, for residential parking in the Boush Street Garage, is hereby accepted.

Section 2:- That pursuant to Section 15.2-2104 of the Code of Virginia, 1950, as amended, the Council has determined that a bond in the sum of $0 shall be executed

in favor of the City of Norfolk.

Section 3:- That the City Manager is authorized to execute a Garage Parking Agreement, containing the terms and conditions set forth in Exhibit A, on behalf of the City of Norfolk and to do all things necessary and proper to carry out its terms.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A

TERMS AND CONDITIONS OF PROPOSED LONG TERM GARAGE PARKING AGREEMENT

1. PROVISION OF PARKING.

During the Term of this Agreement, the City shall provide Lessee parking in the Boush Street Garage ("Garage") subject to the following conditions:

(a) Parking capacity in the Garage of one hundred thirty-six (136) parking spaces (the "Maximum Allocated Amount") will be made available by the City to be set aside exclusively to Lessee to provide long term residential parking for the benefit of Lessee and Lessee's tenants pursuant to this Agreement. The parking spaces leased by Lessee pursuant to this Agreement shall be unreserved.

(b) Any of the parking capacity in the Garage that has not been designated for allocation to the Lessee may be made available by City to the general public (including the Lessee's guests) for transient parking on a non-exclusive, unreserved, first-come, first-served, open occupancy basis. Lessee specifically understands that maximum utilization of all parking spaces is extremely important to City, and Lessee covenants to do all things reasonably necessary to permit City to obtain such maximum utilization. On any given day, City shall have no obligation to make available to Lessee or Lessee's tenants any parking in excess of the Maximum Allocated Amount.

(c) Subject to paragraph (e) below, the City shall charge Lessee $_____, per month ("Parking fee") for each of the parking spaces leased. Lessee shall not permit any parking spaces that are leased for Lessee's tenant parking to be used for any other purpose without the express consent of the City. In the event such consent is given, Lessee shall obtain the necessary Parking Permit and shall pay the standard, residential parking rate for any such parking space. Guests of Lesses's tenants shall obtain Guest Parking Permits through the City's Parking Division at the standard, residential parking rate set by the City Council.

(d) The Term of City's obligation to provide parking under this Agreement shall commence on the date the last Certificate of Occupancy is issued for the use of the building to be used by Lessee's tenants ("Lessee's Building") as a residential building, and shall terminate on that date which is ten (10) years after the commencement date. A memorandum of this Agreement may be recorded in the land records of the City of Norfolk, Virginia, and the City agrees to execute and deliver to Lessee any such memorandum that accurately reflects the terms of this Agreement. Lessee may terminate this Agreement at any time by giving City not less than thirty (30) days prior written notice. Lessee may, at any time, lower the number of leased spaces with thirty (30) days' notice to City and to Lessee's lender, if any.

(e) As of the date of this Agreement, the Parking Fee for the parking spaces leased to Lessee is at the rate of $_____ per month per unreserved space per month. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Parking Fee may be increased from time to time by written notice from the City to Lessee in amounts proportionate

to rate increases enacted by the City Council of the City of Norfolk; however, the City agrees that such rates shall not exceed the standard rates charged to other downtown residents of the City.

(f) Lessee may not charge Lessee's tenants any parking related fees in excess of those established by the City.

(g) Lessee agrees to cooperate in all reasonable respects with the City and use such systems as the City may reasonably adopt from time to time, after consulting with Lessee, in order to track actual use of parking spaces and the number of vehicles parked in the Garage, so long as such systems are generally consistent with those used in other comparable City owned garages to track similar uses of parking. Lessee agrees to, and agrees to cause its agents, employees and contractors to, use good faith in the use and administration of any such tracking systems in order to insure that each vehicle parked in the Garage through the Project-validated guest self-parking is accounted for pursuant to the terms of this Agreement. Lessee acknowledges and agrees that attempts by Lessee, its agents, employees or contractors to circumvent such tracking systems and park additional vehicles without payment therefor may constitute grounds for termination of this Agreement.

2. OPERATION AND USE.

(a) The City or its designated operator shall continue to operate the Garage with all services and facilities normally associated with comparable public parking areas in the City of Norfolk.

(b) The City shall allow unimpeded and open access to Lessee's tenants to and from the Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays.

(c) In addition to the parking spaces leased to Lessee, other parking spaces will be available on a non-exclusive, unreserved, self-parking, first-come, first-served, open-occupancy basis subject to such short-term and daily rates as the City establishes.

(d) Upon giving reasonable notice to Lessee, the City or its designated operator may restrict access to the Garage for the performance of necessary repairs or maintenance and such repairs or maintenance shall be completed as quickly as reasonably possible. If requested by Lessee, the City will provide replacement parking during such maintenance and repairs at other parking facilities owned by the City, and such facilities will be located as conveniently to Lessee's Building as reasonably possible.

(e) Use of the Garage by Lessee, its tenants, agents, employees, contractors and guests shall be subject to such reasonable rules and regulations as the City may adopt from time to time. The City shall reasonably and equitably enforce such rules and regulations.

3. MAINTENANCE AND REPAIR.

(a) The City shall continue to maintain the Garage, or contract for the maintenance thereof, at all times in good order and condition, clean and free of rodents, in accordance with maintenance standards employed at comparable public parking areas in the City

of Norfolk, so that the Garage shall comply with all building codes, ordinances, regulations, and laws of any governmental authority having jurisdiction thereof. The City shall be responsible for maintenance and repair of the Garage and shall pay all charges for water, sewer, gas, electricity and other utilities. The term "maintenance" shall include, but not be limited to, painting, operation, inspection, testing, repair, replacement of mechanical, electrical or similar components and/or cleaning the Garage, including any of its elevators and appurtenant facilities.

(b) In the event of any damage or destruction of all or any portion of the Garage, the City shall undertake promptly to repair or rebuild the Garage to provide as promptly as reasonably possible after the date of such damage or destruction, the Maximum Allocated Amount of parking. During the period of any such repair or rebuilding, the City shall provide replacement parking as provided by paragraph 2(d).

(c) The City shall provide and maintain interior and exterior illumination sufficient to illuminate the Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, between twilight and one hour after dawn.

(d) The City shall provide suitable and sufficient signs in and around the Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate entrances and on any general directories provided by the City in the Garage.

(e) The City shall have the right to make and complete, using high quality workmanship and materials, such replacements, repairs, alterations and improvements to the Garage as it deems necessary or desirable in connection with the aforementioned usage consistent with applicable zoning laws. During the period of such replacements, repairs, alterations and improvements, the City shall provide replacement parking as provided by paragraph 2(d).

(f) In performing maintenance, the City shall use reasonable efforts to interfere as little as possible with the use, occupation and enjoyment of the Garage by Lessee. If possible, maintenance shall be confined to the area actually being so maintained.

4. TAX LIABILITY.

The provisions of this Agreement shall not be deemed to require Lessee to pay, by whatever name called, income or receipts or excess profits taxes assessed against the City, or any capital levy, rent, gift or transfer taxes incurred by the City, pertaining to the ownership or operation of the Garage.

5. TITLE TO PROPERTY

The City covenants that it has full right to enter into this Agreement as of the date hereof and the City is or will be seized in fee simple of and have good and marketable title to the Property and any improvements thereon, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent the City from performing its obligations hereunder.

6. INTEREST; ATTORNEYS' FEES.

If Lessee fails to pay the City any amounts payable under this Agreement when due, following receipt by Lessee of notice thereof from the City, such past-due payments shall bear interest from the date due until paid at the rate of six percent (6%) per annum. In addition, Lessee shall pay all reasonable out-of-pocket costs and expenses of collection (including court costs and reasonable attorneys' fees) incurred by the City in collecting sums due under this Agreement.

7. INSURANCE; LIABILITY.

The City shall not be liable to Lessee or Lessee's tenants, employees, agents or contractors for any injury, damage, compensation or claim directly or indirectly relating to or arising out of any use of the Garage by Lessee tenants, employees, agents or contractors unless such injury, damage, compensation or claim results from the City's gross negligence or willful misconduct.

8. ASSIGNMENT AND LEASING.

(a) Lessee may not assign this Agreement, in whole or in part, or lease all or any part of the Maximum Allocated Amount of parking provided in the Garage for Lessee's tenants, except to (i) a purchaser of Lessee's Building in the event of a sale thereof (ii) an Affiliate of Lessee, (iii) any lender as collateral for financing or (iv) any purchaser at a foreclosure sale, transferee pursuant to a deed in lieu of foreclosure, or any receiver appointed for the property. It shall be a condition of any such assignment that Lessee's Building shall continue to be used for residential purposes. In the event Lessee's Building ceases to be used for residential purposes, the City may terminate this Agreement at any time. For purposes hereof, "Affiliate" shall mean as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to vote more than 50% of the voting stock or membership interests of such person or to direct or cause the direction of the management and policies of such person, whether through the ownership of voting stock or membership interests, or by contract or otherwise. The City agrees to enter into any agreement reasonably requested by any lender or prospective lender to confirm that the assignment of this Agreement to the lender is permitted and to agree to give such lender notice of Lessee's default and a reasonable opportunity to cure such default.

9. NOTICES.

All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City:

Marcus D. Jones, City Manager
City of Norfolk, Office of the City Manager
1100 City Hall Building
810 Union Street
Norfolk, VA 23510

with copies to:

Director of General Services
232 East Main Street, Suite 250
Norfolk, Virginia 23510

Director of City Planning
500 City Hall
810 Union Street
Norfolk, Virginia 23510

Bernard A. Pishko, Esq., City Attorney
Office of the City Attorney
900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

To Lessee:

with a copy to:

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

10. TERMINATION.

In the event Lessee violates any provision of this Agreement or defaults in any of its obligations hereunder, the City may terminate this Agreement if Lessee fails to cure such violation or default within thirty (30) days after Lessee's receipt of written notice of the violation or default. The City agrees to give a simultaneous duplicate notice of default to any of Lessee's lenders for which Lessee has provided the City a notice address. Lessee shall have the right to terminate this Agreement at any time by giving the City ninety (90) days written notice prior to the effective date of the termination.

11. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by the City and Lessee.

12. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

At all times during which any term of this Agreement is in effect, Lessee shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

13. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.

Lessee hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

14. MISCELLANEOUS.

(a) The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who shall be only those persons to whom this Agreement is permitted to be assigned in accordance with the terms and conditions of such agreement. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

(b) In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

(c) This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the City of Norfolk, Virginia.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.