



To the Honorable Council
City of Norfolk, Virginia

November 24, 2020

From: Nikki Riddick
Director of General Services

Subject: Bid - Long Term Parking
Agreement - Fountain Park Garage - 40
parkers

Reviewed:

Catheryn R. Whitesell, Deputy City
Manager

Ward/Superward: 2/6

Approved:

Dr. Larry H. Filer II, City Manager

Item Number: **IB-1**

- I. **Recommendation:** Receive bids and continue the item so all bids can be reviewed.
- II. **Applicant:** City of Norfolk
- III. **Description:**
This agenda item is an ordinance to accept a bid for a long-term garage parking agreement with a ten (10) year term for forty (40) parking spaces in the Fountain Park Garage located at 130 Bank Street.
- IV. **Analysis:**
This request is for a long-term parking agreement in the Fountain Park Garage for a term of 10 years.
- V. **Financial Impact:**
The approved residential parking rate for garages in the City Code is 60 percent of the unreserved 24 hour/7 day a week non-residential garage rate. This ordinance ensures that the tenant pays at least the residential rate established by City Council throughout the term of the agreement.
- VI. **Environmental:**
N/A

VII. **Community Outreach/Notification:**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. **Board/Commission Action:**

N/A

IX. **Coordination/Outreach:**

This letter and ordinance have been coordinated with the Department of General Services and the City Attorney's Office.

Supporting Material:

- EX A-TERMS CONDITIONS-10 yrs-40 parkers-FPG-v.1 (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:



By: _____
Office of the City Attorney

By: _____
DEPT. General Services

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG TERM GARAGE PARKING AGREEMENT, WITH A TERM OF TEN (10) YEARS, FOR THE LEASE OF UP TO FORTY (40) PARKING SPACES IN THE FOUNTAIN PARK GARAGE LOCATED AT 130 BANK STREET IN THE CITY OF NORFOLK, VIRGINIA AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE GARAGE PARKING AGREEMENT ON BEHALF OF THE CITY.

- - -

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 (10) years, for the lease of up to forty (40) parking spaces in the Fountain Park Garage located at 130 Bank Street in the City of Norfolk, Virginia; and

WHEREAS, _____ (the "Bidder") submitted its bid for a long term garage parking agreement, with a term of ten (10) years, for the lease of up to forty (40) parking spaces in the Fountain Park Garage located at 130 Bank Street in the City of Norfolk, Virginia, and was found to be the highest responsible bidder; 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 (10) years, for the lease of up to forty (40) parking spaces in the Fountain Park Garage located at 130 Bank Street in the City of Norfolk, Virginia, generally in accordance with the terms and conditions set forth in Exhibit A attached hereto, is hereby accepted.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Garage Parking Agreement, containing the terms and conditions set forth in Exhibit A, as he may deem necessary in order to carry out the intent of the Council and to execute the Garage Parking Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

Attachment:

Exhibit A - Garage Parking Agreement (6 pages)

EXHIBIT A**TERMS AND CONDITIONS OF GARAGE PARKING AGREEMENT****1. PROVISION OF PARKING.**

(a) The City hereby leases to Tenant and Tenant hereby leases from the City parking for forty (40) employees/residents in the Garage (the "Maximum Allocated Amount") pursuant to the terms of this Agreement. The parking spaces leased by Tenant pursuant to this Agreement shall be unreserved and will be available twenty-four (24) hours per day seven (7) days per week.

(b) Upon receipt of written notice from the City, in the sole discretion of the City, all or a portion of the Maximum Allocated Amount in the Garage may be relocated by the City to another garage in the City of Norfolk parking system (the "Substitute Parking Garage"). The City will use its best efforts to relocate the parking spaces to the garage nearest to the Project with availability at the time of such relocation as determined by the City. Thereafter, as space becomes available in the Garage, which shall be determined in the sole discretion of the City and subject to agreements in place as of the date of this Agreement, Tenant shall have the option to relocate its parking in the Substitute Garage back to the Garage. The City shall use its best efforts to provide parking in the Garage and will provide Tenant with written notice of any such availability. Tenant shall have thirty (30) days after receipt of such notice from the City to notify the City if Tenant desires to relocate its spaces in the Substitute Garage back to the Garage, which relocation shall be effective ten (10) business days after receipt of Tenant's acceptance or as otherwise provided in the City's notice of availability. Tenant's failure to accept such spaces within the thirty (30) day period shall serve as a release of any claim Tenant has to such spaces and a termination of this option.

2. TERM.

The term of this Agreement shall be for a period of ten (10) years, shall commence on _____ (the "Commencement Date"), and shall expire, unless sooner terminated in accordance with the terms of this Agreement, on _____ (the "Term").

3. RENT.

Except as otherwise set forth herein, Tenant shall pay rent for the each of the parking spaces leased hereunder at a rate equal to _____.

4. USE; REDUCTION IN NUMBER OF SPACES; EARLY TERMINATION.

(a) Tenant may, at any time, lower the number of parking spaces leased pursuant to this Agreement with thirty (30) days' prior written notice to City, and, thereafter, the Maximum Allocated Amount shall be decreased to the number of parking spaces then being leased, the rent payable hereunder shall be reduced to reflect to the reduced Maximum Allocated Amount, and the Maximum Allocated Amount may not then be increased. City shall have no obligation to make available to Tenant any parking in excess of the then current Maximum Allocated Amount.

(b) Tenant may terminate this Agreement at any time by giving City not less than thirty (30) days' prior written notice.

(c) Tenant shall not permit any parking spaces that are leased hereunder to be used for any purpose other than as parking for tenants of the Property.

(d) Tenant specifically understands that maximum utilization of all parking spaces is extremely important to City, and Tenant covenants to do all things reasonably necessary to permit City to obtain such maximum utilization.

(e) Tenant may not charge for use of the parking spaces leased hereunder any amount in excess of the monthly parking rate payable pursuant to this Agreement or any other parking related fees in excess of those established by the City.

(f) Tenant agrees to cooperate in all reasonable respects with the City and use such systems as the City may reasonably adopt from time to time 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. Tenant 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 ensure that each vehicle parked in the Garage is accounted for pursuant to the terms of this Agreement. Tenant acknowledges and agrees that attempts by Tenant, 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.

(g) Use of the Garage 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.

5. **OPERATION, MAINTENANCE AND REPAIR.**

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

(b) Except as otherwise set forth herein, City shall allow unimpeded and open access to and from the Garage at all times, twenty-four (24) hours per day, seven (7) days per week, including holidays.

(c) The City shall 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.

(d) In the event of any damage or destruction of all or any portion of the Garage, the City, at its option, shall undertake to repair or rebuild the Garage to provide, as promptly as

reasonably possible after the date of such damage or destruction, the then current Maximum Allocated Amount of parking. During the period of any such repair or rebuilding, the City shall provide replacement parking at other parking facilities owned by the City, and such facilities will be located as conveniently to the Property as possible and, if available, shall be a covered facility. If the City, in its sole and absolute discretion, chooses not to repair or rebuild the Garage, the City shall provide replacement parking in accordance with this Section 5(d).

(e) 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 (1) hour after dawn.

(f) 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.

(g) The City shall have the right to make and complete 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 5(d).

(h) 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 Tenant. If possible, maintenance shall be confined to the area actually being so maintained.

6. **TAX LIABILITY.**

The provisions of this Agreement shall not be deemed to require Tenant 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.

7. **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 Garage, 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.

8. **INTEREST; ATTORNEYS' FEES.**

If Tenant fails to pay the City any amounts payable under this Agreement when due, following receipt by Tenant 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, Tenant 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.

9. **INSURANCE; LIABILITY.**

The City shall not be liable to Tenant or Tenant'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 Tenant tenants, employees, agents or contractors unless such injury, damage, compensation or claim results from the City's gross negligence or willful misconduct.

10. **ASSIGNMENT AND LEASING.**

Tenant 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, except to (i) a purchaser of the Property in the event of a sale thereof, (ii) an Affiliate of Tenant, (iii) any lender as collateral for financing of the Property or (iv) any purchaser of the Property at a foreclosure sale, transferee pursuant to a deed in lieu of foreclosure, or any receiver appointed for the Property; provided, however, it shall be a condition of any such assignment that the Property shall continue to be used for [residential] purposes. In the event the Property 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 fifty percent (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.

11. **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:

City Manager
 City of Norfolk
 Office of the City Manager
 810 Union Street
 1101 City Hall Building
 Norfolk, VA 23510

with copies to:

Director of Parking
230 East Main Street
Norfolk, Virginia 23510

and:

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

To Tenant:

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.

12. **TERMINATION.**

In the event Tenant violates any provision of this Agreement or defaults in any of its obligations hereunder, the City may terminate this Agreement if Tenant fails to cure such violation or default within thirty (30) days after Tenant’s receipt of written notice of the violation or default. Tenant agrees to provide a copy of any notice of default received from the City to its lenders within three (3) business days of its receipt of any notice of default. Tenant shall have the right to terminate this Agreement at any time by giving the City thirty (30) days’ written notice prior to the effective date of the termination.

13. **ENTIRE AGREEMENT; RELEASE.**

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 Tenant. The Tenant hereby releases any claims or causes of action it may have under any prior agreement, written or oral, with respect to parking in the Garage.

14. **COMPLIANCE WITH FEDERAL IMMIGRATION LAW.**

At all times during which any term of this Agreement is in effect, Tenant 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.

15. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.**

Tenant hereby represents that it is organized as a _____ 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.

16. **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 state courts in the City of Norfolk, Virginia.

(d) This Agreement or 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 Tenant any such memorandum that accurately reflects the terms of this Agreement.

(e) 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.