

**Meeting Date:** 8/19/2014

**Report Type:** Consent

**Report ID:** 2014-00518

**Title:** Lot D Parking and Operations Management Agreement

**Location:** 12th and I Streets, District 4

**Recommendation:** Pass a Motion authorizing the City Manager to execute a two-year agreement with two, two-year renewal options, with JB Company Management L.P. to manage and operate the surface parking lot located at 12th and I Streets and commonly known as Lot D.

**Contact:** Matt Eierman, Parking Services Manager, (916) 808-5849; Jerry Way, Director of Public Works, (916) 808-7100, Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:** Off-Street Parking Admin

**Dept ID:** 15001211

**Attachments:**

1-Description/Analysis

2-Background

3-Agreement

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**City Attorney Review**

Approved as to Form

Gerald Hicks

8/7/2014 4:20:15 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 8/4/2014 9:34:46 AM

## Description/Analysis

**Issue Detail:** Since November 2000, the City of Sacramento has leased the property located at the corner of 12<sup>th</sup> and I Streets from JB Company Management, L.P. The City developed a surface parking lot on the property, commonly known as Lot D, and continues to operate and maintain it.

The current lease is due to expire August 31 and both parties would like to enter into a parking operations and management agreement whereby the City will operate the lot on behalf of JB Management. The term of the proposed agreement will be two years with two, 2-year renewal options. At the end of the agreement, ownership of the parking lot improvements will transfer from the City to JB Management.

**Policy Considerations:** This recommendation supports the Central City Parking Master Plan goal to make parking safe, secure, attractive and convenient.

**Economic Impacts:** None

### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This lease is exempt from CEQA under Section 15301 “Operation of existing public structures or facilities involving no expansion of use.”

**Sustainability Considerations:** This action supports the City of Sacramento’s sustainability goals to improve and optimize the transportation infrastructure.

**Other:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** In 2000, the City of Sacramento leased the property located at the corner of 12<sup>th</sup> and I Streets from JB Company Management, L.P. At the time, the lot was unimproved, and the City spent approximately \$182,000 on paving, lighting, and other improvements to convert it to a surface parking lot, which is now commonly known as Lot D.

The current lease expires August 31. Under terms of the previous lease agreements, the City retained ownership of all improvements it made to Lot D and was required to remove them upon expiration of the lease. JB Management, however, would like to keep those improvements and continue operating it as a surface lot. To reimburse the City for the parking lot improvements, both parties have agreed to enter into a parking operations and management agreement at the end of which ownership of the improvements will transfer to JB Management.

The term of the proposed agreement is two years with two, 2-year options to extend the term. At the end of the agreement, ownership of all parking lot improvements, except for pay stations, will transfer from the City to JB Management. If the City decides not to exercise either renewal option, then ownership of the City’s improvements, except for pay stations, will transfer to JB Management. In the event JB Management declines the City’s request to extend the term with the intent to use a different operator, it will reimburse the City the amount of revenue the City would have earned over the entire six years of the agreement based on the average amount of annual income collected during the realized years of the agreement. JB Management may

decline to renew the agreement in favor of developing the site for non-parking uses, in which case the City-owned improvements will transfer to JB Management.

**Financial Considerations:** Each month, JB Company Management will pay the City \$1,500 to manage Lot D. The City will also collect \$150 per month as reimbursement for the depreciation of the city-owned pay machines. If the average monthly revenue is above \$10,000 (\$120,000 per year) the City will earn an additional 5% of gross revenues.

The City will retain all citation revenue collected from patrolling the lot, and it will not be included in the calculation for average monthly revenue.

**Local Business Enterprise Program (LBE):** There are no LBE considerations associated with the requested action.

## **Background**

In November 2000, the City entered into lease agreement 2000-175 with JB Management for the purpose of building and operating a surface parking lot on JB Management's property located at 12<sup>th</sup> and I Streets. The term expired on February 8, 2008. Rent during the lease was \$4,000 per month.

The parking lot that was constructed at the 12<sup>th</sup> and I Street location is commonly known as "Lot D" and has 110 parking spaces. The construction contract for the parking lot was for a not-to-exceed amount of \$182,125.

On April 3, 2008 the City and JB Management executed an amendment to the lease, extending the term to month-to-month with a 30-day right to terminate by either party. Rent during the amendment period was \$4,200 per month.

On April 1, 2013 both parties signed a new, one-year lease agreement for \$8,333 per month. This agreement has subsequently been amended to extend the term while the new parking operations management agreement is negotiated.

## PARKING OPERATIONS MANAGEMENT AGREEMENT

This Parking Operations Management Agreement (“Agreement”) is made and entered into on September 1, 2014 (“Effective Date”), by and between the City of Sacramento (“City”) and JB Company Management, L.P. and Gately Enterprises, LLC (“collectively Owner”).

1. **LOT**—The term “Lot” refers to the real property at 12<sup>th</sup> and I Streets, as identified in the map attached as Exhibit A.
2. **IMPROVEMENTS**—All Improvements on the Lot are owned by City. Improvements include, but are not limited to asphalt and striping, parking signs, planters, landscaping, pay stations and irrigation. Ownership of the Improvements, with the exception of the pay stations (which shall remain the property of the City), will transfer to Owner at the expiration of the Agreement, subject to the following terms and conditions.
3. **TERM**— This Agreement is for an Initial Term of two (2) years from the Effective Date. City has two, 2-year options (“Option”) to extend this agreement by providing Owner written notice of its intent to exercise the option, no more than 120 days, and no less than 90 days before the expiration of the term in effect at the time of the notice. In the event that Owner declines City’s written notice, it shall specify in a written notice to City whether it intends to develop the Lot or to change parking management and continue to operate the Lot.
  - a. If City declines to exercise the first Option, ownership of the Improvements transfers to Owner at the expiration of the Initial Term; if City declines to exercise the second option, ownership of the Improvements transfers to Owner at the expiration of the First Option.
  - b. If Owner rejects City’s written notice to exercise either Option for the purpose of changing parking management, Owner must pay City an amount equal to the net income the City would have earned over the remainder of the 6-year agreement. This amount will be based on the average net income earned by the City over the time it managed the Lot during this Agreement, but not including any depreciation fee, and be paid to City no later than 30 days after receipt of Owner’s notice to change parking management. If Owner does not respond to City’s written notice to exercise either Option within 30 days of receipt of City’s request, then the City must give Owner a second written notice, and if Owner fails to respond thereto within 15 days, then City’s written notice is deemed accepted.
  - c. If Owner rejects City’s written notice to exercise either Option for the purpose of developing the Lot for non-parking uses, ownership of the Improvements, excepting the pay stations, will transfer to Owner at the end of the current term so long as the Lot is not used for paid parking operations other than by

tenants of a completed development on the Lot. If Owner does use the Lot for paid parking operations at any time within six years after the Effective Date, ownership of the Improvements, excepting the pay stations, will transfer to Owner at the end of the then current term, after Owner pays City an amount equal to the income the City would have earned from the date City last operated the lot through the end of the sixth anniversary of the Effective Date. This amount will be based on the average income earned by the City over the time it managed the Lot during this Agreement, and be paid to City no later than 30 days after receipt of Owner's notice to change parking management.

- 4. PURPOSE**—The Lot shall be used solely and exclusively for the operation of a parking lot. Any change in use to all or a portion of the Lot shall be mutually agreed upon in writing by both parties, except for owner's decision to develop the Lot for other than paid parking use of tenants located on the Lot, which shall be in the sole and absolute discretion of Owner.

**5. COMPENSATION AND MANAGEMENT FEE**

- a. Beginning on the Effective Date of this Agreement, all amounts collected in connection with the operation of the Lot ("Revenue"), shall be used to offset Operating Expenses (as defined below). "Monthly Net Revenue" shall be "Monthly Revenue" (as defined below) minus "Monthly Operating Expenses" (as defined below).
- b. For purposes of this Agreement "Monthly Revenue" means the total amount of cash receipts generated from all business operations conducted upon or from the Lot, during any one calendar month this Agreement is in effect, without any type of deduction. Revenue collected from the issuance of parking citations and further described in section 7 is not included in the calculation of "Monthly Revenue."
- c. For purposes of this Agreement "Operating Expenses" means all expenses incurred in connection with the operation and maintenance of the Lot. All operating expenses are the responsibility of Owner and will be deducted from Monthly Revenue as described in this section, City will pay agreed upon expenses on Owners behalf from Monthly Revenue.
- d. "Monthly Operating Expenses" as used herein shall mean Operating Expenses incurred or attributed for any particular calendar month.
- e. The City shall be responsible for collecting all Revenue, performing billings and collecting accounts receivable in relation to City's operation of the Lot. All Revenue will be deposited in a City account and City will keep full and accurate accounting records, which upon demand at the sole cost of Owner, may be audited. If the audit uncovers a discrepancy of 15% or above, City will reimburse owner the full cost of the audit. The City shall have the right to review and respond to audit prior to any reimbursement due to owner.

- f. Each month, City will calculate the Monthly Net Revenue and the “Monthly Owner Proceeds,” which term means Monthly Net Revenue minus the Monthly Management Fee and the Depreciation Fee (defined below), for the immediately preceding month. City shall pay the Monthly Owner Proceeds to Owner within sixty (60) days of the first day of each calendar month in arrears. City shall provide brief details of the income sources in a form reasonably acceptable by Owner.
- g. On or before July 1st of each year during the Term, City shall prepare and submit to Owner, for Owner's review and approval, an operating budget for the next successive year (the “Operating Budget”), which shall include a projection of Revenue and Operating Expenses for the ensuing year.
- h. Owner shall pay City a fee of **One Thousand Five Hundred dollars (\$1,500)** per month, plus any performance incentives earned and described in section 6 (“Monthly Management Fee”). Such fee will be paid from the Monthly Net Revenue, if any. If Monthly Net Revenue is not available or is not sufficient to pay the Monthly Management Fee and/or monthly expenses, City shall notify Owner of the amount of the deficiency as provided for in this Agreement and Owner shall pay City the amount of the deficiency within forty-five (45) days after notice is sent to Owner by City.
- i. In addition to the Monthly Management Fee, Owner shall pay City \$150 per month for depreciation of the pay stations (“Depreciation Fee”)

**6. PERFORMANCE INCENTIVES**—City will act as a parking management company for Owner and will provide Owner advice regarding parking market conditions and best practices for operating the Lot. All calculations in this section will be based on gross revenue and all calculations will be averaged based on the preceding 12 month period.

- In addition to the Monthly Management Fee, if MAB is above \$10,000 (\$120,000 per year) for the current month, then City will earn an additional fee of 5% of gross receipts in excess of \$10,000.

**7. PARKING CITATIONS**—The City at its own expense will add the Lot to its regular patrol coverage and retain all revenue from citations issued to vehicles parked in the Lot.

**8. INDEMNITY**—City shall defend, indemnify and hold harmless Owner, its members, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of City, its officers, directors, agents, employees, volunteers or contractors. Likewise, Owner shall defend, indemnify and hold harmless City, its Council, officers, directors, agents, employees and volunteers from and against

all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Owner, its officers, directors, agents, employees, volunteers or contractors.

It is the intention of City and Owner that the provisions of the aforementioned paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, and contractors. It is also the intention of City and Owner that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, and contractors.

## **9. INSURANCE**

During the entire term of this agreement, Owner shall maintain the insurance coverage described in this Section.

It is understood and agreed by the Owner that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Owner in connection with this Agreement.

### **a) Minimum Scope & Limits of Insurance Coverage**

- I. General Liability Insurance, providing coverage at least as broad as ISO Commercial General Liability Form 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy. Garage liability coverage will be accepted if it meets the coverage requirements for general liability.

### **b) Additional Insured Coverage**

- I. General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects liability arising out of activities performed by or on behalf of Owner, products and completed operations of Owner, and premises owned, leased or used by Owner.

### **c) Other Insurance Provisions—The policies are to contain, or be endorsed to contain, the following provisions:**

- I. Owner's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in

excess of Owner's insurance and shall not contribute with it.

- II. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
  - III. Coverage shall state that Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - IV. City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.
- d) Acceptability of Insurance—Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section must be declared to and approved by the City Risk Management Division in writing.
- e) Verification of Coverage
- I. Owner shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
  - II. The City may cancel this Agreement if the certificates of insurance and endorsements required have not been provided, if the insurance is canceled or Owner otherwise ceases to be insured as required herein.

Owner acknowledges that the City of Sacramento is a self-insured public entity and agrees that City's program of self-insurance fulfills any and all insurance requirements. The City of Sacramento shall provide a letter of self-insurance stating that the City of Sacramento's self-insurance program adequately protects against liabilities and claims arising out of the performance of this agreement.

**10. IMPROVEMENTS**— City, at Owner's expense, shall install and maintain parking pay stations on the Lot. All pay stations will be owned by the City and removed upon the expiration of this agreement.

**11. MAINTENANCE AND REPAIR**—City shall keep and maintain the Lot and all improvements thereon in good repair and in a neat and satisfactory condition, and shall make all repairs and replacements that may become necessary to the Lot, whether structural or nonstructural, ordinary or extraordinary subject to Owner written approval. All notices and signs upon the Lot shall be neat and properly maintained. Owner shall have the right to enter the Lot at all reasonable times to inspect the same.

**12. UTILITIES AND SERVICES**—All charges for water, gas, light, heat, power, electricity, telephone or other communication service, janitorial service, trash pick-up, sewer and all other services supplied to or consumed on the Lot (collectively, "Services") directly related to this parking operation, and all taxes, levies, fees or surcharges therefore shall be the sole responsibility of Owner.

**13. SURRENDER OF LOT**—Upon termination of this Agreement, City, without further notice, shall deliver up to Owner possession of the Lot. City will have thirty (30) days after termination of this Agreement to remove any personal property from the Lot and all pay machines.

**14. NOTICES**—All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail, registered or certified, postage prepaid, or delivered by overnight courier, and addressed to the party to whom the notice is directed at the address set forth below. Either party may change the address for notices or Owner may change the address for payments by giving the other party written notice to that effect.

**ADDRESS FOR NOTICES**

To Owner:

JB Company Management L.P.  
Attn: Gary Benvenuti  
1825 Bell Street, #100  
Sacramento, CA 95825

and

Gately Enterprises, LLC  
Attn: Jim Gately  
1221 66<sup>th</sup> Street  
Sacramento, CA 95819

To City:

Parking Services Division  
Attn: Matthew Eierman, Parking Services Manager  
300 Richards Blvd., 2nd Floor  
Sacramento, CA 95811

**15. TERMINATION OF AGREEMENT**—Owner and City may terminate this Agreement, at any time, by providing the other party written notice no less than sixty (60) days prior to the selected date of termination.

If Owner terminates the agreement pursuant to this paragraph, Owner shall pay City an amount equal to the income the City would have earned over the remainder of the 6-year agreement. This amount will be based on the average

income earned by the City over the time it managed the Lot during this Agreement, but not include depreciation fees, and will be paid to City no later than 30 days after receipt of Owner's notice of termination. If City terminates this Agreement pursuant to this paragraph, then no further compensation is due it, and City will remove Pay Machines within 14 days of termination, and Owner may seek and engage a different parking operator, or operate the Lot for parking itself.

Termination or expiration of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration.

- 16. RELATIONSHIP OF PARTIES**—Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person or court to create the relationship of partnership or of joint venture between Owner and City, and neither the method of computation of fee nor any other provisions contained in this Agreement nor any acts of the parties shall be deemed to create any relationship of owner of real property and holder of a limited agreement to use the same for the purposes set forth herein.
- 17. SUCCESSOR**—The covenants, conditions and agreements contained in this Agreement shall be binding on the parties hereto and on their respective heirs, successors, assigns and legal representatives.
- 18. EXHIBITS**—All exhibits attached to this Agreement shall be deemed to be incorporated herein by the individual reference to each such exhibit, and all such exhibits shall be deemed to be a part of this Agreement as though set forth in full in the body of this Agreement.
- 19. AUTHORITY**—The undersigned parties hereby warrant that they have proper authority and are empowered to execute this Agreement on behalf of Owner.
- 20. CAPTIONS**—The Captions contained in this Agreement are for purposes of convenience only and are not to be used to interpret or construe this Agreement.

[Signatures on following page]

DATED: 7.30.14

DATED: \_\_\_\_\_

OWNER:

JB Company Management, L.P

CITY:

CITY OF SACRAMENTO,  
a Municipal Corporation

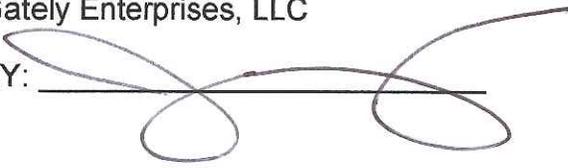
BY: 

BY: \_\_\_\_\_  
Jerry Way, Director of Public Works

Its: G.P.

OWNER:

Gately Enterprises, LLC

BY: 

Its: managing member

APPROVED AS TO FORM:

BY:   
DEPUTY CITY ATTORNEY

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

Exhibit A – Map

EXHIBIT A

Premises to be leased include the following parcel numbers:

- 1) 006-0051-013-0000
- 2) 006-0051-014-0000
- 3) 006-0051-015-0000
- 4) 006-0051-016-0000
- 5) 006-0051-017-0000

