

Submitted by: Mayor Wuerch, /
Prepared by: Department of Law
For reading: October 15, 2002

CLERK'S OFFICE
APPROVED

Date: 10-29-02

ANCHORAGE, ALASKA
AO NO. 2002- 161

AN ORDINANCE AUTHORIZING THE LONG TERM LEASE OF PARKING SPACES IN THE
FIFTH AVENUE PARKING GARAGE BETWEEN THE MUNICIPALITY OF ANCHORAGE,
ANCHORAGE PARKING AUTHORITY, AS LESSOR AND 5TH AVENUE DEVELOPMENT
LLC AS LESSEE.

THE ANCHORAGE ASSEMBLY ORDAINS:


Section 1. The Municipality of Anchorage is authorized to lease parking spaces in the 5th Avenue
Parking Garage to 5th Avenue Development LLC upon the terms and conditions contained in the
agreement submitted herewith.

Section 2. This ordinance shall be effective immediately upon its passage and approval by the
Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 29th day of October,
2002.


Chair of the Assembly

ATTEST:


Municipal Clerk

CONTRACT FOR GROUP RATE PARKING PERMITS

This Contract for Group Rate Parking Permits (the "Contract") is made in this ____ day of October, 2002, by and between ANCHORAGE PARKING AUTHORITY (the "Contractor"), 700 West 6th Avenue, Suite 206, Anchorage, Alaska 99501 and 5TH Avenue development, LLC (Purchaser).

For and in consideration of the payments, covenants and conditions specified herein to be paid, performed and observed by Purchaser, Contractor agrees to sell to Purchaser and Purchaser agrees to buy from Contractor the number of parking permits specified hereafter in the parking garage or permit area designated hereafter, upon the terms set forth hereafter.

1. CONDITION OF IMPLEMENTATION. Implementation of this Contract is effective as of July 1, 2003.

2. PARKING FACILITY/NUMBER OF SPACES. Purchaser agrees to buy from Contractor at least 271 parking permits on a monthly basis in the following facilities:

<u>Spaces</u>	<u>Facility</u>
_____	3 rd & H Street 'Central' Lot
_____	3 rd & E Street 'Lower Bowl' Lot
_____	A & C Street 'Couplet' Lot
_____	3 rd Avenue 'Post Office' Lot
_____	3 rd & C Street 'Holiday Inn' Lot
_____	7 th & I Street Lot
_____	7 th & G Street Parking Garage
_____	6 th & H Street Mall & Parking Garage
<u>31</u>	5 th & B Street Parking Garage (Covered)
<u>240</u>	5 th & B Street Parking Garage (Roof Reserved)
_____	On-Street Permit Area #1
_____	On-Street Permit Area #2

a. The parking spaces to be made available to Purchaser hereunder will be pre-selected, pre-assigned or otherwise designated as Purchaser's spaces.

b. Purchaser may reduce the total number of parking permits covered by this agreement by not more than 25% during the term of this

contract, by giving Contractor written notice of Purchaser's decision to do so, not less than 30 days in advance of the month for which Purchaser wishes to surrender permits. In such event, Purchaser's monthly payment obligation shall thereafter be that amount equal to the discount rate specified below times the reduced number of permits covered by this agreement after Purchaser's notice.

c. Purchaser may increase the number of parking permits covered by this agreement at any time on a space available basis. Purchaser's monthly payment obligation in such event will be that amount equal to the applicable discount rate based on the increased number of permits times the total permits obtained.

3. TERM.

a. Barring termination pursuant to its terms, this Contract shall run for a period of 10 years from July 22, 2003 through July 31, 2013.

b. Purchaser may exercise, at its option, a 10-year extension from August 1, 2013 through July 31, 2023 at the rate schedule expressed within this contract.

c. The hours of access shall be during the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and all other hours are subject to prior commitments of Contractor. In addition, the roof will be open for general public parking on all weekends and Federal Holidays.

4. PAYMENT. Purchaser agrees to make the monthly payment to Contractor, without deduction, offset, prior notice, or demand, at Contractor's address as set forth herein, on or before the 25th day of the month in advance of the month for which permits are being purchased. The monthly payment due for reserved parking spaces on the 5th Avenue Garage roof is \$66.75 per space, \$81.75 for covered reserved parking spaces and \$46.75 per space for any non-reserved spaces.

a. The parties acknowledge and agree that the monthly rate for each parking permit purchased during the term of this contract shall not exceed the listed rate approved by the Contractor's Board of Directors for permit groups of the same size as Purchaser.

b. The parties acknowledge and agree that the Contractor may increase the monthly rate for all parking spaces by up to 20% at the end of year 5, 10, and 15 of the contract.

c. Purchaser shall be entitled to an additional five percent (5%) discount from the monthly payment if Purchaser pays a minimum six (6) months of payments in advance. In such event, the Purchaser shall be entitled to no reduction, adjustments, reimbursements, discounts, or rebates for or during the six (6) month period for which pre-payment is made.

5. Modification of Parking Decks. Purchaser may not change, modify, alter or realign the parking decks, spaces or garage without the specific written consent of Contractor. Purchaser will be allowed to install a security fence for up to 20 vehicles upon written acceptance of a design by the Contractor.

6. USE. Parking permits issued pursuant to this Contract allow access to the parking facilities and the parking spaces covered by this Contract solely for the purpose of parking motor vehicles and for access to and from these vehicles but for no other purpose. Any other use of the parking facilities is unsafe, and not condoned by this Contract. If Contractor becomes aware of any such unauthorized use, it will promptly notify Purchaser to correct the improper use.

7. ASSIGNMENT AND SUBLETTING. In case of default by Purchaser, its rights to parking under this contract may be assigned to the Lender provided any default is cured within 30 days after written notice. Purchaser expressly covenants and agrees that it shall not sell or assign any parking permit issued pursuant to this Contract to any other third party without Contractor's express written consent, which Contractor shall not unreasonably withhold.

a. Contractor acknowledges that Purchaser may charge an additional fee of up to \$2.00 per permit in addition to the monthly rate specified in Paragraph 4.a. above to cover administrative costs. This charge must be separately identified to the individual permit holder and separate accounting must be provided to the Contractor upon request.

b. The Contractor may revise or amend rules, regulations and policies. Such revisions or amendments shall be forwarded to Purchaser for distribution to permit holders.

8. ALTERNATE PARKING. In the event of emergency, circumstances beyond Contractor's control, or where necessary by reason of required maintenance or repairs, Contractor may temporarily substitute parking access at an alternate parking facility for all or any number of the permits covered by this agreement for a period of time not to exceed four (4) weeks at a time.

9. VEHICLE TOWING. Purchaser acknowledges and agrees that Contractor reserves the right to tow, with the exercise of ordinary due care, any vehicle, without additional notice, if such vehicle: is parked in a manner which violates any of parking facility rules, regulations, or policies; is parked at a facility or in a parking space which Contractor has designated closed or unavailable for parking; is parked without display of any required permits, or with such permits displayed in a manner other than the manner required by Contractor; or otherwise impedes or impairs, in any way, Contractor's operation of its parking facilities. Purchaser will ensure that all users of the parking permits covered by this Contract are made aware of Contractor's right to tow vehicles.

10. EXCULPATION AND INDEMNIFICATION.

a. Purchaser shall indemnify, defend and hold Contractor and its present and former directors, officers and employees harmless from and against any and all liability, claims, damages, costs or expenses, including attorneys' fees and costs of suit or appeal, arising from, in connection with, or out of any act, omission or negligence of Purchaser or its officers, contractors, agents, servants and employees, arising from, in connection with, or out of any accident, injury, harm, or damage, of any kind or nature whatsoever, howsoever and by whomsoever caused, to any person or to the property of any person, occurring in or about the parking facilities or the parking spaces covered by this Contract.

b. Contractor and its present and former directors, officers and employees shall not be liable for any loss or damage to person or property

sustained by Purchaser, which may be caused by Contractor's parking facilities, or any improvement on, in or under the land or the property upon which the Contractor's parking facilities are located, or any appurtenances thereto being out of repair, or by the bursting or leaking of any water, gas sewer or steam pipe, or by theft, or by any act or neglect of Purchaser, its officers, contractors, licensees, agents, servants, employees, guests, invitees, visitor, or others in any direct or indirect relationship with Purchaser, except that the foregoing shall not apply where and to the extent that such loss or damage results in whole or in part from negligent, reckless or intentional acts or omissions of Contractor, its directors, officers, contractors, licensees, agents, servants, employees, guests, invitees, visitors, or others in any direct or indirect relationship with Contractor.

c. Purchaser, its directors, officers, contractors, licensees, agents, servants and employees shall not be liable for any loss or damage to person or property sustained by Contractor, except that the foregoing shall not apply where and to the extent that such loss or damage results in whole or in part from negligent, reckless or intentional acts or omissions of Purchaser, its directors, officers, contractors, licensees, agents, servants, employees, guests, invitees, visitors, or others in any direct or indirect relationship with Purchaser.

11. EVENTS OF DEFAULT. The following shall be deemed examples of potential events of default by Purchaser under this Contract:

a. Purchaser fails to pay, when due, any monthly payment or other charges due hereunder; or

b. Purchaser fails to comply with any term, provision or covenant of this Contract, other than monthly payment, and fails to cure such failure within thirty (30) days of written notice thereof by Contractor to Purchaser or within such objectively reasonable additional time as may be required, and agreed to between Contractor and Purchaser; or

c. Purchaser makes an assignment for the benefit of creditors.

12. CONTRACTOR'S REMEDIES. On the occurrence of any event of default by Purchaser, including those described as examples in the preceding paragraph or any other events of default by Purchaser hereunder,

Contractor shall have the option to pursue any of the following remedies after forty eight (48) hours advance written notice or demand as is required by law and this Contract;

a. Contractor may deactivate or declare invalid any and all access cards or identification permits issued in connection with this Contract which authorize the use of the parking facilities and take any and all other steps to deny access to Contractor's parking facilities to any user who claims a right to use Contractor's parking facilities under this Contract; or,

b. Contractor may, at its election, terminate this Contract or terminate Purchaser's right to access only, without terminating this Contract.

c. Upon any termination of this Contract, whether by lapse of time or otherwise, Contractor shall be entitled to recover (i) the worth at the time of the award of the unpaid permit fees that had been earned at the time of termination; (ii) the worth at the time of the award of the amount by which the unpaid permit fee that would have been earned for the balance of the term exceeds the amount of the loss of permit fees for the same period that Purchaser proves could have been reasonably avoided; and (iii) any other amount, and court costs, necessary to compensate Contractor for all detriment proximately caused by Purchaser's default. "The worth at the time of award", as used in parts (i) and (ii) of this subparagraph, is to be computed by allowing interest at the rate of ten percent (10%) per annum.

d. In the event Purchaser fails to pay any monthly payment, or other sums due, Purchaser shall pay to Contractor on demand a one time late charge in an amount equal to five percent (5%) of the unpaid amount of such installment or other charge overdue to help defray the additional cost to Contractor for processing such late payments, and failure to pay such late charge within ten (10) days after demand shall be an additional event of default. The provision for such late charge is in addition to all of Contractor's other rights and remedies.

e. Upon any termination of Purchaser's rights to access without termination of this Contract, Contractor may enter, take and hold possession

of the parking facilities and parking spaces identified in Paragraph 2. No such entry and possession will terminate this Contract or release Purchaser from any obligation, including the obligation to make Contract payments.

f. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of payment due under this Contract or of any damages accruing by reason of the violation of any of its terms, provisions and covenants. No act or thing done by Contractor or under this Contract shall be deemed a release of Purchaser's obligations under this Contract, and no agreement to release Purchaser of its obligations shall be valid unless in writing signed by Contractor. No waiver by Contractor of any violation or breach of any terms, provisions or covenants of this Contract shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions or covenants. Contractor's acceptance of monthly payment, or other sums after the occurrence of an event of default shall not be construed as a waiver of such default, unless Contractor so notifies Purchaser in writing. Forbearance by Contractor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Contractor's right to enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Purchaser under the terms and conditions of this Contract, it shall become necessary or appropriate for Contractor to employ or consult with attorneys concerning this Contract or enforce or defend any of Contractor's rights or remedies hereunder, Purchaser agrees to pay any reasonable attorneys' fees so incurred.

13. PURCHASER'S REMEDIES

a. Should Contractor default in the performance or observance of any provisions of this Contract and fail to fully remedy such default within ten (10) days after written notice by Purchaser, Purchaser may, until the default is cured, reduce the payment payable under the Contract in an amount proportional to the extent to which the default interferes with Purchaser's use of the parking facility.

b. Should Contractor default in the performance or observance of any covenants of this Contract and fail to fully remedy such default within thirty (30) days after written notice by Purchaser, or within such reasonable additional time as may be objectively required and agreed to between Contractor and Purchaser to cure such default, Purchaser may terminate this Contract.

c. Purchaser's remedies set forth in this section are in addition to and not in derogation of all other rights and remedies available to Purchaser under this Contract and applicable law.

14. DUTIES UPON TERMINATION.

a. Upon termination of this Contract, whether by lapse of time or otherwise, or upon any termination of Purchaser's right to access without termination of this Contract, Purchaser shall surrender all access cards and permits as well as vacate Contractor's facilities immediately. Purchaser hereby grants to Contractor full and free license, with or without process of law, to take any and all steps necessary to repossess Contractor's parking facilities, to expel or remove Purchaser and any others who may occupy the parking facilities, or parking spaces pursuant to this Contract, and to remove any and all vehicles therefrom, using reasonable care, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage. Purchaser waives any claim of damage for such action. No such action taken by Contractor shall affect Contractor's right to payment or any other right given to Contractor hereunder or by operation of law.

b. Upon termination of Purchaser's right to access, Contractor shall exercise due diligence in an effort to mitigate damages.

c. Any and all vehicles which may be removed by Contractor by reason of Purchaser's default, may, with the exercise of ordinary due care, be handled, removed and stored, as the case may be, by or at the direction of Contractor. Contractor shall in no event be further responsible for the value, preservation or safekeeping of said vehicle. Purchaser shall pay to Contractor, upon demand; any and all expenses incurred in such removal and all storage charges.

15. SURRENDER OF PREMISES. No act or thing done by Contractor or its agents during the term hereby granted shall be deemed a surrender of the parking facilities or parking spaces identified in Paragraph 2 of this Contract and no agreement to surrender them shall be valid unless the same be made in writing subscribed to by Contractor.

16. MAINTENANCE OF PREMISES. Contractor is responsible for maintenance and security of all facilities to which permits issued allow access.

17. DESTRUCTION OR CONDEMNATION OF PARKING FACILITIES. If, during the Contract term, the parking facilities identified in Paragraph 2 are (i) totally or partially destroyed, or (ii) totally or partially taken in a proceeding in eminent domain or (iii) conveyed under threat of such a proceeding, rendering the parking facilities totally or partially inaccessible or unusable, Contractor may, at its option:

a. Restore the parking facilities to substantially the same condition as they were in immediately before the destruction or taking, in which case such destruction or taking shall not terminate this Contract; or

b. Terminate this Contract by giving written notice of the same to Purchaser within thirty-days (30) of the destruction or taking.

c. In case of destruction or taking where Contractor elects not to terminate the Contract, there shall be an abatement or reduction of monthly payments between the date of the destruction or taking and the date of completion of restoration of the parking facilities in an amount proportional to the extent to which the destruction or taking interferes with Purchaser's use of the parking facilities.

18. QUITE ENJOYMENT AND POSSESSION. Permit holders shall and may lawfully have access to and use of the parking facilities identified in Paragraph 2 during the term of this contract without hindrance or interruption subject to the terms of this Contract.

19. JURISDICTION AND VENUE. Jurisdiction and venue for any and all actions or proceedings commenced with respect to this contract shall be

20. ADDRESSES. All notices or communications in connection with this Contract shall be made by personal service ~~by~~ Certified United States Mail ~~Return Receipt Requested~~ or by ~~other reliable courier service~~ at the addresses listed below ~~or at~~ such other address as either party shall designate in ~~writing~~ to the other.

FIFTH AVENUE DEVELOPMENT, LLC

By:

Date:

The foregoing Contract was acknowledged before me on this ____ day of _____, 199_, by Kevin J. Kinney, Executive Director of the Anchorage Parking Authority, on behalf of the Anchorage Parking Authority.

Notary Public in and for Alaska. My
commission expires:

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing Contract was acknowledged before me on this ____ day
of _____, 199____, by _____ of _____
_____, on behalf of the _____.

Notary Public in and for Alaska. My
commission expires:
