



REQUEST FOR PROPOSALS
PARKING MANAGEMENT SERVICE CONTRACT, FY2019

REQUEST FOR PROPOSALS

Buncombe County North Carolina seeks proposals for the management of five surface parking lots, and the parking garage located at 11 Sears Alley.

BACKGROUND

Buncombe County is the largest county in Western North Carolina, and the seventh most populous county in the state with more than 255,000 residents. The County serves as the economic hub of the region. Buncombe County spans 660 square miles, with one city and five towns. The City of Asheville is the largest, and is the county seat. Throughout history Buncombe has been an important crossroads, being approximately 240 miles west of the state capital, Raleigh, North Carolina; 205 miles north of Atlanta, Georgia; and 120 miles east of Knoxville, Tennessee.

Buncombe County has a total of five surface parking lots and two parking garages, which include approximately 1585 parking spaces for public parking. This RFP is for one of those parking garages and all five of those surface lots.

SCOPE OF WORK/EXPECTATIONS

This RFP is for the following parking locations in downtown Asheville.

The garage at 11 Sears Alley containing 664 spaces, sitting on 1.8 acres, and the five surface lots listed below.

Lot Location	Pay station Type	Approx. # of Spaces	Public Parking Hours
46 Aston (Hughes lot)	Solar Pay Station	45	24/7
2 Sawyer (gravel lot)	Honor Box	25	24/7
52 Coxe (Parkland lot)	Solar Pay Station	87	24/7
50 Coxe (Gym Lot)	Solar Pay Station	16	24/7
30 Valley (Permits and Inspections Lot)	Solar Pay Station	76	Evenings & Weekends

Contracts for additional locations may be offered as they become available.

The parking management company that is awarded the contracts shall provide services consistent with proposed contracts attached hereto.

MINIMUM QUALIFICATIONS

The minimum acceptable qualifications for a parking management service include:

- Contracts with at least three Cities or Counties for the management of multiple parking lots or garages within the past three years.



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ADDITIONAL INFORMATION

- There is no guarantee of an award, and terms are subject to change. Submission of a proposal does not represent an award or any legally binding contract.
- Responding companies may be asked for additional information prior to the County making a final decision.
- All questions must be emailed to ron.venturella@buncombecounty.org by October 15, 2018, 5:00pm.

PROPOSAL RESPONSES

Proposals must be submitted via email to Ron Venturella, Buncombe County Procurement Manager, **no later than 2:00 pm on October 19, 2018**, in order to be considered. The email address for submission is ron.venturella@buncombecounty.org. Buncombe County's file size limit for emails is 50MB. The use of file sharing platforms such as Dropbox are acceptable. **It is the responsibility of the applicant that their proposal is received. Receipt of proposals can be verified by calling 828-250-4154.**

Proposals must contain all of the following information:

1. Provide the name and address of your firm. Describe what type of a business entity your firm is (corporation, general partnership, Limited Liability Company, etc.). Indicate in what state and year your business entity was incorporated or formed.
2. Provide a brief history of your business, including years of operation, general business description, number of clients serviced, types of services generally offered, size of firm, and statement of philosophy of customer service levels provided to clients.
3. Describe the background, experience, and capabilities of your firm as it relates to the Scope of Work outlined above.
4. List at least three (3) clients (municipal/county government) for whom you have provided services in the past three years. Provide telephone numbers and contact names for references.

SELECTION PROCESS

The selection process will include the following criteria in the evaluation of proposals. These criteria are not necessarily listed in order of importance.

- Company's qualifications and experience in conducting similar contracts, including location of offices and related staffing
- Firm's understanding of the service to be provided
- Experience with similar clients

Following the deadline for submittal, proposals will be reviewed and analyzed. The selection shall be made in order of preference based on criteria established herein that is the most advantageous for the County.

Buncombe County reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The County reserves the right to finalize a



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contract with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

CONTACT

For more information, contact Ron Venturella, Buncombe County Procurement Manager, at ron.venturella@buncombecounty.org, telephone (828) 250-4154. **It is the responsibility of the applicant to assure that their proposal is received. Receipt of proposals can be verified by calling Mr. Venturella.**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, sometimes, "License" or "Agreement"), made and entered into this ____ day of _____, 20____, by and between Buncombe County, a body politic and corporate of the State of North Carolina, having its principle offices at 200 College Street, Asheville, NC 28801 (Licensor) and **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** (Licensee). (Licensor and Licensee are sometimes, hereinafter, collectively referred to as the "Parties").

WITNESSETH:

Licensor, for and in consideration for the license, covenants and agreements hereinafter set forth on the part of the Licensee, its successors and assigns, to be paid, kept and performed, has the authority to manage the Premises as described further herein:

Those certain surface parking areas in Asheville, NC, owned or leased by Licensor, and more particularly described **Exhibit A**, which is attached hereto and incorporated by reference herein. (Said surface parking areas are hereinafter, sometimes, referred to as the "Premises").

The Terms of this License shall be as follows:

1. **LICENSE** - Licensee shall have a license to manage and operate parking on the Premises. Licensee shall have authority and responsibility to do all things reasonably necessary and proper to manage and operate surface parking. Licensee shall manage and operate surface parking using prudent business practices and ethical standards.

It is understood that any parking system, including but not limited to the gatehouse, parking gates and arms, and the data associated therewith (hereinafter "Parking System"), is solely the property of the Licensor. Licensee shall deliver any records and/or data associated with the Parking System in electronic form upon Licensor's request. However the automated pay station(s) as installed by Licensee on the Premises remain the property of Licensee and may be removed at the expiration of the Term or any renewal Term by Licensee.

2. **TERM** - The term of this Professional Service Agreement (Term) shall commence on the date first written above and shall terminate on March 31, 2021. This Agreement may be renewed for one (1) additional one (1) year term upon the written agreement of both Parties. In the event that any portion of the Premises are sold to an unaffiliated third party or redeveloped, this License may be terminated by Licensor as to said portion of the Premises by issuance to the Licensee of 60 days advance written notice.
3. **PAYMENT** - As payment for said License, Licensee shall pay Licensor the sum of eighty percent (80%) of all revenues collected by Licensee, less direct labor costs and direct

operating expenses. Direct labor shall be defined as pro rata share of wages, FICA, workers compensation and benefits for time spent directly patrolling and servicing parking lot. All payments shall be payable monthly in arrears by the 10th working day of each month and shall be documented by certified statement from Licensee. Licensor reserves the right to audit and inspect the records and books of Licensee for the full term of this Agreement. In the event direct labor costs and expenses exceed revenue, Licensee shall absorb costs and continue to perform services outlined in this license.

4. PARKING VALIDATION – Licensor reserves the right to validate parking passes and/or provide parking at a reduced or no cost for users of the Premises. Generally speaking, the licensee intends to offer free parking to those visiting the Licensor at the Licensor’s request.
5. RATE - All rates set and charged by Licensee, and any increases thereto, must be approved by Licensor and must be changed if deemed unreasonable, in Licensor’s sole opinion.
6. DEFAULT - In the event of default in the performance by Licensee, of any covenant, agreement or condition herein contained, and the continuation of such default for ten (10) days for monetary default and thirty (30) days for non-monetary default after receipt by Licensee of written notice of such default from Licensor delivered by registered or certified mail, Licensor may terminate this Agreement by written notice to Licensee. Upon the effective date of such termination, Licensor shall have the right to re-enter and repossess the Premises. Licensor shall have the right to pursue all of the remedies available to Licensor at law or in equity for breach of this Agreement. If the Licensor shall at any time fail to perform any of the covenants, conditions, or provisions of this Agreement and such default is not cured within thirty (30) days after receipt of written notice thereof from Licensee, Licensee shall have the right to pursue all of the remedies available to Licensee at law or in equity for breach of this Agreement. No default shall be deemed waived unless such waiver be in writing.
7. TAXES - Licensee shall pay any and all ad valorem taxes levied on any fixtures, equipment, inventory or other personal property located on the Premises which is owned by the Licensee, and all license, privilege and income taxes due from the operation of Licensee’s business of the premises.
8. UTILITIES - Licensee shall not be responsible for charges for utilities used in the operation of the Premises as a commercial parking lot. Licensee shall not, however, utilize any utility without prior written approval of Licensor.
9. INSURANCE

Licensee agrees that its insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Licensor’s signing of this License.

The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Licensee's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Licensee shall procure and maintain at its sole cost and expense during the term of the License is as follows:

- a. Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Licensee shall ensure that any Sub-Licensees also have workers compensation coverage at the statutory limits.
- b. Employer's Liability. Coverage with minimum limits of \$500,000 each employee accident and \$500,000 each employee disease.
- c. Commercial General Liability. Insurance covering all operations performed by the Licensee with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 in aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe Licensor shall be named as an additional insured under the policy.
- d. Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this License. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.
- e. Crime policy covering acts of employee dishonesty, forgery or alteration and computer fraud with minimum limit of \$500,000 per loss. The policy shall include coverage for all directors, officers, agents and employees of the Licensee.
 - i. The bond or policy shall include coverage for extended theft and mysterious disappearance.
 - ii. The bond or policy shall not contain a condition requiring an arrest and conviction.
- f. Cyber Liability. Providing third party coverage to include security, privacy, regulatory action, event management for all affected persons whose confidential information was compromised or was reasonably likely to have been compromised, cyber extortion, and crisis fund insurance. This policy shall carry a minimum limit of \$500,000. If policy is of a claims made type, such coverage shall be for a period of two (2) years following expiration or termination of this License and shall provide for a retroactive date no later than the inception date of this License.
- g. Property. Licensee shall not be obligated to maintain property insurance on Licensee's furnishings, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and description of Licensee and of persons claiming by, through, or under Licensee which may be located on Licensor property shall be at the sole risk and hazard of Licensee and no part of loss or damages to such property from whatever cause shall be the responsibility of, charged to, or borne by the Licensor.

- h. Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Licensee may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over any policy(s) referenced herein. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

- a. If the Licensee maintains higher limits than the minimums shown above, the Licensor requires and shall be entitled to coverage for the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor. Notwithstanding the foregoing, Licensee's liability in excess of the minimum limits of insurance required hereunder shall not include damages for penalties, lost profits, typical and ordinary overhead items, punitives, interest, the claims of third parties, or arising from the joint negligence or acts of Licensee and Licensor.
- b. The Licensee shall provide the Licensor with certificates of insurance on an approved form, evidencing the above amounts. Buncombe County shall be named as an additional insured under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the License.
- c. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Licensor, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the Licensor.
- d. Licensee shall require and verify that all Sub-Licensees maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Buncombe County is an additional insureds on insurance required from Sub-Licensees.
- e. The limits of coverage under each insurance policy maintained by the Licensee shall not be interpreted as limiting the Licensee's liability and obligations under this License.

Before commencing work and at any subsequent policy renewals, the Licensee shall provide the Licensor with certificates of insurance evidencing the above amounts. The liability certificate shall name Buncombe County as additional insured under the policies. The Licensee shall notify Licensor immediately in writing of any changes to or cancellation

of any such policies occurring at any time during the term. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

The Licensee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this License. The limits of coverage under each insurance policy maintained by the Licensee shall not be interpreted as limiting the Licensee's liability and obligations under the License.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

10. MAINTENANCE AND REPAIRS - Licensee accepts Premises "as is". Licensee shall keep and maintain the Premises in good repair and condition, normal wear and tear excepted. Licensee shall be responsible for trash removal on the Premises. Following Licensor's written consent, which shall not be unreasonably withheld or delayed, Licensee may install, maintain and repair, at Licensee's sole cost and expense, fixtures such as signs, meters, gates and fences and other items necessary or useful for use of the Premises and Licensee shall be solely responsible for such installation, maintenance and repair. Licensor may refuse consent to any proposed fixtures, signs and/or other requests which, in Licensor's sole opinion, are too large, deceptive, unattractive, could damage the Premises, or otherwise inconsistent with or inappropriate to the Premises. Upon any termination of this License, Licensee shall surrender the Premises clean and in the same condition as the Premises were in upon the execution hereof, reasonable wear and tear, acts of God, and damage by casualty loss covered by insurance excepted. All equipment placed on the Premises shall remain property of the Licensee and may be removed by Licensee at the expiration of the License term or any renewal Term. Licensee shall repair all damage to the Premises resulting from the installation and/or removal of signs and or fixtures installed and/or removed by Licensee.
11. SAFE AND SANITARY CONDITIONS – Licensee shall not permit, allow or cause any act or deed to be performed upon, in or about the Premises which shall cause or be likely to cause injury to any person or the Premises, including parking areas, sidewalks or pavement, adjoining the Premises. Licensee shall at all times keep the Premises in a neat and orderly conditions, and shall keep the Premises and the entryways, parking areas, sidewalks and delivery area used solely by it, clean and free from rubbish, dirt, pests, snow, and ice. Additionally, when necessary, Licensee shall spread salt on foot-traffic areas in the premises.
12. ALTERATIONS - Licensee shall have the right and privilege at any time during the term of this License to make, at its own expense and without the prior written consent of Licensor, such minor improvements which are consistent with the operation of a commercial parking lot and for no other purposes. Licensee shall retain ownership of all such improvements

and shall have the right to remove the same at the end of the term and any renewal term at the sole cost of the Licensee. In no event shall the Licensee drill, penetrate, nail into, screw into, and/or otherwise alter the Premises without the express written consent of the Licensor through its Director of General Services.

13. ASSIGNMENT AND SUBLETTING - Licensee shall not assign this License without the prior written consent of Licensor. This paragraph shall not be construed to prohibit Licensee from renting space for commercial parking on the premises. However, should Licensee sell its business as a commercial parking operator, Licensor agrees that Licensee may assign this License as part of such sale. Nonetheless, Licensee shall not be relieved of any of its obligations hereunder.
14. USE - Licensee will operate all spaces not specifically “reserved” for Licensor’s use and its tenants as paid parking in all evenings and on weekends after business hours. Licensee intends to utilize available parking spaces, as defined by Licensor, for the purpose of selling parking. Licensee will only utilize spaces specifically defined by Licensor during the time frame approved. Licensor may add or delete spaces for management by Licensee in its sole discretion from this License.
15. COMPLIANCE WITH LAWS - Licensee shall use the Premises for a commercial parking lot and for no other purpose without first securing the written consent of Licensor. Licensee shall use and occupy the Premises in accordance with all applicable governmental laws, regulations and ordinances, including, but not limited to, any zoning laws or ordinances.
16. SURRENDER OF POSSESSION - Upon the termination or expiration of this License, Licensee shall surrender the said premises to Licensor in at least as good condition and state of repair as at the beginning of the term, ordinary wear and tear excepted.
17. LICENSOR’S AUTHORITY AND COVENANT OF QUIET ENJOYMENT - Licensor represents that it has full right and authority to enter into this License upon the terms and conditions herein set forth and that Licensee shall peacefully and quietly hold and enjoy the Premises for the full term free from adverse claims of any and all persons whomsoever so long as it does not default in the performance of any of its covenants hereunder.
18. INDEMNITY AND HOLD HARMLESS - Licensee agrees to defend, indemnify and hold harmless Licensor and its employees, agents, and representatives, from and against any and all liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement or judgment of any kind or nature directly or indirectly, including reasonable attorneys’ fees, and other costs and expenses of litigation, which may be asserted against or incurred by Licensor, or for which Licensor may be liable, in the performance of this License, except those which arise from the primary negligence or willful misconduct of

Licensor. The provisions of this paragraph shall survive the termination of this License for a period of two years.

19. TERMINATION - This License may be terminated by either party for convenience with a sixty day written notice. LICENSOR HOWEVER SHALL NOT HAVE THE RIGHT TO CANCEL THIS LICENSE PRIOR TO EXPIRATION OF THE TERM FOR PURPOSES OF RE-LEASING THE PREMISES TO ANOTHER PARKING OPERATOR WITHIN SIXTY (60) DAYS OF SAID CANCELLATION.

20. ACCIDENTS - Licensee shall advise Licensor or Licensor’s agent immediately upon the occurrence of any accident involving automobiles and/or persons on or about the Premises, and shall submit a written report to Licensor or agent within two (2) business days of the day of any such accident

21. NOTICES - Any notice provided herein shall be deemed to have been served sufficiently if the same shall be in writing and either hand delivered to the addresses designated below or mailed via certified mail, return receipt requested, addressed as follows:

AS TO LICENSOR:

Buncombe County
Leigh Anderson
Buncombe County Operations Manager
40 Coxe Avenue
Asheville, NC 28801

AS TO LICENSEE:

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

22. ENTIRE AGREEMENT - This License constitutes the entire agreement and supersedes any and all other prior agreements and undertakings, both written and oral, among the Parties with respect to the subject matter hereof and, except as otherwise expressly provided here in, is not intended to confer upon any other person any rights or remedies hereunder.

23. Modification - This License cannot be modified amended or otherwise changed except by consent of both parties confirmed in writing signed by both parties.

24. Choice of Law - This License shall be governed by the laws of North Carolina. Parties agree that the situs of the License is Buncombe County, North Carolina and that venue for any action, dispute, suit or like matter is proper in Buncombe County, North Carolina.

{Signature Page Follows}

NOW THEREFORE, the parties hereby make, agree, and execute this Contract by the below signatures of duly authorized officials or agents. The individual signatories below have the expressed and implied authority on behalf of their respective Boards and/or organization to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

LICENSOR:

Buncombe County

ATTEST:

By: _____
(Signature of Authorized Agent)

(Printed Name of Authorized Agent)

(Title of Authorized Agent)

(Date)

LICENSEE:

ATTEST:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

By: _____
(Signature of Authorized Agent)

(Printed Name of Authorized Agent)

(Title of Authorized Agent)

(Date)

{EXHIBIT A FOLLOWS}

EXHIBIT A

Tract 1 – “46 Aston Street Lot”:

Being the surface parking portions (approximately 55 parking spaces) of tract two of that parcel of land described in deed recorded in Book 1572, Page 539 of the Buncombe County, NC Registry. Said property is shown on the records of the Buncombe County Tax Office as PIN#: 9648-39-6557 and highlighted in the illustration below.



Tract 2 – “2 Sawyer Street Lot”:

Being the surface parking portions (approximately 16 parking spaces) of that parcel of land described in deed recorded in Book 5055, Page 1320 of the Buncombe County, NC Registry. Said property is shown on the records of the Buncombe County Tax Office as PIN#: 9648-39-6489 and highlighted in the illustration below.



Tract 3 – “52 Coxe Lot”:

Being the surface parking portions (approximately 32 parking spaces) of Parcel 1 of that tract or parcel of land described in deed recorded in Book 5606, Page 1279 of the Buncombe County, NC Registry. Said property is shown on the records of the Buncombe County Tax Office as PIN#: 9648-39-4353 and highlighted in the illustration below.



Tract 4 – “Parkland Lot”:

Being the surface parking portions (approximately 80 parking spaces) of Lots 24 and 25 of Revised Plan for Subdivision of Ravenscroft, Asheville, N.C., as same is recorded in Plat Book 2, at Page 76, Buncombe County, NC Registry, reference to which plat is hereby made for purposes of description. Said property is shown on the records of the Buncombe County Tax Office as PIN#: 9648-39-6366 and highlighted in the illustration below.



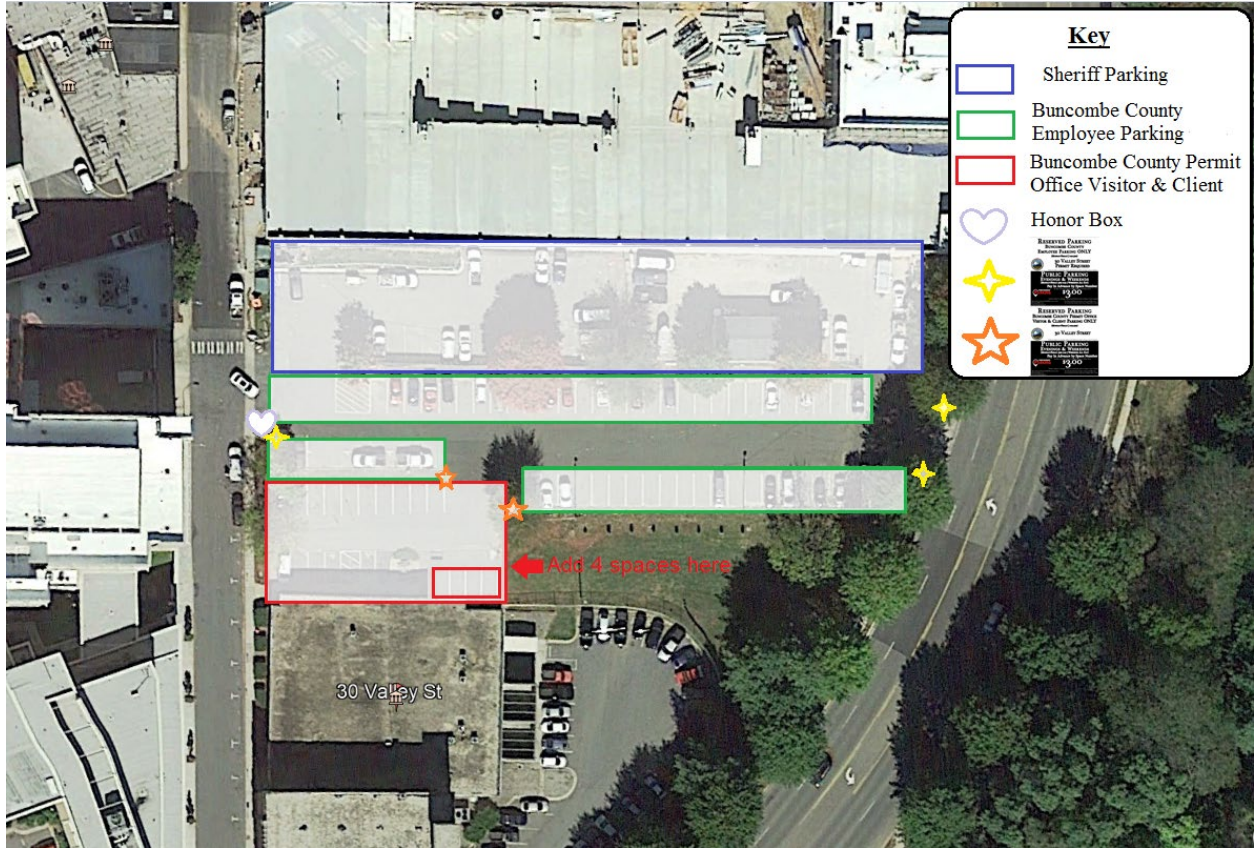
Tract 5 – “50 Coxe Ave.” Lot:

Being the surface parking portions (approximately 15 parking spaces) of Lots 14-18 of Block B. T.C. Coxe Avenue, Asheville, N.C., as same is recorded in Plat Book 6, at Page 48, Buncombe County, NC Registry, reference to which plat is hereby made for purposes of description. Said property is shown on the records of the Buncombe County Tax Office as PIN#: 9648-39-4540 and highlighted in the illustration below.



Tract 6 – “30 Valley St.” Lot:

Being the surface parking portions not used by the Buncombe County Sheriff’s Office (approximately 70 parking spaces) of the property shown on the records of the Buncombe County Tax Office as PIN#: 9649-50-8644 and highlighted in red and green in the illustration below.



THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, sometimes, "License" or "Agreement"), made and entered into this ____ day of _____, 20____, by and between Buncombe County, a body politic and corporate of the State of North Carolina, having its principle offices at 200 College Street, Asheville, NC 28801 (Licensor) and **XXXXXXXXXXXXXXXXXXXX** (Licensee). (Licensor and Licensee are sometimes, hereinafter, collectively referred to as the "Parties").

WITNESSETH:

Licensor, for and in consideration for the license, covenants and agreements hereinafter set forth on the part of the Licensee, its successors and assigns, to be paid, kept and performed, has the authority to manage the Premises as described further herein:

That certain parking garage containing approximately 664 spaces located at 11 Sears Alley, Asheville, NC, 28801, owned or leased by Licensor, and illustrated on **Exhibit A** (herein referred to as "Premises,") and more particularly described as:

BEING the parking structure located on that certain parcel of property identified as "Tract 1" in a plat recorded in the office of the Register of Deeds for Buncombe County in Plat Book 120, at Page 164, and described in the tax records of Buncombe County as PIN: 9648-39-4758-0000, containing 1.825 acres, more or less.

The Terms of this License shall be as follows:

1. **LICENSE** - Licensee shall have a license to manage and operate the parking garage on the Premises. Licensee shall have authority and responsibility to do all things reasonably necessary and proper to manage and operate the parking garage. Licensee shall manage and operate the parking garage using prudent business practices and ethical standards. The parking garage must be staffed every Monday through Friday that County is open for business from 7:00 a.m. through 7:00 p.m., and whenever there are special events about which the County gives notice to Licensee and/or which prudent business practice would deem staffing the parking garage.

It is understood that the parking system, including but not limited to the gatehouse, parking gates and arms, and the data associated therewith (hereinafter "Parking System"), is solely the property of the Licensor. Licensee shall deliver any records and/or data associated with the Parking System in electronic form upon Licensor's request.

2. TERM - The term of this Professional Service Agreement (Term) shall commence on the date first written above and shall terminate on March 31, 2021. This Agreement may be renewed for one (1) additional one (1) year term upon the written agreement of both Parties. In the event the premises are sold to an unaffiliated third party or redeveloped, this License may be terminated by Licensor by issuance to the Licensee of 60 days advance written notice. Further, all terms and conditions of this License are dependent upon, and subject to the allocation of funds for the purposes set forth in this License, and this License shall automatically terminate if funds cease to be available in the Licensor's budget.
3. PAYMENT - As payment for said License, Licensee shall pay Licensor the sum of eighty percent (80%) of all revenues collected by Licensee, less direct labor costs and direct operating expenses. Direct labor shall be defined as pro rata share of wages, FICA, workers compensation and benefits for time spent directly patrolling and servicing parking lot. All payments shall be payable monthly in arrears by the 10th working day of each month and shall be documented by certified statement from Licensee. Licensor reserves the right to audit and inspect the records and books of Licensee for the full term of this License. In the event direct labor costs and expenses exceed revenue, Licensee shall absorb costs and continue to perform services outlined in this license.
4. PARKING VALIDATION – Licensor reserves the right to validate parking passes and/or provide parking at a reduced or no cost for users or the parking structure on the Premises. Generally speaking, the licensee intends to offer free parking to those visiting the Licensor at the Licensor's request.
5. RATE - All rates set and charged by Licensee, and any increases thereto, must be approved by Licensor and must be changed if deemed unreasonable, in Licensor's sole opinion.
6. DEFAULT - In the event of default in the performance by Licensee, of any covenant, agreement or condition herein contained, and the continuation of such default for ten (10) days for monetary default and thirty (30) days for non-monetary default after receipt by Licensee of written notice of such default from Licensor delivered by registered or certified mail, Licensor may terminate this License by written notice to Licensee. Upon the effective date of such termination, Licensor shall have the right to re-enter and repossess the Premises. Licensor shall have the right to pursue all of the remedies available to Licensor at law or in equity for breach of this License. If the Licensor shall at any time fail to perform any of the covenants, conditions, or provisions of this License and such default is not cured within thirty (30) days after receipt of written notice thereof from Licensee, Licensee shall have the right to pursue all of the remedies available to Licensee at law or in equity for breach of this License. No default shall be deemed waived unless such waiver be in writing.
7. TAXES - Licensee shall pay any and all ad valorem taxes levied on any fixtures, equipment, inventory or other personal property located on the Premises which is owned by the

Licensee, and all license, privilege and income taxes due from the operation of Licensee's business of the premises.

8. UTILITIES - Licensee shall not be responsible for charges for utilities used in the operation of the Premises as a commercial parking lot. Licensee shall not, however, utilize any utility without prior written approval of Licensor.

9. INSURANCE -

Licensee agrees that its insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Licensor's signing of this License. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Licensee's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Licensee shall procure and maintain at its sole cost and expense during the term of the License is as follows:

- a. Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Licensee shall ensure that any Sub-Licensees also have workers compensation coverage at the statutory limits.
- b. Employer's Liability. Coverage with minimum limits of \$500,000 each employee accident and \$500,000 each employee disease.
- c. Commercial General Liability. Insurance covering all operations performed by the Licensee with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 in aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe County shall be named as an additional insured under the policy.
- d. Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this License. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.
- e. Crime policy covering acts of employee dishonesty, forgery or alteration and computer fraud with minimum limit of \$500,000 per loss. The policy shall include coverage for all directors, officers, agents and employees of the Licensee.
 - i. The bond or policy shall include coverage for extended theft and mysterious disappearance.
 - ii. The bond or policy shall not contain a condition requiring an arrest and conviction.
- f. Cyber Liability. Providing third party coverage to include security, privacy, regulatory action, event management for all affected persons whose confidential information was compromised or was reasonably likely to have been compromised,

cyber extortion, and crisis fund insurance. This policy shall carry a minimum limit of \$500,000. If policy is of a claims made type, such coverage shall be for a period of two (2) years following expiration or termination of this License and shall provide for a retroactive date no later than the inception date of this License.

- g. Property. Licensee shall not be obligated to maintain property insurance on Licensee's furnishings, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and description of Licensee and of persons claiming by, through, or under Licensee which may be located on Licensor property shall be at the sole risk and hazard of Licensee and no part of loss or damages to such property from whatever cause shall be the responsibility of, charged to, or borne by the Licensor.
- h. Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Licensee may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over any policy(s) referenced herein. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

- i. If the Licensee maintains higher limits than the minimums shown above, the Licensor requires and shall be entitled to coverage for the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor. Notwithstanding the foregoing, Licensee's liability in excess of the minimum limits of insurance required hereunder shall include damages for penalties, lost profits, typical and ordinary overhead items, punitives, interest, the claims of third parties, or arising from the joint negligence or acts of Licensee and Licensor.
- j. The Licensee shall provide the Licensor with certificates of insurance on an approved form, evidencing the above amounts. Buncombe County shall be named as an additional insured under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the License.
- k. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Licensor, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the Licensor.

- I. Licensee shall require and verify that all Sub-Licensees maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Buncombe County is an additional insured on insurance required from Sub-Licensees.
- m. The limits of coverage under each insurance policy maintained by the Licensee shall not be interpreted as limiting the Licensee's liability and obligations under this License.

Before commencing work and at any subsequent policy renewals, the Licensee shall provide the Licensor with certificates of insurance evidencing the above amounts. The liability certificate shall name Buncombe County as additional insured under the policies. The Licensee shall notify Licensor immediately in writing of any changes to or cancellation of any such policies occurring at any time during the term. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

The Licensee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this License. The limits of coverage under each insurance policy maintained by the Licensee shall not be interpreted as limiting the Licensee's liability and obligations under the License.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

10. MAINTENANCE AND REPAIRS - Licensee accepts "as is". Licensee shall keep and maintain the Premises in good repair and condition, normal wear and tear excepted. Licensee shall be responsible for trash removal on the Premises. Following Licensor's written consent, which shall not be unreasonably withheld or delayed, Licensee may install, maintain and repair, at Licensee's sole cost and expense, fixtures such as signs, meters, gates and fences and other items necessary or useful for use of the Premises and Licensee shall be solely responsible for such installation, maintenance and repair. Licensor may refuse consent to any proposed fixtures, signs and/or other requests which, in Licensor's sole opinion, are too large, deceptive, unattractive, could damage the Premises, or otherwise inconsistent with or inappropriate to the Premises. Upon any termination of this License, Licensee shall surrender the Premises clean and in the same condition as the Premises were in upon the execution hereof, reasonable wear and tear, acts of God, and damage by casualty loss covered by insurance excepted. All equipment placed on the Premises shall remain property of the Licensee and may be removed by Licensee at the expiration of the License term or any renewal Term. Licensee shall repair all damage to the Premises resulting from the installation and/or removal of signs and or fixtures installed and/or removed by Licensee.

Additionally, Licensee shall, outside of regular business hours, cause the interior of the Premises (which includes parking decks/areas, stairs and stairwells, and landings) to be

pressure washed at least once every six (6) months and shall cause the interior of the Premises to be swept at least once every two (2) months.

11. SAFE AND SANITARY CONDITIONS – Licensee shall not permit, allow or cause any act or deed to be performed upon, in or about the Premises, which shall cause or be likely to cause injury to any person or the Premises, including parking areas, sidewalks or pavement, adjoining the Premises. Licensee shall at all times keep the Premises in a neat and orderly conditions, and shall keep the Premises and the entryways, parking areas, sidewalks and delivery area used solely by it, clean and free from rubbish, dirt, pests, snow, and ice. Additionally, when necessary, Licensee shall spread salt on foot-traffic areas in the premises.

By way of illustration, the cleaning duties described above include, but may not be limited to, the following:

Daily Duties

- Remove trash from dumpsters
- Walk stairwells and floors to remove any abandoned belongings and trash

Weekly Duties

- Sweep stairwells
- Wipe down handrails
- Wipe down Elevator buttons
- Wipe down Pay Stations and
- Remove debris from floor drains

Monthly duties

- Wipe down ledges and framing in the stairwells

Semiannual duties

- Pressure wash stairwells and elevator lobby areas

12. ALTERATIONS - Licensee shall have the right and privilege at any time during the term of this License to make, at its own expense and without the prior written consent of Licensor, such minor improvements which are consistent with the operation of a commercial parking lot and for no other purposes. Licensee shall retain ownership of all such improvements and shall have the right to remove the same at the end of the term and any renewal term at the sole cost of the Licensee. In no event shall the Licensee drill, penetrate, nail into, screw into, and/or otherwise alter the parking structure without the express written consent of the Licensor through its Director of General Services.
13. ASSIGNMENT AND SUBLETTING - Licensee shall not assign this License without the prior written consent of Licensor. This paragraph shall not be construed to prohibit Licensee from renting space for commercial parking on the premises. However, should Licensee sell its business as a commercial parking operator, Licensor agrees that Licensee may assign this

License as part of such sale. Nonetheless, Licensee shall not be relieved of any of its obligations hereunder.

14. USE - Licensee will operate all spaces not specifically “reserved” for Licensor’s use and its tenants as paid parking in all evenings and on weekends after business hours. Licensee intends to utilize available parking spaces, as defined by Licensor, for the purpose of selling parking. Licensee will only utilize spaces specifically defined by Licensor during the time frame approved. Licensor may add or delete spaces for management by Licensee in its sole discretion from this License.
15. COMPLIANCE WITH LAWS - Licensee shall use the Premises for a commercial parking lot and/or garage and for no other purpose without first securing the written consent of Licensor. Licensee shall use and occupy the Premises in accordance with all applicable governmental laws, regulations and ordinances, including, but not limited to, any zoning laws or ordinances.
16. SURRENDER OF POSSESSION - Upon the termination or expiration of this License, Licensee shall surrender the said premises to Licensor in at least as good condition and state of repair as at the beginning of the term, ordinary wear and tear excepted.
17. LICENSOR’S AUTHORITY AND COVENANT OF QUIET ENJOYMENT - Licensor represents that it has full right and authority to enter into this License upon the terms and conditions herein set forth and that Licensee shall peacefully and quietly hold and enjoy the Premises for the full term free from adverse claims of any and all persons whomsoever so long as it does not default in the performance of any of its covenants hereunder.
18. INDEMNITY AND HOLD HARMLESS - Licensee agrees to defend, indemnify and hold harmless Licensor and its employees, agents, and representatives, from and against any and all liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement or judgment of any kind or nature directly or indirectly, including reasonable attorneys’ fees, and other costs and expenses of litigation, which may be asserted against or incurred by Licensor, or for which Licensor may be liable, in the performance of this License, except those which arise from the primary negligence or willful misconduct of Licensor. The provisions of this paragraph shall survive the termination of this License for a period of two years.
19. TERMINATION - This License may be terminated by either party for convenience with a sixty day written notice. LICENSOR HOWEVER SHALL NOT HAVE THE RIGHT TO CANCEL THIS LICENSE PRIOR TO EXPIRATION OF THE TERM FOR PURPOSES OF RE-LEASING THE PREMISES TO ANOTHER PARKING OPERATOR WITHIN SIXTY (60) DAYS OF SAID CANCELLATION.

20. ACCIDENTS - Licensee shall advise Licensor or Licensor's agent immediately upon the occurrence of any accident involving automobiles and/or persons on or about the Premises, and shall submit a written report to Licensor or agent within two (2) business days of the day of any such accident
21. NOTICES - Any notice provided herein shall be deemed to have been served sufficiently if the same shall be in writing and either hand delivered to the addresses designated below or mailed via certified mail, return receipt requested, addressed as follows:

AS TO LICENSOR:

Buncombe County
Leigh Anderson
Buncombe County Operations Manager
40 Coxe Avenue
Asheville, NC 28801

AS TO LICENSEE:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

22. ENTIRE AGREEMENT - This License constitutes the entire agreement and supersedes any and all other prior agreements and undertakings, both written and oral, among the Parties with respect to the subject matter hereof and, except as otherwise expressly provided here in, is not intended to confer upon any other person any rights or remedies hereunder.
23. Modification - This License cannot be modified amended or otherwise changed except by consent of both parties confirmed in writing signed by both parties.
24. Choice of Law - This License shall be governed by the laws of North Carolina. Parties agree that the situs of the License is Buncombe County, North Carolina and that venue for any action, dispute, suit or like matter is proper in Buncombe County, North Carolina.

{Signature Page Follows}

NOW THEREFORE, the parties hereby make, agree, and execute this Contract by the below signatures of duly authorized officials or agents. The individual signatories below have the expressed and implied authority on behalf of their respective Boards and/or organization to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

LICENSOR:

Buncombe County

ATTEST:

BY: _____

(Printed Name of Authorized Agent)

(Title of Authorized Agent)

(Date)

LICENSEE:

ATTEST:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

By: _____

(Signature of Authorized Agent)

(Printed Name of Authorized Agent)

(Title of Authorized Agent)

(Date)

{EXHIBIT A FOLLOWS}

EXHIBIT A

11 Sears Alley - 664 Space Garage

