City of Palo Alto (ID # 5624)

City Council Staff Report

Report Type: Action Items **Meeting Date: 6/29/2015**

Summary Title: Consideration of Factfinding Recommendation; Award Contract to Serco, Inc. for RPP Enforcement; BAO

Title: Consideration of Impasse and Factfinding Recommendation Regarding RPP Enforcement Staffing, Approval of Three-Year Contract to Serco, Inc. For $1,509,630 For Contract Enforcement for the Downtown Residential Preferential Parking (RPP) Program, Approval of a Budget Amendment Ordinance in the Amount of $378,000 To Appropriate Funds for the First Year of the Contract, and Adoption of Resolution Amending the Administrative Penalty Schedule for Violation of the RPP Program

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council:

1. Hold a public hearing (as required by State law) regarding the impasse in negotiations with Service Employees' International Union, Local 521 (SEIU) regarding contracting out for the Downtown RPP Parking Enforcement services, including consideration of the factfinding panel recommendation.
2. Implement the City's last, best, and final offer to SEIU by:
    a. Authorizing the City Manager or designee to award a three-year contract in the amount of $1,509,630 to Serco, Inc. for enforcement of the Downtown Residential Preferential Parking (RPP) program,
    b. Approving a Budget Amendment Ordinance (BAO) in the amount of $378,000 to cover contract costs for the first year, transferring funds from the General Fund to the Residential Parking Permit Fund offset with a reduction in the Budget Stabilization Reserve, and
3. Adopt the attached Resolution amending the administrative penalty schedule to include a penalty amount for violation of the Residential Preferential Parking (RPP) program.

Executive Summary

On December 2, 2014, Council directed staff to proceed with implementation of the first Downtown Residential Preferential Parking (RPP) program, designed to regulate parking in the

neighborhoods north and south of Downtown. The program will limit non-permit holder parking to two hours during regular business hours (see staff reports 5304 and 5305 for background). The Downtown RPP program was the result of 10 months of business and resident stakeholder engagement with city staff on the development of the program, including deliberations on hours of enforcement, program boundaries, price of permits and allocation of permits to employees, and represents a significant effort to begin managing neighborhood parking supply.

Consistent with Council direction, staff is in the process of awarding contracts necessary to move the program forward, including parking regulatory signage, online permit sales, and citation processing. This report provides an overview of the recommended enforcement strategy and vendor selection process.

In December 2014, staff contacted SEIU to discuss staff's proposal to contract with a third party vendor for parking enforcement services for the Downtown RPP program. Over the course of four months, staff met with SEIU numerous times to discuss alternative proposals, but the parties were unable to reach agreement. SEIU demanded that the parties engage in factfinding under State law, and the parties held a factfinding hearing on May 29, 2015. The factfinding panel issued its recommendation to the parties on June 15, 2015. As discussed in this report, staff recommends that Council hold a public hearing regarding the impasse with SEIU and award downtown RPP enforcement to Serco, Inc.

Background

Prior to the City's posting of the RPP enforcement solicitation, the police department analyzed the program design and staffing requirements and time associated with enforcement of the proposed new Downtown RPP district. Based on this analysis, the police department estimated that, based on a program design of permit parking for residents and area employees combined with 2-hour time regulated parking, 4 community service officers, one supervisor, and one administrative support staff would be required, at a minimum, to provide an appropriate level of enforcement for the proposed RPP district. Based on the complexities of the Downtown RPP permit structure and the timed parking in the area, the police department recommended that enforcement officers would use chalking as the main methodology for performing the enforcement activity, similar to how parking enforcement is currently performed in the existing 2-hour zones. Based upon the unique complexities of the new program and the need to implement quickly in order to meet the community's needs it was determined that contracting with an experienced contractor would likely be the best option in implementing the desired program.

Staff developed an RFP to determine the feasibility of a contractor implementing the desired program in a timely manner. The RFP developed by the City did not specify the number of enforcement officers being requested; rather, the City invited proposers to visit the RPP District and make a proposal based on their experience with similar programs.

Staff posted an RFP on October 9, 2014 for enforcement services for the RPP program and received three proposals. The firms that provided proposals are listed in the table below:

Figure 1: Contract Enforcement Proposals Received

Name of Firm	Proposal Cost per Year
Data Ticket, Inc.	$263,250
SP Plus	$234,866
Serco, Inc.	$503,210

Staff interviewed each firm and found that Serco, Inc. demonstrated the most complete understanding of the Downtown RPP program intricacies based on an evaluation of relevant experience, proposed staffing approach, and proposed technologies, despite the higher cost to the City, as discussed further below.

Discussion

The city interviewed the three firms who responded to the RFP – Data Ticket, SP Plus and Serco. During the interviews, City staff questioned all proposers on the method of enforcement being proposed as well as the staffing approach to the work. Both Data Ticket and SP Plus stated that they would staff the area with 2 enforcement officers, while the Serco proposal proposed 4 team members and one supervisor, which was consistent with the police department's estimates. Serco demonstrated the most complete understanding of the Downtown RPP program design and experience enforcing similar parking programs in other cities, while responses from the other two proposers demonstrated that they did not understand the complexity of the permitting system in the RPP in developing their staffing estimates.

In addition, Data Ticket and SP Plus maintained that the method of enforcement would be license-plate recognition (LPR) technology. City staff are concerned that relying on LPR technology for enforcement is not sufficient for adequate enforcement. The City has not used LPR enforcement before and the technology works best when mounted to a vehicle which has adequate access to vehicle license plates. Currently, cars within the RPP District park so closely together that it is unclear whether LPR technology would be effective. Additionally, LPR technology typically requires "geo-fencing" a zone or an area in order to track whether a particular vehicle has violated a parking regulation by moving a vehicle. Phase 2 of the RPP program requires that employees park on a designated block, or a very small number of blocks, and in the interviews it was clear that neither Data Ticket nor SP Plus accounted for challenges associated with geo-fencing such small areas within their proposal. It is questionable whether the geo-fencing technology would be able to identify areas as small as an individual block.

Based on Serco's understanding of the program requirements, level of service proposed and experience enforcing similar programs, the proposal review team felt that Serco's proposal would be the most effective at yielding the type of enforcement required by the City.

As part of their services, Serco will be responsible for recruitment of enforcement personnel, background checks and screening, final selection, and initial and on-going training of personnel. Training will include permit enforcement, issuance of citations, marking vehicles, customer service, information about Palo Alto's Downtown, and codes and ordinances related to parking enforcement in the area. Additionally, Serco will provide all personnel with uniforms, badges, ID tags, and vehicles. Selected personnel may be interviewed by City staff prior to approval, and uniforms and vehicle markings will be approved by the City's Chief Communications Officer or designee.

Following City Council's direction to proceed with implementation of the Downtown RPP, the City also met with SEIU regarding contracting the additional enforcement required for the RPP. Although no existing staff members or current work will be impacted by contract enforcement for Downtown RPP program, SEIU opposes the City's recommended approach to contract the RPP work. City staff met with SEIU six times from December through March to discuss the union's concerns about the City's strategy to enforce the program. The Union made proposals which focused on enforcement by two full time City staff members in the Downtown RPP district and City purchase of LPR technology. Staff believes these proposals are not responsive to the City's concerns and cannot recommend SEIU's proposed alternatives for two main reasons. First, two enforcement officers do not provide an adequate level of staffing for the work, and second, as discussed above, staff does not support reliance on LPR (license plate recognition) technology for RPP enforcement. When SEIU continued to make no substantial movement from its position on these issues after several meetings, the City declared impasse by letter on March 23, 2015 and informed SEIU of the City's intent to move forward with the contract award to Serco.

On April 22, 2015, SEIU requested that the parties engage in factfinding under State law as an impasse resolution procedure. On April 29, 2015 the Public Employment Relations Board (PERB) rejected the City's objections to this request and ordered the parties to factfinding. The City and SEIU participated in a factfinding hearing chaired by neutral factfinder Paul Roose on May 29, 2015 and the factfinding panel issued its recommendations on June 15, 2015. Under State law, after factfinding procedures have been completed, but no earlier than 10 days after the factfinding panel issues its recommendation, a public agency may, after holding a public hearing regarding the impasse, implement its last, best, and final offer.

The requested actions would conclude the process described above and execute the vendor contract necessary for parking enforcement in the Downtown RPP district. In addition, the requested actions would modify the City's administrative penalty schedule to include a penalty for violation of the RPP program. Staff proposes that the penalty for violation be set initially at $53, to match the existing penalty under Section 10.46.110 for violation of the College Terrace RPP program.

Timeline

Once the contract is awarded , the Serco team will need at least 60 days to mobilize and train

the officers before enforcement can begin. Other vendors are also mobilizing to install signs and provide for online permit sales and citation processing. The current schedule anticipates permit sales beginning in August, with enforcement of the RPP program in September. Phase One of the Downtown RPP pilot program will be 6 months, directly followed by Phase Two, with a duration of one year or more. During the pilot phases of the program City staff will work with downtown residents, businesses and the contractor to fine-tune the program to assure it is responsive to stakeholders' interests. The City Council will be asked to set parameters of Phase Two based on data collected during the first several months of Phase One.

Resource Impact

The enforcement contract with Serco, Inc. amounts to $503,210 annually and staff is requesting approval of the attached Budget Amendment Ordinance to transfer $378,000 from the General Fund to the Residential Parking Permit Fund offset with a reduction to the General Fund Budget Stabilization Reserve to partially fund the first year of the parking enforcement contract.

The Fiscal Year 2016 RPP Adopted Budget included $125,000 for parking enforcement. A $378,000 transfer from the General Fund to the Residential Parking Permit Fund is necessary to increase the budget to cover the first year of costs under this contract.

The RPP budget conservatively assumes approximately $230,000 in revenue from permit sales and parking citation revenue. Staff will monitor revenues and expenses in this fund during Fiscal Year 2016. Based on actual experience, staff may bring forward budget adjustments as part of the Fiscal Year 2016 Midyear Budget review.

During Fiscal Year 2016, staff will evaluate revenue and expenditure data related to the RPP district and provide recommendations to Council for future funding of contract enforcement effort as part of the Fiscal Year 2017 budget process.

Policy Implications

Implementation of a Downtown RPP program is consistent with the City's three-pronged parking approach, and is also consistent with the following comprehensive plan goals:

1. Goal T-8, Program T-49: Implement a comprehensive program of parking supply and demand management strategies for Downtown Palo Alto
2. Policy T-47: Protect residential areas from the parking impacts of nearby business districts

Environmental Review

Contract enforcement of the Downtown RPP district is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility that this program may have a significant effect on the environment and Section 15301 in that this program will have a minor impact on existing facilities.

Attachments:

- Attachment A: Budget Amendment Ordinance (DOCX)
- Attachment B: Resolution Adding Penalty for Violation of Residential Preferred Parking (PDF)
- Attachment C: Contract with Serco (PDF)
- Attachment D: Downtown RPP Factfinding Report and City Dissent (PDF)

ATTACHMENT A

Ordinance No. XXXX

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO AMENDING THE BUDGET FOR FISCAL YEAR 2016 TO PROVIDE A TRANSFER FROM THE GENERAL FUND IN THE AMOUNT OF $378,000 TO THE DOWNTOWN RESIDENTIAL PARKING PERMIT FUND OFFSET WITH A REDUCTION IN THE BUDGET STABILIZATION RESERVE FOR PARKING PERMIT ENFORCEMENT SERVICES IN THE DOWNTOWN RESIDENTIAL PREFERRED PARKING (RPP) DISTRICT

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. The Council of the City of Palo Alto finds and determines as follows:

A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 15, 2015 did adopt a budget for fiscal year 2016; and

B. In December 2014, the City Council adopted a resolution approving the establishment of Residential Preferred Parking (RPP) District in Downtown neighborhoods; and

C. The RPP program is part of a multi-pronged strategy to ensure that parking facilities are efficiently utilized and that the available parking is prioritized for the appropriate use; and

D. Staff recommends that the City Council approve a parking enforcement contract in the amount of $503,210 for parking enforcement efforts in the RPP district which will include vendor provided recruitment of enforcement officers, background checks and screening, final selection, and initial and on-going training of personnel. Training will include permit enforcement, issuance of citations, marking vehicles, customer service, information about Palo Alto's Downtown, and codes and ordinances related to parking enforcement in the area. Additionally, the vendor will provide all personnel with uniforms, badges, ID tags, and vehicles.

E. The total contract amount of $503,210 is recommended to be funded in Fiscal Year 2016 with $125,210 in RPP permit revenue and $378,000 with a transfer from the General Fund Budget Stabilization Reserve.

SECTION 2. Therefore, the sum of Three Hundred Seventy Eight Thousand Dollars ($378,000) is hereby transferred from the General Fund to the Downtown Residential Parking Permit Fund offset with a reduction to the Budget Stabilization Reserve and appropriated in the Residential Parking Permit Fund for parking enforcement efforts.

SECTION 3. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

SECTION 4. The actions taken in this ordinance do not constitute a project requiring environmental review under the California Environmental Quality Act (CEQA).

INTRODUCED AND PASSED: Enter Date Here

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

APPROVED:

_____
Senior Assistant City Attorney

_____
City Manager

_____
Director of Administrative Services

_____
Director of Planning and Community Environment

NOT YET APPROVED

Attachment B

Resolution No. _____
Resolution of the Council of the City of Palo Alto Amending the Civil Penalty Schedule for Violations of the Palo Alto Municipal Code to Add a Penalty for Violations of Chapter 10.50 (Residential Preferred Parking Districts)

The Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. Municipal Code Civil Penalties. The civil penalty schedule for violations of the Palo Alto Municipal Code established by Resolution No. 9410 is hereby amended to add the following*:

10.50.100(a)	Violation of Posted RPP Permit Sign	$53

*All penalties include state-mandated assessments pursuant to Gov't. Code 76000, S.B 1407(2008), and Government Code 76000.3 (S.B. 857, 2008) totaling $12.50.

All other penalties shall remain the same.

SECTION 2. The Council finds that the adoption of this resolution does not constitute a project for purposes of the California Environmental Quality Act, and, therefore, no environmental assessment is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Senior Assistant City Attorney

APPROVED:

_____
Mayor

_____
City Manager

_____
Police Chief

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ATTACHMENT C

CITY OF PALO ALTO CONTRACT NO. Cl5156763
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND SERCO INC.
FOR PROFESSIONAL SERVICES

This Agreement is entered into on this I" day of June, 2015, ("Agreement") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and **SERCO INC.,** a New Jersey corporation, located at 1818 Library Street, Suite 1000, Reston, Virginia 20190 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide parking enforcement services for the Downtown Residential Preferential Parking (RPP) district ("Project") and desires to engage a consultant to provide services in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.
The term of this Agreement shall be from the date of its full execution through May 31, 2018 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set fo1th in Exhibit "B", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the

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CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed Five Hundred Three Thousand Two Hundred Ten Dollars ($503,210.00) per year. Total contract compensation shall not exceed One Million Five Hundred Nine Thousand Six Hundred Thirty Dollars ($1,509,630.00). The applicable rates and schedule of payment are set out in Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C-1"). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses,

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pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives written notice to CONSULTANT and CONSULTANT has an opportunity to review and accept or dispute the errors, omissions, or ambiguities of the work product defined within such notice. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES (Not Applicable)

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed if such assignment will not impact the schedule or quality of the Services. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the other party will be void.

SECTION 12. SUBCONTRACTING. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Muhammad Mansoor as the Regional Manager to have overall supervisory responsibility for the performance, progress, and execution of the Services. The Regional Manager position provides high level program support which is not conducted on site or in a day to day capacity. A Project Manager position will represent CONSULTANT during the normal operations for the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager, which approval shall not be unreasonably withheld, conditioned, or delayed if the substituted project manager has comparable experience and qualifications. CONSULTANT,

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at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Jessica Sullivan, Planning & Community Environment Department, Transportation Division, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone: (650) 329-2453. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, actual third party claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses including reasonable attorney's fees, experts fees, and court costs ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

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SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

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19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Serco Inc.
Attention: David Allen Gitlin, Jr
1818 Library Street, Suite 1000
Reston, VA 20190

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

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21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the City, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. NON-APPROPRIATION

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24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty given that CITY has provided CONSULTANT with thirty (30) days written notice (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.

25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

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25.9 All unchecked boxes do not apply to this agreement.(Not Applicable)

25.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

25.11 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

25.12 Non-Solicitation. During the term of the Agreement and for a period of 1 year thereafter, the City shall not give any preferential treatment in its hiring practices to any of Consultant's employees working or involved with the Agreement or proposed to work under the Agreement by either party.

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IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

SERCO INC.

DocuSigned by:
David Cornell
7C1EDF1D7E1F4C8...

Manager Contracts

APPROVED AS TO FORM:

Attachments:

EXHIBIT "A":	SCOPE OF WORK (Includes Attachment "A")
EXHIBIT "B":	SCHEDULE OF PERFORMANCE
EXHIBIT "C":	COMPENSATION
EXHIBIT "C-1":	SCHEDULE OF RATES
EXHIBIT "D":	INSURANCE REQUIREMENTS

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EXHIBIT "A"
SCOPE OF SERVICES

CONSULTANT will provide enforcement services for the Downtown Residential Preferential Parking (RPP) district, issuing parking citations to violators for a period of up to 3 years. Information on the design of the Downtown RPP district is found in Attachment A.

TASK 1: ONBOARDING AND STARTUP – 60 DAYS

CONSULTANT will provide the appropriate and necessary training to employees who work for the CITY, relevant to their respective job duties. CONSULTANT shall maintain complete training records for each employee, as well as any other records prescribed by law or CITY policy as appropriate. The CITY's Police Department will provide all materials related to enforcement rules and regulations currently in place; all other training materials are to be provided by CONSULTANT.

Training topics include, but are not limited to, to the following topics:

a. Design of the Downtown RPP District, including information on employee and resident permits and history of the program development
b. Enforcing parking permit violations and other parking regulations
c. Marking and tagging of vehicles using Consultant-provided handheld devices
d. Palo Alto Municipal Codes, California Vehicle Code, state statutes, and ordinances related to parking enforcement
e. Chain of command and authority levels
f. Marking, tagging, towing, and impoundment of vehicles
g. Job procedures and emergency protocol
h. Responding to calls for service
i. Customer service delivery and expectations
j. Courtroom procedures and testimony
k. Workplace safety
l. Civil rights law and procedures
m. Information on history of Palo Alto, City Downtown, and City Attractions

The training program should provide the CONSULTANT's personnel with sufficient understanding of the RPP District as well as operation of required equipment and enforcement protocol. All personnel are to complete and pass the training course prior to starting service, and the training procedures must be approved by the CITY. The time period from CITY's notice to proceed to start of enforcement shall not be less than sixty (60) days.

CONSULTANT will also train staff to appear in court in a professional manner with related documentation and evidence to support the case. CONSULTANT's Project Manager will represent the company on most court appearances unless an enforcement officer is specifically

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required to be present, in which case the Project Manager will accompany the enforcement officer or Supervisor to the hearing.

Deliverable: CONSULTANT will provide a training plan upon receiving notice to proceed from the CITY. The training plan will include all training activities planned for enforcement officers and include information from the CITY required to complete the training, as well as a detailed schedule.

PERSONNEL

CONSULTANT will ensure that all new employees meet all CITY of Palo Alto and CONSULTANT employment requirements as listed below. CONSULTANT will comply with all existing Government code and CITY non-discrimination policies.

All candidates must complete a job application and provide a DMV printout. To be offered a position, candidates must pass a pre-screening at CONSULTANT's expense. The pre-screening includes the following:

a. Pre-employment drug and alcohol testing
b. Criminal history background check
c. DMV record check
d. Social Security Number verification
e. Eligibility to work in the United States
f. Ability to speak and write in English
g. LiveScan/Fingerprinting
h. California Department of Justice background check

Drivers will undergo further screening:

a. Comply with USDOT/Federal Motor Carrier Safety Administration and California DMV regulations
b. DMV nationwide records check
c. Pass the Smith Systems Defensive Driver Safety Training
d. 40 hours on-the-job training

CONSULTANT shall select and hire only persons who are well-qualified to perform the duties for their respective job positions, and should provide classifications of all employee positions within their proposal, including a job description. Classifications might include, but are not limited to:

- Parking Enforcement Supervisor/Manager: Assist the parking enforcement staff with day-to-day operations and staffing issues. Supervisor shall be responsible to report with the on a bi-monthly basis and provide updates on the enforcement process, any feedback from the public, incidents and number of citations issued. A supervisor should possess

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sufficient IT knowledge to be able to handle employee equipment issues in the field, and the capability of working with the citation processing agency for any citation issues.

- Parking Enforcement Staff: Responsible for the day-to-day management, supervision, and operation of parking enforcement services. These individuals must have the capacity to act as "Ambassadors" for the CITY, providing information about parking enforcement practices and other information on Palo Alto's Downtown.
-

CONSULTANT should provide performance metrics for each position so that performance evaluations may take place.

CONSULTANT will provide eleven (11) shirts and eleven (11) pants to full-time employees.

CONSULTANT will issue staff jackets, hats, and rain attire for inclement weather, all bearing the company logo. CONSULTANT and uniform company will be responsible for cleaning of uniforms. Cleaning of uniforms is not the responsibility of the CITY. CONSULTANT will provide sample uniforms for CITY review prior to any issuance of uniforms.

Employees will wear CONSULTANT-issued photo ID at all times while on duty.

CONSULTANT will be expected to purchase parking permits for any employees driving to Palo Alto.

CONSULTANT will be responsible for all personnel supervision, discipline, and termination actions. However, the CITY may require the removal of any CONSULTANT's personnel, when it is determined to be in the best interest of the CITY, at any time.

CONSULTANT will address temporary vacancies due to vacations, illness, leaves of absence, or termination and provide continuous staffing.

Deliverables:

a. CONSULTANT will supply an updated organization chart and complete list of employees and roles at the CITY's request and annually on contract anniversary date.
b. CONSULTANT will provide draft design of enforcement uniforms for approval during transition phase.
c. At the request of the CITY, Consultant will allow CITY to participate in employee interviews.

TASK 2: Enforcement of Phase 1 and Phase 2 of RPP Program (18 Months)

CONSULTANT will be responsible for issuing citations for parking permit violations within the Downtown RPP District, in accordance with the rules specified in Attachment A. Citations must include the make, model, color, and style of vehicle, license tag number or Vehicle Identification

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Number (VIN), violation code number and description, base fine amount and additional fine amount in the event there is a failure to respond timely, badge number, the location of the parking offense, type of offense (e.g. permit incorrectly displayed, no valid permit, not parked in the right location) and the time and date of the offense.

CONSULTANT staff will be fully trained on Consultant-furbished handheld devices. Staff will also be trained on how to capture digital images of vehicle license plates, and how to issue manual paper citations. Consultant will work with CITY's existing citation processing vendor to ensure that citations associated with the RPP district may be recorded and tracked separately from existing parking enforcement.

CONSULTANT will be trained on proper placement of citations on the windshield, how to complete and issue citations for drive offs and covered VIN numbers, missing license plates, and other unusual occurrences. In the event the driver drives away, the citation will be mailed as required by the California Vehicle Code.

CONSULTANT will furnish two (2) hybrid vehicles for parking enforcement services and will be responsible for all on-going operating expenses including insurance, fuel, maintenance, and repairs. The vehicles will be equipped with GPS tracking units and LPR technology as necessary. CONSULTANT's vehicles shall be clearly identifiable as performing parking enforcement and parking meter maintenance and collection operations for the CITY. CONSULTANT's staff shall operate all vehicles at all times in compliance with all state and local motor vehicle and emissions laws. Vehicles shall not have missing parts or dents, and the rear of all patrol vehicles shall have a sign warning of frequent vehicle stops. All vehicles used by CONSULTANT shall have blinking flasher lights installed on each vehicle's roof. CONSULTANT will obtain approval by the CITY Manager and the Chief Communications Officers or his/her designee prior to ordering decals for the marking of vehicles.

CONSULTANT will also provide officers with four (4) Trek Marlin 6 bicycles, anticipating that some enforcement officers may be able to use this method of enforcement for either Phase 1 or Phase 2.

Deliverable: CONSULTANT will provide draft design for vehicle marking. Consultant will provide a an enforcement strategy document for Phase 1 and Phase 2 of the program, including anticipating beats, schedule, and personnel assigned to each phase of the project. Consultant will work with CITY to identify opportunities for improving and modifying enforcement strategy at periodic intervals during Phase 2 of the program, especially opportunities which could be afforded by the introduction of technology (e.g. LPR). The Consultant will use mark-moding and chalking as the main forms of enforcement during Phase 1, but will work with the CITY to identify other modes of enforcement as the program moves forward.

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CONSULTANT will provide a schedule of estimated patrol routes and frequency recommendations. The CITY seeks to ensure that coverage is adequate, fair, regular, and consistent, although it is also expected that CONSULTANT will alternate the patrol routes on a regular basis to eliminate predictability. CONSULTANT can propose changes to routes and schedules to the CITY as part of their performance reporting meetings and documentation.

CONSULTANT will be responsible for maintaining records of employment and, upon request, provide the CITY with personnel and training information for each employee.

CONSULTANT will require Parking Enforcement Officers to submit daily reports regarding issues such as:

a. Missing or damaged or conflicting parking signs, or traffic control signs, or curb markings
b. Obstructed parking signs, stop signs, yield signs or any safety hazard
c. Parking abnormalities or abnormal parking patterns
d. Beat analysis and beat enforcement
e. Incidents/accidents

CONSULTANT will update and meet with CITY staff regularly, including the following:

a. Weekly status reports with Parking Operations Lead and other staff as necessary
b. Monthly progress meetings
c. Quarterly evaluation and status report
d. Annual performance review

CONSULTANT will seek CITY approval on operational changes including but not limited to:

a. Schedules
b. Routes
c. Operations

ATTACHMENT A

The proposed Downtown Residential Preferential Parking (RPP) Program is being introduced as part of a suite of parking management strategies aimed at improving parking and traffic conditions in Downtown Palo Alto. The program will restrict commuter parking during hours of operation, although limited numbers of commuter-employee permits will also be sold. Over time, the number of employee permits will be reduced as additional parking supply is provided within the Downtown area.

The proposed RPP District includes a geographic area surrounding Palo Alto's Downtown commercial zone and bounded by the City of Menlo Park to the Northwest. Currently, the only existing parking restrictions within this boundary include the Downtown Business District color zone and the SOFA business District:

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- The SOFA business district has 2-hour parking along streets which house mainly local businesses. Customers may re-park after two hours in any of the spaces.
- The Downtown color zone has 2-hour parking which is limited to a specific color zone – Blue, Coral, Lime or Purple. Parking twice within the same color zone during the time period 8:00 to 5:00 is not permitted.

The physical boundaries of the new Downtown RPP District will not include the existing SOFA and Downtown areas, which are currently enforced by the Palo Alto Police Department using mark-moding and chalking. The area within the dotted blue line will be included in the new parking District (see below).

The program as currently proposed has two distinct phases, where parking restrictions will differ:

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Phase 1: 6 Months

For the first phase of the program, the CITY will sell RPP permits to residents and to employees who live or work within the boundaries of the District. Permits will be sold online using an online issuance system by T2 Systems. It is expected that guest permits will be hangtags and that individual permits will be stickers on vehicles. There will be several types of valid permits:

- Resident Permit (sold to individuals living at residential addresses within the blue line area).
- Standard Commuter Employee Permit: This is a permit that will be sold to employee commuters who work within the RPP District Boundary.
- Residential Annual Guest Permits / Visitor Permits

All permits shall be valid anywhere within the District during this phase. Although the CITY recognizes that license plate recognition (LPR) equipment could be used for enforcement and physical permits may not be necessary for Phase 1 enforcement, the CITY wishes to use Phase 1 of the program to collect needed parking occupancy data, and therefore will require physical permits during Phase 1. This phase of the program will be used to determine the appropriate "permit cap" for employee permit sales in future phases of the program. The CITY is proposing that Phase 1 of the program last for 6 months only. All permits sold within Phase 1 will expire at the end of 6 month period, which will be identified on the permit.

Phase 2: 12+ Months

After Phase 1, the CITY will begin to limit the number of employee permits which will be sold for the program. Rather than allowing employees with permits to park anywhere within the District, employee permits will be allocated in one of the following ways:

1. Employee permits may be sold specific to a block face or faces, e.g. the "900-1000 Block of Ramona", which would be visible on the permit, or;
2. Employees with permits can only park during enforcement hours at specific "employee" spots within the District, which would be allocated along block faces within the residential area.

Residential permits, Annual Guest Permits and Visitor permits will be valid anywhere within the District. Anyone without a valid permit will be allowed to park for two (2) hours, at which point they would need to move their car to a different parking space. The hours of enforcement of the program are expected to be Monday through Friday, 8:00am – 5:00pm.

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EXHIBIT "B"
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement.

	Milestones	**Completion No. of Days/Weeks From NTP**
1.	Onboarding and Startup	60 DAYS
2.	Enforcement of Phase 1	6 Months
3.	Enforcement of Phase 2	12 + Months

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EXHIBIT "C"
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Basic Services") and reimbursable expenses shall not exceed $503,227.00 per year. Total contract compensation shall not exceed $1,509,681.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed $503,210.00 per year. Total contract compensation shall not exceed $1,509,630.00.

BUDGET SCHEDULE	**NOT TO EXCEED AMOUNT**
Task 1 (Project Manager per year)	$141,446.00
Task 2 (Parking Enforcement Officer per year)	$242,304.00
Task 3 (ODC's & Materials per year)	$119,460.00

Sub-total Basic Services Per Year	**$503,210.00**
Sub-total Basic Services For Three Year Term	**$1,509,630.00**

Reimbursable Expenses	None

Total Basic Services and Reimbursable expenses	$**1,509,630.00**

Maximum Total Compensation	**$1,509,630.00**

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REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: None

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

EXHIBIT "C-1"
HOURLY RATE SCHEDULE

Scope	Labor Categories (e.g., Consultant, Sr. Consultant, etc.)	Est Hours	Hourly Rate	Extended Rate
Task 1	Project Manager – Direct Labor Rate	1,920	$ 40.87	$ 78,470
	Overhead Rate (including Fringe, G&A and Fee)	1,920	$ 32.80	$ 62,976
Total not to exceed, Task 1	Project Manager (fully burdened)	1,920	$ 73.67	$ 141,446
Task 2	Parking Enforcement Officer (5 FT PEO) – Direct Labor Rate	9,600	$ 14.00	$ 134,400
	Overhead Rate (including Fringe, G&A and Fee)	9,600	$ 11.24	$ 107,904
Total not to exceed, Task 2	Parking Enforcement Officer (fully burdened)	9,600	$ 25.24	$ 242,304
Task 3	ODCs / Materials to include: bicycles / vehicles, uniforms, ticket writers, cell phones, and other misc. supplies	N/A		$ 97,033
	Burdens and Fee G&	N/A N/A		$ 22,427
Total not to exceed, Task 3	ODCs and Materials (fully burdened)	N/A		$ 119,460
Total not to exceed (Tasks 1 – 3)	Project Manager (1), Parking Enforcement Officers (5) and ODCs / Materials (all fully burdened)	N/A		Annual NTE $ 503,210

TOTAL NOT TO EXCEED AMOUNT FOR TERM 3 YEARS @ $503,210. 00 per year = 1,509,630.00

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EXHIBIT "D"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY PROPERTY DAMAGE BODILY INJURY & PROPERTY DAMAGE COMBINED.	$1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON - EACH OCCURRENCE PROPERTY DAMAGE BODILY INJURY AND PROPERTY DAMAGE, COMBINED	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	$1,000,000	

YES **THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED**: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, **NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.**

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.

C. DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. <u>PRIMARY COVERAGE</u>

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER

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INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE EMAILED OR MAILED TO:

EMAIL: InsuranceCerts@CityofPaloAlto.org

PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303.

ATTACHMENT D

Paul D. Roose
Arbitrator / Mediator
Golden Gate Dispute Resolution
510-466-6323
paul.roose@ggdr.net
www.ggdr.net
June 15, 2015

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between	)	
City of Palo Alto	)	
Employer	)	
and	)	Collective Bargaining Impasse
SEIU Local 521	)	Factfinding
Union	)	PERB Case No: SF-IM-151-M

APPEARANCES:

For the Employer: Gina Roccanova, Attorney
Meyers Nave
555 12th St. Suite 1500
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For the Union: Robert Szykowny, Attorney
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FACTFINDING PANEL:

Appointed by the Employer: Suzanne Mason, Assistant City Manager
City of Palo Alto

Appointed by the Union: Nick Raisch, Area Director
Service Employees International Union Local 521

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

1) State and federal laws that are applicable to the employer

2) Local rules, regulations, or ordinances

3) Stipulations of the parties

4) The interests and welfare of the public and the financial ability of the public agency

5) Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in comparable public agencies

6) The consumer price index for goods and services, commonly known as the cost of living

7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received

8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations

Service Employees International Union Local 521 is the exclusive representative for the General Employees unit with the City of Palo Alto, California. The parties had a collective bargaining agreement

(CBA) in place at the time of this dispute. That agreement became effective December 1, 2013 and is set to expire December 1, 2015.

The City has six other represented bargaining units with CBA's. The city's total workforce ranges from 1200 to 1400 employees.

One of the classifications represented by the Union is community service officer (CSO). This classification, formerly designated as parking enforcement officer, is assigned to the city's police department. The primary duty of this non-sworn classification is the enforcement of parking rules and regulations, including issuing citations, within the city. There are nine CSO positions in the current year budget, eight of which are filled. This classification is the subject of the instant dispute.

In 2014, the Union learned that the Employer was proposing to implement a new Residential Parking Permit (RPP) program in downtown Palo Alto neighborhoods. On December 18, 2014, management and union representatives met for the first time about this plan. The Union expressed concerns that the City was intending to contract out permit sales and parking enforcement work to an outside vendor. The Union considered this to be work under its bargaining unit.

The parties conducted six "meet and confer"[1] sessions between February 4, 2015 and March 5, 2015. No agreement was reached. The Employer's Labor Relations Manager Melissa Tronquet then wrote a letter to the Union on March 23, 2015. The letter concluded with the following:

> The City has met and conferred in good faith with SEIU over its recommendation to contract out parking enforcement in the new RPP district. SEIU's failure to provide any new or substantive proposals in the past several meetings that are responsive to the City's needs demonstrates that the parties have a fundamental disagreement that further discussions will not resolve. As a result, the parties are at impasse and City plans to move forward with a recommendation to the City Council on or around April 20, 2015 to approve a contract for parking enforcement in the RPP.

What happened next is not completely clear from the record supplied to the factfinding panel. It appears that the Union contacted the California Public Employment Relations Board requesting the dispute be certified for factfinding under Government Code 3505. The Employer opposed this request, arguing that the matter was outside the scope of bargaining and that a single issue dispute within the context of an existing CBA was not an appropriate matter for MMBA factfinding. PERB rejected the Employer's objections and certified the matter for factfinding. On May 15, 2015, PERB notified the

[1] One of the disputed issues is whether these discussions between the parties fall under the rubric of collective bargaining or not, with the Employer taking the position that they do not. This report is characterizing these meetings as "meet and confer" since that was the label placed on these meetings by the City in its correspondence with the Union.

undersigned that the parties had selected him to be the chair of the factfinding panel in this matter pursuant to Government Code 3505. A hearing was set by mutual agreement to be held on May 29, 2015.

The panel convened on that date in Palo Alto and took on-the-record evidence and argument from both sides concerning the matter in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, confidential mediation was also conducted on that date. Mediation efforts proved unsuccessful. The parties then went back on the record and submitted their final proposals and oral argument for the panel's consideration.

STIPULATED ISSUE

The parties submitted the following as a mutually-agreed stipulated issue statement for this dispute:

1. Should the City contract with its selected third party vendor to enforce parking restrictions in its trial downtown RPP program?
2. How should the parties resolve any identified impacts on the bargaining unit?

BACKGROUND TO THE DISPUTE

The City of Palo is located in Santa Clara County between San Francisco and San Jose. It has a population of approximately 67,000. The city is considered to be a part of the Silicon Valley and hosts world-renowned Stanford University. It is home base for many high-profile businesses such as Tesla Motors and Hewlett-Packard. City government provides a full range of services to its residents and businesses, including police and fire services. It has a general fund budget of about $171 million.

In recent years, Palo Alto residents who live in neighborhoods near the thriving downtown have been growing increasingly concerned about downtown workers parking on residential streets. At the same time, downtown businesses expressed concerns about the availability of parking spaces for their employees. Over a nine-month period in 2014, City staff worked with various stakeholders to come up with a plan to create a pilot parking permit program. Under Phase I of this proposed program, residents could apply for and receive a certain number of free permits, and downtown employees could purchase permits.

The City already has a parking permit program in the Stanford University area, which includes residential permits and guest passes. The program was created in 2009 as a result of residents' concerns about Stanford University staff and students and Facebook employees parking on residential streets during the day. The permit program, called the College Terrace program, is administered by City employees. Parking enforcement is conducted by SEIU-represented CSO's.

A second resident-only program exists in the Crescent Park neighborhood. Initiated as a 12-month trial in 2013, the program is not considered a true RPP program. However, it shares aspects of an RPP program, including the use of a hang tag parking permit. It is being extended for an additional year. This program is also enforced by CSO's.

The City Manager recommended to the City Council in a report December 1, 2014, that a citywide ordinance be passed that would establish a framework for RPP's. The report reads as follows:

> If the City-wide ordinance is approved, the College Terrace program would continue unchanged. However at a later date, the City could rescind the College Terrace ordinance and replace it with a resolution as envisioned by the citywide ordinance. Incorporating the College Terrace program into the citywide program would allow for more uniform enforcement.

The Employer acknowledged during the factfinding hearing that, potentially, the Downtown pilot program could be made permanent and that RPP more generally could be extended to additional City neighborhoods.

The proposed ordinance includes the following recommendation:

> Allowance for contract enforcement of RPP districts. Staff noted that enforcement costs for RPP districts could be significant, and recommend allowing for contract (non-city employee) enforcement if appropriate.

In the meantime, pending passage of the proposed ordinance, the City issued a Request for Proposals (RFP) for a new downtown RPP. The RFP included permit sales and enforcement duties, as well as other services. In regard to enforcement, the RFP states:

> Contract Parking Enforcement personnel will provide enforcement services for the Downtown RPP district, issuing parking citations to violators. The chosen contractor is expected to provide all equipment needed for enforcement operation, including but not limited to vehicles, handheld devices for uploading citation information and uniforms.

The City received three bids from contractors in November 2014 in response to the RFP. Two of the bids proposed to use two contractor employees for enforcement. The City considered these two

proposals "non-responsive" because the City believed that this was inadequate staffing. A third proposal, from Serco Inc., included four enforcement personnel. It also included supervisory personnel, background checks and a two-month implementation timeframe[2]. The Serco bid includes screening, hiring and training all project employees. It also provides uniforms, feedback and consulting services, two hybrid cars and four bicycles for use by enforcement officers. This proposal was accepted by the City.

In Serco's bid, the company claims that it currently performs this kind of work for many public jurisdictions, including some in California. The City's Transportation Planning Manager Jessica Sullivan spoke on the record at the hearing on behalf of the Employer. She said that she spoke at length with personnel at the City of West Hollywood, also a Serco parking enforcement client. The City did not obtain any information from any of the cited comparator jurisdictions in regard to any collective bargaining agreements with their unions that impacted this contracted out work one way or the other.

Ms. Sullivan did indicate that she learned that the City of Inglewood, CA, went through a "long difficult process" of phasing out bargaining unit work. The Employer's RFP was written, she asserted, with the intention of not doing that and keeping intact the existing unit work.

Phase I of the City's program has an initial six-month period, during which the program will be evaluated and refined in response to resident and employer input. It will then be modified and extended under Phase II for an additional year, or more. Implementation of the contract with Serco has been postponed while the impasse procedure is pending.

A City CSO, Gabriel Mora, attended the factfinding hearing and spoke on the record. Mr. Mora has seventeen years of experience as a CSO and as a parking enforcement officer, the CSO's predecessor job title. He stated that the title of the position changed four or five years ago, but that the duties remained the same. "We do 100% parking enforcement. Except once a week we rotate onto abandoned vehicle duty," Mr. Mora said. During the years he has been with the City, parking enforcement has always been performed exclusively by City parking enforcement officers / CSO's.

Mr. Mora also indicated that the CSO's currently enforce street sweeping restrictions in the areas now designated for the downtown RPP. Under the contracting-out proposal, the CSO's would continue to do so.

[2] The City's RFP called for the program to be operational within 60 to 90 days from contract award. The Serco bid says "...we feel confident in our ability to be operational within 60 days from the award of a contract."

Mr. Mora also stated that the CSO's enforce the existing RPP program in the Stanford University area. When the program first began four or five years ago, he said, the CSO's were issuing about thirty citations a day. Now, they issue only three or four citations a day.

In regard to the vehicles used in the existing parking enforcement program, Mr. Mora said that they use three-wheeled vehicles known as Go-4's. Mr. Mora stated that the CSO's do not use bicycles in their duties, but that some department police officers use bicycles.

The Union presented several proposals on how the City could do the Downtown RPP work with bargaining unit employees. In a new proposal presented to the City during the factfinding hearing, the Union asserted that it had devised a way of covering the new work with the existing workforce by implementing significant new technology citywide and reorganizing existing enforcement activities citywide. The City, however, communicated that this proposal did not address its priorities for the Downtown RPP.

RELEVANT CONTRACT PROVISIONS AND RELATED DOCUMENTS

The existing agreement between the parties contains several sections that are relevant to this dispute and provide context for the parties' negotiations over this issue.

Memorandum of Agreement

Article 1 – Recognition

Section 1 – Recognition. Pursuant to Sections 3500-3510 of the Government Code of the State of California and Chapter 12 of the City of Palo Alto Merit System Rules and Regulations, the City recognizes the Union as the exclusive representative of a representation unit consisting of all regular full and part-time employees in the classifications listed in Appendix A attached hereto. This unit, shall for purposes of identification, be titled the SEIU General Employees bargaining unit (hereinafter "General Unit).

Article III – Union Security

Section 13 – Contracting Out. The City through the labor management process will kept [sic] the Union advised of the status of the budget process, including any formal budget proposal involving the contracting out of SEIU bargaining unit work traditionally performed by bargaining unit members, where such contracting will result in layoff or permanent reduction in hours. Within the ninety (90) day period of contracting out, both parties may offer alternatives to contracting out and meet and confer on the impact of such contracting out of a bargaining unit employee work. The City will notify the Union in writing when contracting out work which has been traditionally performed by bargaining unit workers, where such contracting out is expected to replace a laid off bargaining unit position that has been eliminated within ninety (90) days prior to the date of the planned contract work. When feasible, the City will provide such notice prior to the beginning

date of the planned contract work. The City will meet with the Union upon request to discuss alternatives. This provision does not apply to the filling of temporary vacancies of twelve (12) months or less duration. The City will provide the Union with a biannual list by department of all contract workers or vendors who are contracted by the City who perform work for the City. The City will make a reasonable effort to identify the names of the vendors on the list and the nature of the work provided by each vendor.

Article XXI – No Abrogation of Rights

The parties acknowledge that Management rights as indicated in Section 1207D of the Merit System Rules and Regulations and all applicable State laws are neither abrogated nor made subject to negotiation by adoption of this MOA.

Merit System Rules and Regulations

Employer and Employee Relations and Employee Representatives

1207. Rights, obligations and limitations

(d) Rules no abrogation of rights [sic]. By the adoption of the provisions of this chapter, City management shall not be deemed to abrogate its right to establish policy and procedure and make whatever changes it considers necessary for the good and efficient services of the City. The exclusive rights of city management include, but are not limited to: determine the missions of its constituent departments, sections, groups and individuals; set standards of services; determine the standards of selection for employment and promotions; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means, time and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its missions and exercise complete control and discretion over its organization and technology of performing its work.

Job Specification

Community Service Officer (relevant sections)

Purpose of classification: Under direct supervision, Community Service Officers perform a variety of police-related tasks in any of the divisions of the Police Department. A non-sworn classification, Community Service Officer provides support in crime prevention activities, following-up on assignments for police investigators, gathering information on community offenses hazards, violations, or nuisances, and performs related duties as required.

In the area of Traffic Enforcement, responsibilities may include:

28. Performs Parking Enforcement Officer functions as needed

POSITIONS OF THE PARTIES

The Employer

The City is participating in the factfinding process "subject to its objections that the factfinding process is not applicable to this dispute at all." The City asserts that the courts will ultimately decide the question, and that is not for the panel to decide.

The Employer does ask the panel to rule on the issue of whether the issue in dispute is within the scope of bargaining. The City contends that it is not within scope, and fundamentally about a management right not subject to bargaining. The City cites court precedent that the only contracting out decisions subject to bargaining requirements are those involving layoffs and those in which the contracting out decision is "substantially motivated" by savings of labor costs. Moreover, the City did bargain in good faith, meeting with the Union six times.

The City contends that many of the MMBA statutory factors do not apply in this case. The ones that do apply favor the Employer's position. The "interests of the public," a statutory factor, are best served by the City's contracting out proposal.

The Employer contends that it needs to contract out parking enforcement work for the downtown RPP pilot program. Cost is not a factor, the Employer asserts. The issues are quality, the package of services and equipment that Serco is offering, and Serco's significant experience operating similar programs. Serco can provide the right training, the right feedback on the program, and the right equipment. The existing bargaining unit employees, "not through any fault of their own, not because they are bad workers," cannot perform this work. "They don't have the structure, the support, the training" for this assignment, the City's advocate argues.

The City does not believe that the existing RPP program, with enforcement by City employees, is a relevant comparison. The proposed program covers a much larger area and is much more complex, in that non-residents will be allowed to purchase permits, that different types of permits will be displayed in the same zones, that permits will be limited to areas potentially as small as a block-face, and that non-permit holders will be permitted to park for limited periods. The City's advocate put it this way:

> The City's primary interest here is not that this task be done in a certain amount of time but that it be done correctly. And that it be done in…laboratory conditions by an experienced vendor that understands programs like these and can assess whether this is

> going to work going forward...This is a complex program, so they're going to have questions: "Can I park here, can't I park here, when can I park here, how can I get a permit, can I get a permit for this zone, can I get a permit for that zone?" They'll have to be able to answer those questions. And we also want people who have been trained to do that.

This is a limited-term pilot program, the parameters of which are evolving, the Employer contends. There will be no impact on the Union's bargaining unit when this program is implemented. There will be no layoffs or reduction in hours of existing staff, the Employer asserts.

The Employer urges the panel to recommend that the City proceed with its contracting out of the parking enforcement work for the Downtown RPP.

The Union

Initially, the Union objected to the contracting out of both permit sales and parking enforcement. Prior to the commencement of factfinding the Union withdrew its objection to the permit sales plan. The only issue remaining is that of the contracting out of parking enforcement work.

The Union contends that the Employer should not contract out this work, and does not need to. The Union has shown the Employer that its bargaining unit members can do the new work. The Employer has not demonstrated a compelling reason to contract out the work.

"This has always been bargaining unit work. The job description lists it. The City has tried to draw the distinction that somehow this is new work. We have shown that our workers already do this same work in the Stanford area," the Union's advocate argued.

The Union has made proposals on how the work can be done, but does not ultimately care how the work gets done, as long as it is done by Union-represented employees. The Union has never opposed more training for CSO's.

In regard to the MMBA statutory factors, it is clear that these were written up with an entire MOU in mind, the Union contends. However, the Union believes that the "interests and welfare of the public" and the "financial ability" of the Employer are relevant factors. The Union believes that its proposal to keep the work in the unit is actually less expensive than the Employer's Serco proposal.

The "comparison" factor is also relevant, the Union contends. The City proposes to give this work to non-union workers making $14 an hour and without public benefits.

PANEL FINDINGS

As both sides have pointed out, this is not a typical MMBA factfinding. Most disputes subject to this procedure involve entire contract negotiations, or at least a bargaining reopener on certain limited contract articles. This dispute concerns a single issue that has arisen within the term of an existing CBA.

PERB Has Defined the Scope of This Dispute

PERB, over the objections of the Employer, has ruled that this issue is appropriate for factfinding. The Employer argues that it is up to the courts, not the factfinding panel, to address the Employer's objection to the use of this process. The panel agrees with this Employer argument. PERB has empowered the panel to make findings and recommendations on the substance of this dispute. That is what the panel will do.

The Employer has, however, asked the panel to issue findings on another threshold issue: is the substance of the dispute a mandatory subject of bargaining? For the same reasons as articulated above, the panel declines to address this issue. The panel regards PERB's certification of this process for this issue as a mandate to address the merits.

This Is An Interest Dispute, Not a Rights Dispute

Disputes over single issues arising under a contract, such as the one in dispute here, are most often addressed through the grievance procedure outlined in the parties' CBA. The parties' CBA contains a grievance procedure with binding arbitration of grievances. An arbitrator selected to hear such a grievance would view the dispute through the following lens: did the Employer violate the CBA when it carried out some particular action? This is known as a "rights" dispute. In the instant case, had the Union filed a grievance about the contracting out of parking enforcement, then the question would be whether or not the contracting out violated the terms of the parties' agreement.

However, in the instant case, the Union has approached this matter as a dispute over a proposed modification of the agreement between the parties. In essence, the Union is proposing to add to the CBA an agreement that the Employer shall not contract out parking enforcement work for the Downtown RPP. Rather than a "rights" dispute, this is what is commonly known as an "interest" dispute. Under the above-cited Government Code, the factfinding panel is required to apply the statutory criteria to the two parties' proposals in this regard and recommend the proposal that most closely conforms to those criteria.

Because of this distinction between rights and interest disputes, the panel will not examine the issue of whether or not the proposed contracting out violates the current CBA. That determination is not reached in these findings and recommendation.

The panel also notes that not all aspects of the City's proposed contract with the vendor Serco are addressed in this analysis. The parties' issue statement poses the matter narrowly. Consequently, only the issue of the proposed performance of parking enforcement duties by the outside vendor is scrutinized here. The other aspects of the proposed contract – permit sales, training, equipment purchase and management of the RPP program – are outside the scope of these findings.

MMBA Criteria Relevant to the Case

The panel agrees with the advocates for both parties that many of the MMBA criteria listed on page three of this report are not relevant in this case. In particular, criterion six (consumer price index) and criterion seven (overall compensation) are only relevant marginally, if at all. Criterion three is relevant insofar as the parties have stipulated to evidence to be considered. Criteria one and two are relevant to the extent that the parties have cited relevant sections of state laws and local ordinances to bolster their positions.

The most relevant criteria in this instance are the following:

> 4) The interests and welfare of the public and the financial ability of the public agency
>
> 5) Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in comparable public agencies
>
> 8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations

Criterion four was cited by the Employer to justify its proposal to contract out the work, arguing that the interests of the public are best served by an outside vendor performing the disputed work. The Union has also cited this criterion, arguing that its proposal to do the work with City employees is less expensive and thereby best coincides with the Employer's finances.

The panel recognizes that the Employer has a legitimate interest in providing high quality services to its constituent residents and businesses. It has the right to make the initial determination about

the most efficient way to provide city services. This right is codified in the above-cited "management rights" sections of the CBA and the City rules. The nub of this dispute is how to balance this right with the legitimate interest the Union has in protecting its bargaining unit work.

The Union's argument about the financial implications of the Serco contract is compelling. While the Employer did not openly concede that keeping the work in-house would be less expensive, it took the financial issue off the table. It did so by making a point that the City had selected the most expensive of the three vendor bids. And it did so by asserting that saving labor costs was not the primary reason for its contracting-out proposal. And the Employer did not attempt to make a case at the hearing that using City workers for parking enforcement of the Downtown RPP would be more costly than contracting with Serco.

Since the Employer is not arguing that the Union's proposal is too expensive, then the panel will not address the relative costs of the vendor contract versus the options proposed by the Union. From the panel's standpoint, cost is not a factor.

The next relevant factor – comparison with other jurisdictions – was not explored in depth by either party. The Employer asserted that other public jurisdictions have contracted out similar work. But key information about the labor relations aspects of any such contracting (e.g., were there any MOU's or sideletters of agreement regarding such contracting, or disputes over the issue) was missing from the record. The Union presented no specific comparables. Therefore, the panel concludes that comparability is not a dispositive factor in this case.

The final relevant factor – a catch-all factor regarding other facts "normally or traditionally taken into consideration" – provides the panel with the leeway to take into account the unique aspects of this dispute. As such, the panel is most interested in the question of placing this dispute in the context of the parties' existing CBA. Contract changes do not occur in a vacuum – they are evaluated in relation to the parties' prior agreements and how those agreements have been implemented and interpreted.

The Dispute Should Be Viewed in the Context of the Parties' CBA and Practices

First, it should be noted that the parties have a history of bargaining over contracting out. Article III Section 13 of the CBA, cited above, provides for negotiations in the event of certain proposals to contract out. It allows for the development of alternatives to contracting out and layoffs. It requires the Employer to provide information to the Union about vendors. The current CBA also recognizes the Union as the exclusive representative of the CSO classification, and incorporates the CSO job description.

The history of the parking enforcement officer / CSO is clear and undisputed. All parking enforcement work has been performed by CSO's, even in residential parking permit programs. Whatever the City has believed to be its rights to contract out this work in the past, it is evident that it has not exercised that right.

The panel views the City's proposal to contract out this work now as a substantial departure from past practices. The evidence that parking enforcement constitutes the vast majority of CSO work was unrebutted. However the job description reads, parking enforcement remains the core of the CSO duties. Enforcement of residential parking programs and other hang-tag programs are part of these core duties.

The Employer vigorously asserts the uniqueness of the Downtown RPP program and why it needs an experienced outside contractor to perform this vital and community-sensitive work. The crux of its arguments, however, was that employees who enforce the RPP need to be well-trained and well-managed. Training and management functions are under the exclusive control of City management. The City was not able to show a nexus between the need for well-trained and well-managed staff and the need to use non-City employees to perform the enforcement work.

The Employer also asserted the importance of contracting out as a means to obtain the necessary equipment. Lack of expensive specialized equipment can be a valid argument for the need to contract out. However, the Employer did not make the argument about equipment at a level of detail that was persuasive to the panel. The Employer did not present information about the limitations of the City's current equipment or make an argument about the cost of purchasing additional equipment being prohibitive.

The Employer also emphasized in the hearing the time-sensitive nature of the Downtown RPP. The City is concerned that any change to the current contracting-out proposal will cause delays, upsetting residents and businesses. The only specific timeframe in evidence in the factfinding process was the 60-90 day implementation period required in the RFP and the 60-day commitment made by Serco in its bid. The City asserted that doing the work with City employees would take longer to implement– but this assertion was not backed up with evidence in the record.

One aspect of the Employer's proposal that seemed initially appealing to the panel was the characterization of this contracting out as a "pilot program." It is traditional in collective bargaining to agree to new departures from past agreements for a fixed period of time, reverting to the status quo ante at the conclusion of a trial period and subjecting the results to a bilateral evaluation. However, a closer look at this issue reveals a somewhat ambiguous picture. While the RPP is characterized as a trial, the City has

made no commitment to bring the work into the bargaining unit at the end of the trial period. Indeed, the City Manager's report to the City Council in December 2014 notes that "enforcement costs for RPP districts could be significant" and recommends 'allowing for contract (non-city employee) enforcement if appropriate."

The panel's task is to recommend the proposal that best balances the interests of the Employer with the interests of the Union. The Employer's proposal, in this instance, tilts too far and too fast in the direction of upending a long-standing practice. That practice is that the Union's bargaining unit members in the City of Palo Alto have performed parking enforcement in all its various aspects. For this reason, and in the context of the entire analysis presented above, the panel recommends that Downtown RPP parking enforcement work not be contracted out to the City's selected vendor.

Since the panel is recommending that the work not be contracted out, then the second part of the stipulated issue is moot.

PANEL RECOMMENDATION

The factfinding panel recommends that the City of Palo Alto not contract out parking enforcement work in its Downtown RPP program.

Paul D. Roose, Neutral Chairperson

Date: June 15, 2015

/s/ Nick Raisch

Nick Raisch, Union-appointed Panel Member

Date: June 15, 2015

__x___I concur with the Recommendations

_____I dissent from the Recommendations (see attached explanation)

/s/ Suzanne Mason

Suzanne Mason, Employer-appointed Panel Member

Date: June 15, 2015

_____I concur with the Recommendations

__x___I dissent from the Recommendations (see attached explanation)

OFFICE OF THE CITY MANAGER

CITY OF PALO ALTO

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City of Palo Alto – SEIU Local 521

Collective Bargaining Impasse Factfinding PERB Case No: SF-IM-151-M

Dissent of Employer Appointed Panel Member, Suzanne Mason, Assistant City Manager

In recommending that the City not contract for parking enforcement and related services in its Downtown Pilot RPP program ("Downtown Pilot"), neutral factfinder Paul Roose prioritizes the speculative concerns of a public employee union over the best interests and welfare of the public. The factfinder improperly dismisses the unique challenges associated with the downtown pilot and recommends a course of action that would further delay – by a year or more – the implementation of a pilot program that Palo Alto residents have clearly identified as an urgent need. Because the factfinders recommendation is contrary to the will of Palo Alto residents and does not serve the best interests of the public, I dissent.

1. **The contractor, Serco, is best able to meet the public interest in timely implementation of the Downtown Pilot.**

The factfinder's recommendation completely fails to acknowledge the strong public demand for timely implementation of the Downtown Pilot. Although the factfinder describes the Downtown Pilot as the product of "nine-month period in 2014," for many downtown residents, the pilot RPP program is in fact the culmination of a multi-year effort. Palo Alto residents expected implementation early in 2015 and RPP stakeholders continue to meet monthly to discuss the urgent need for these services and to monitor implementation of the program.

Despite the strong public interest in timely implementation, the factfinder recommends that the City provide enforcement with City employees, a course of action that would delay enforcement by up to a year or more. If the City were to accept the factfinder's recommendation, the public would be burdened by: (1) the time and cost of procuring new equipment and providing appropriate training

Citywide; (2) the time required to revise enforcement routes Citywide; (3) the time required to hire and train new enforcement personnel; (4) the time required to recruit and hire new management personnel with experience managing a complex RPP program.[1] Each of these processes would only prolong the wait for these crucial and long-awaited services. As Palo Alto residents have made clear, the need is now.

The City's selected vendor, Serco, is best positioned to rapidly implement high-quality enforcement of the Downtown Pilot, as the public interest demands. Serco has extensive experience in enforcement of complex RPP programs and is able to provide the staff, supervisory personnel, background checks, training, uniforms, and equipment – including two hybrid cars and four bikes – necessary to begin enforcement within 60 days.

2. **The Contractor, Serco, will best serve the public interest in effectively implementing a new, complex, and dynamic Downtown Pilot, based upon their prior experience with similar programs.**

The factfinder's recommendation improperly oversimplifies the scope of the Downtown Pilot and the unique enforcement challenges it presents and fails to appreciate importance of having an experienced parking enforcement operator with prior experience implementing programs similar to the Downtown Pilot. The factfinder understates the complexity of the Downtown Pilot in his explanation that "non-residents will be allowed to purchase permits." In fact, the City will be providing several different types of permits integrating residential, employee, and retail parking, each of which will be subject to different regulations, with some permits potentially valid only on a specific block-face. In effect, the Downtown Pilot involves multiple overlapping permit parking programs in the same geographical area, each with distinct rules. The specific circumstances of Palo Alto's downtown create the need for such a complex program, and the unique enforcement challenges associated with the Downtown Pilot cannot fairly be compared with the City's existing parking programs, which allow all residential permit holders to park anywhere in the RPP area.

[1] While the City remains willing to work with the Union to discuss new technologies and optimize existing enforcement, the City cannot delay implementation of the critically important Downtown Pilot to work through these issues or introduce these additional variables into evaluation of the program's success.

The factfinder also fails to appreciate the dynamic nature of the Downtown Pilot. The pilot is so-named because it is a new program (different from existing City RPPs) that is still being developed and will be adjusted based on community input. As the staff report for the resolution creating the Downtown Pilot explains, many of the regulations that will apply in Phase II of the pilot will be based on data collected and input received by staff during Phase I. The program will continue to be closely scrutinized and evaluated by staff, residents, property owners, business owners, and employees for potential changes and improvements. Correspondingly, the scope and required resources for enforcement are also subject to change over the life of the Pilot.

In light of these challenges and the fluid nature of the Downtown Pilot, Serco can best serve the public interest in effective and flexible implementation. Serco currently provides enforcement services for similarly complex RPP programs in other communities and has a track record of success with multi-layered enforcement programs. Moreover, Serco can rely on this experience to provide the feedback and consulting on program design that is integral to the pilot concept. Finally, Serco has committed to use a combination of enforcement strategies appropriate to the program design as it may change over time, and has the experience and flexibility to do so effectively.

3. **The City's proposal to contract the Downtown Pilot with Serco has no impact on existing employees.**

The factfinder's recommendation subverts the public interest in timely and effective implementation of the Downtown Pilot even though the City's proposal to contract with Serco has no impact on the City's current employees or their current work. The City has not proposed any layoff or reduction in hours for CSOs, nor has the City proposed any other change in the scope of work to be performed by CSOs. CSOs will continue to enforce street-sweeping the in the Downtown RPP area as well as "color-zone" parking in the downtown core.

Indeed, the only interests served by the factfinder's recommendation are those of the Union itself, which has asserted wholly speculative fears regarding future loss of work. Not only is it improper for the factfinder to elevate this hypothetical concern over the clear public interest, but the factfinder's recommendation is also unsupported by the facts. The City has made no proposal to contract with Serco for existing enforcement or future RPP areas outside of the Downtown Pilot.

In short, the factfinder prioritizes the theoretical future concerns of the Union over the present and concrete interests and welfare of the public, even though the Union's existing members and their current work would not be impacted at all.

4. Conclusion

The City proposed to contract with Serco for enforcement of the Downtown Pilot because of Serco's prior experience with similar programs, and its ability to offer a package of services that best serves the interest and welfare of Palo Alto residents in a timely manner. Serco is able to provide enforcement promptly and effectively, including four enforcement personnel, supervisory personnel, background checks, 30-day onboarding, extensive training in customer service and other topics, uniforms, feedback and consulting services, two hybrid cars and four bicycles for use by enforcement officers, and an approach that emphasizes customer service. By suggesting that the crux of the City's argument in favor of Serco "was that employees who enforce the RPP need to be well-trained and well-managed," the factfinder simply misses the mark. As explained above, the City proposed to contract with Serco because, in light of the critical importance, complexity, and fluidity of the Downtown Pilot, Serco's complete set of services offer the best chance of success for the public.