

**1. Requested Motion**

**Meeting Date:** September 3, 2013

Approve the Service Provider Agreement for the *Management and Operations Beach and Street Enforcement (SPA-13-05-PW)* in the amount of \$318,000.00, per year, between the Town and Central Parking Systems/Standard Parking and authorize the Town Manager to execute the Agreement on behalf of the Town.

**Why the action is necessary:**

Town Council authorization is required pursuant to the Town's procurement documents to approve all purchases that exceed \$25,000.00.

**What the action accomplishes:**

Authorization allows the continuation of BASE activities with no lapse in services.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff-Public Works  
 Town Attorney

**5. Background:**

Town Council authorized staff to begin negotiations with Central Parking resulting from the recommendation made by the Selection Advisory Committee. Staff is now comfortable that the Agreement as negotiated is in the Town's best interest.

The services performed within the contract provisions include maintenance and enforcement of the Town's public parking program. A unique component of the Town's program is Beach Patrol, which performs activities from maintenance assistance on the beach to enforcing violations of a civil nature. The contract as negotiated provides beach patrol activities in addition to current operations hours. During the winter season, Beach Patrol will work each day from 7 A.M. – 8 P.M.

This Agreement is written for a two year period with the ability to extend it annually for up to five years. This agreement represents an increase of approximately 5.5% from the prior arrangement, some of this increase represents the enhanced beach patrol services. The current agreement did not provide for any increases for the duration of the contract period which commenced in 2007. A provision has been added to the agreement before you for approval to allow for an increase in fees after the first year and each year thereafter based on a local Consumer Price Index as mutually agreed upon by both parties.

Attached is the Services Provider Agreement as accepted by Central Parking.

**6. Alternative Action:** Take no action.

**7. Management Recommendations:**

Approve the contract with Central Parking for Beach and Street Enforcement.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

## SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT ("Agreement") is entered into on this \_\_\_\_ day of August, 2013, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and Central Parking System of Florida, Inc. with an address of 2401 21<sup>st</sup> Avenue South, Nashville, TN 37212(hereafter "Provider"), a Tennessee for-profit corporation, for the Provider to render the following services to the Town: The scope of the project includes managing the operations of the Town's public parking program and providing a beach patrol to enforce violations of a civil nature and to provide assistance to the public, as provided in this Agreement.

1. Scope of Services. Provider shall perform the services and work as set forth in "Scope of Services" which is attached hereto as Exhibit "A" and made a part of this Agreement. Provider warrants and represents that it is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement. The parties shall have the ability to change the Scope of Services by mutual written agreement, except that the Town shall have the unilateral right to delete services hereunder for any reason without compensation to Provider other than for services already performed.
2. Term. The term of this Agreement shall commence on September 16, 2013 and continue for two (2) years from date of award with three (3), one (1) year annual renewable options to be exercised upon mutual agreement and initiated by the Town of Fort Myers Beach, subject to the Town's ability to terminate the Agreement as set forth elsewhere.
3. Payment Obligation. The Town shall pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in Exhibit "B," which is attached hereto and made a part of this Agreement. The Provider's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town shall pay the undisputed amount, if any, within thirty (30) days. If payment is not made by the Town to Provider within thirty (30) days, Provider shall have the right to charge interest up to the statutory rate on the unpaid balance from the date such payment became due and payable.
4. Provider's Obligations. The Provider's obligations shall include, but are not limited to, the following:
  - a) Licensure. The Provider shall maintain all licenses and/or certifications required by any governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) Provision of Services. The Provider shall perform all services pursuant to this Agreement in accordance with generally accepted standards of

professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider shall designate one (1) person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and shall make all deductions required of employers by state, federal and local laws.

- c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
  - d) Indemnity and Hold Harmless. The Provider shall be liable and agrees to be liable for, and shall indemnify, defend and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and reasonable attorneys' fees (including but not limited to appellate attorney fees) arising out of the Provider's errors, omissions, willful action(s) and/or negligence. The Provider shall not be liable to, nor be required to indemnify the Town for any portions of damages arising out of any error, omission, willful action(s) and/or negligence of the Town, its employees, agents, or representatives.
  - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.
  - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
  - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town shall provide written notice to the Provider that it is authorized to commence work. The Provider thereafter shall commence work promptly and shall carry on all such services and work as may be

required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement, in addition to any other remedies the Town may have.

6. Insurance. The Provider shall have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "A". Each Certificate of Insurance shall include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and for Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider shall instruct the issuing company to mail thirty (30) days written notice to the Town of such cancellation.
7. Inclusion of Additional Documents. Any request for bids and/or request for proposal and all exhibits or other attachments thereto as issued by the Town are hereby incorporated and made a part hereof, including the Providers response to #RFP-13-05-PW including all supporting documents and exhibits, within "Exhibit C". In the event of any conflict between this Agreement and the additional documents, the terms of this Agreement shall prevail.
8. Termination of Agreement. Town may terminate this Agreement without cause upon thirty (30) calendar days' prior written notice to the Provider, in which case the Town shall compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of two (2) years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement the next succeeding two (2) years.
11. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" shall be deemed to include its employees, agents, and/or authorized representatives.
12. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement shall only be valid when made in writing and signed by both parties. In

the event of any conflict between the requirements, provisions, and/or terms of this Agreement and any subsequent written modification hereto, the most recently executed document shall take precedence.

13. Miscellaneous Provisions.

- h) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida. The venue for any litigation arising out of this agreement shall be in Lee County, Florida.
- i) Attorneys Fees: The prevailing party in any litigation arising out of the agreement is entitled to recover reasonable attorney's fees from non-prevailing party.
- j) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- k) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- l) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- m) Notices. All notices hereunder shall be in writing and shall be sent via U.S. Postal Service, first class mail, or by a nationally recognized overnight courier service, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party. All notices shall be deemed given upon confirmed receipt or rejection thereof. Legal notices to Provider shall be sent to: Central Parking System, Inc., Attn: Legal Dept., 2401 21<sup>st</sup> Avenue South, Nashville, TN 37212.
- n) Security. The Town expressly acknowledges that Provider does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do Provider's employees undertake the obligation to guard or protect the property or persons of any customers or any other individuals from the intentional acts of third parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN

PROVIDER:

BY: Town of Fort Myers Beach

BY: Central Parking System of Florida, Inc.

Terrance Stewart, Town Manager

Signature

Date: \_\_\_\_\_

ATTEST:

Daniel G. Huberty  
Printed name of person signing

BY: \_\_\_\_\_  
Michelle Mayher, TOWN CLERK

Executive Vice President  
Title (printed)

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM (for  
Provider):

BY: \_\_\_\_\_  
Fowler, White, Boggs, TOWN ATTORNEY

BY: Buz Edgeworth  
Buz Edgeworth  
Associate Counsel

## EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_ DAY OF August, 2013 BETWEEN THE TOWN OF FORT MYERS BEACH AND CENTRAL PARKING SYSTEM OF FLORIDA, INC., PROVIDER.

### SCOPE OF SERVICES:

The Provider shall perform the following services under this Agreement:

- Assistance and consultation with the Town as necessary in any enhancement, change or modification of the program.
- Assistance in implementing the program, including working with businesses, neighborhood groups, and other organizations as needed.
- Provide and/or purchase all support vehicles, office and computer equipment as required to perform the day to day operations of the parking program. Provider may negotiate with the Town, the lease and/or use of Town owned parking program support equipment to be used during the term of the Contract.
- Installation and maintenance of parking meters, pay stations and change machines. The Provider shall provide price quotes and act as the Town's agent when new parking equipment is purchased by the Town. Equipment type and installation shall be in accordance with standards issued by the Town. All parking equipment and appurtenances shall be repaired within twenty-four hours of identified as malfunctioning.
- Collection, counting and depositing of revenue. Collections of each meter and pay stations shall be done no less than weekly. In the high volume areas the meters and pay stations shall be collected at least twice per week and more often if necessary. All change machines shall be monitored and maintained in the same manner. All collections shall be deposited on the day of collection, into a bank account specified by the Town. A receipt, in a form approved by the Town, shall be provided to the Town the following workday along with the meter audit generated at the time of collection. Each meter will be audited by Provider's personnel any time the cash in the meter is removed.
- Carries out operations consisting of beach patrol and enforcement of the violations of a civil nature pursuant to Town of Fort Myers Beach Ordinances including but not limited to: Animal Control, Taking of Recyclable Materials, Two and Four Wheeled Motor Driven Vehicles, Parking Vehicles, Night Sleeping on Beach, Parks and Recreation, Removal of Nuisance, Anti-Littering, Beach and Dune Management, Regulations on Live Shelling, Bicycle Safety Ordinance and such additional ordinances as determined by the Town in its sole discretion. In addition to Ordinance enforcement, Beach operations shall also include litter and debris removal, wildlife rescues as necessary and informational services to visitors to the beach.
- Provide sufficient personnel to issue parking violation citations at a level of enforcement specified by the Town. Service will be seven days a week with operating hours at least from 9:00 AM to 6:00 PM.
- Provide appropriate training for all enforcement personnel. A training program will be developed in conjunction with Town staff, and may be attended by Town staff as desired.
- Provide towing and immobilization services.

- Maintain a database of citations issued. Provide connectivity between parking operation and Town staff as desired. Also, enter additional parking citations issued by Lee County Sheriff's Office into database.
- Provide a conveniently located office within the corporate limits of Fort Myers Beach to accept payment of citations, issue parking permits, accept customer inquiries, and generally contain the management of the program, issue late notices for overdue payment of citations and coordinate follow-up collection services. Accept payment of citations and late penalties. Attend enforcement proceedings for disputed citations and follow through with hearing officers' decisions.
- Handle all customer service associated with the program.
- Provide weekly, monthly and annual reports as required by the Town.
- The Provider may purchase data software and information systems relating to and associated with the day to day operations of the parking management program, with prior approval of the Town. All program specific products purchased by the Provider on behalf of the Town shall upon termination of the Contract remain the property of the Town.
- Any reasonably related services upon request.

**TERM:** The term of this Agreement shall commence on September 16, 2013 and continue for two (1) years from date of award with three (3), one (1) year annual renewable options to be exercised upon mutual agreement and initiated by the Town of Fort Myers Beach, subject to the Town's ability to terminate the Agreement as set forth elsewhere.

**INSURANCE:** The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;
- b) Commercial General Liability Insurance with minimum limits of \$3,000,000 each occurrence combined single limit or \$3,000,000 each occurrence/\$3,000,000 general aggregate.
- c) Business Automobile Liability Insurance with minimum limits of \$3,000,000 each occurrence Combined Single Limit or \$3,000,000 each occurrence/\$3,000,000 general aggregate.
- d) Employee Fidelity Bonds (or Crime insurance) with a limit no less than \$25,000 for each employee

**EXHIBIT "B"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_\_ DAY OF  
August, 2013 BETWEEN THE TOWN OF FORT MYERS BEACH AND  
CENTRAL PARKING SYSTEM OF FLORIDA, INC., PROVIDER.

**PAYMENT OBLIGATION**

1. Payment terms are as follows:

Parking and Street Enforcement:	<u>\$174,900</u>
Beach and Street Enforcement:	<u>\$143,100</u>
<b>Total Contract Price:</b>	<b><u>\$318,000</u></b>

Payment will be made by the Town on a monthly basis in an amount of  
\$26,500, equivalent to one-twelfth (1/12) the annual contract price  
of \$318,000.

The Town may at the end of the first year, and each year thereafter, through the  
duration of this Agreement negotiate a modification to the annual contract price, with  
an increase, if any, capped by a local Consumer Price Index (CPI), approved by the  
Town that is in effect on the renewal date.

2. Provider shall have access to and is authorized use of the Town property as below  
described, which is used in the day to day operations of the Street Parking Program and  
Beach and Street Enforcement (B.A.S.E.):

1 – 2003 Ford Ranger	1 – 2010 Kubota Utility Vehicle
2 – Hamilton 1200 Coin Changers	1 - Ace Coin Counter
1- Magner Coin Counter	1 – Amsec All Steel Safe
1 – Coin Canister Collection Card	1 – P.O.M. Handheld Meter Auditing System
2 – Linkport Credit Card Machines	2 – APC Battery Back-ups
1 – Cubic Handheld Paystation Auditing System	1 – Spectronic 7" DVD Player
1 –Brother MFC 3100C Printer	1 - Symphonic VCR
1 – Emachine T2240 Computer w/HP 5500 Printer and Emachine Monitor	1 – Arco Print Time Clock
1 – Uniden Desk Phone	2 – AT&T Desk Telephones
2 – Survivalink Defibrillators	2 – Nikon Digital Cameras
1 – Small Office First Aid Kit	2 – First Aid Kits (Beach Patrol Units)
1 – Small Refrigerator	1 – Small Microwave
4 – Office Desks	3 – Desk Chairs
4 – 4 Drawer Filing Cabinets	2 – 2 Drawer Filing Cabinets
2 – Blond/Gray Lobby Tables	1 – Black Fold Out Table
1 – Pickled Wood VCR/TV Stand	1 – Couch
1 – Loveseat	1 – Pickled Wood End Table
1 – Pickled Wood Coffee Table	3 – Cherry Wood Shelving Units
	3 – Cherry Wood Chairs

1 – Cherry Wood Table

1- Round Cherry Wood Table

The Provider acknowledges and understands that the above listed property are Town owned assets and Provider agrees to notify the Town should the property be damaged or unusable in any manner. The Town will determine replacement and disposal of property that has been damaged or is found to be unusable.

Provider shall pay to the Town \$1,000.00 per annum for the use of the above listed Town property.

The Provider shall be responsible, at its own cost, to assure the proper maintenance and repair to any and all Town property being used. The Provider shall provide all maintenance and repair logs to the Town as requested. Provider also agrees to pay all fuel costs for Town vehicles used pursuant to this Agreement.

The Provider accepts and fully understands that should the Town be desirous, or it becomes necessary to discontinue usage of any Town property, it shall not be the Town's responsibility to replace said property. Replacement of any such property as part of this provision shall be negotiated between the Town and the Provider.

The Town reserves the right to increase or decrease the amount the Provider shall pay to the Town for usage of the described property, provides any increase is subject to mutual agreement of the Town and Provider. The annual amount will be deducted from the first monthly payment of each year for the duration of this Agreement.

It is further understood and accepted by the Provider that all Town property shall not leave the corporate limits of the Town unless being taken for regular service or repair. No Town property shall be utilized by the Provider or any of its employees, representatives, or agents, for personal use or convenience at time for any reason. Provider shall ensure that any person operating the vehicles is properly licensed and is physically and mentally fit to so operate it at all times.

3. Provider shall receive reimbursement for out-of-pocket expenses from the Town as follows:

The Provider shall not receive any out-of-pocket expenses from the Town unless previously approved and authorized by the Town.

4. The Town shall be responsible for payment directly to the tax collector of the sales tax (if any) due on any revenues collected by Owner or its agents (including Provider).

EXHIBIT "C"

INSERT RFP

EXHIBIT "C"

Insert Certificate of Insurance

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN

BY: Town of Fort Myers Beach

Terrance Stewart, Town Manager

Date: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Michelle Mayher, TOWN CLERK

APPROVED AS TO LEGAL FORM:

BY: \_\_\_\_\_  
Fowler, White, Boggs, TOWN ATTORNEY

PROVIDER:

BY: Central Parking System of Florida, Inc.

Daniel G. Huberty  
Signature

Daniel G. Huberty  
Printed name of person signing

Executive Vice President  
Title (printed)

APPROVED AS TO LEGAL FORM (for Provider):

BY: Buz Edgeworth  
Buz Edgeworth  
Associate Counsel