Council Meeting: 11/02/2009
Agenda: Approval of Agreements
Item #: 8. g. (1).

CITY OF KIRKLAND
Public Works Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tami White, Parking Coordinator

Date: October 28, 2009

Subject: Simmons Construction Parking Agreement

RECOMMENDATION**:**

Council approves the attached resolution which would authorize the City Manager to enter into a parking agreement with Simmons Construction, Inc., for the use of eight parking stalls in the City-owned Auxiliary parking lot at Lakeshore Plaza.

BACKGROUND DISCUSSION:

Simmons Construction would like the use of eight parking stalls in the Auxiliary parking lot at Lakeshore Plaza beginning approximately November 9, 2009, for a minimum of five months. Simmons needs the parking stalls to use as a construction staging and mobilization area for its project at 13 Central Way. The parking spaces will be fenced off from public use.

Simmons Construction will rent the parking stalls for $125.00 per space for a total of $1,000.00 per month. The current monthly permit parkers will be permanently relocated to the west side of the parking lot. The proposed parking agreement is attached.

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RESOLUTION R-4785

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR THE USE OF EIGHT STALLS OF THE AUXILIARY PARKING LOT AT LAKESHORE PLAZA FOR A CONSTRUCTION STAGING AND MOBILIZATION AREA.

WHEREAS, Simmons Construction, Inc., is interested in securing the temporary use of eight parking stalls for construction staging and mobilization while constructing a project in downtown Kirkland; and

WHEREAS, the City is willing to make eight parking stalls at its Auxiliary lot at Lakeshore Plaza available for such purposes;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City a parking agreement substantially similar to the Agreement attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

PARKING AGREEMENT

This Parking Agreement ("Agreement"), is made and entered into on this _____ day of _____, 2009, between the City of Kirkland, a municipal corporation of the state of Washington (referred to as "City"), and Joseph S. Simmons Construction, Inc., (referred to as "Simmons Construction").

WITNESSETH

WHEREAS, Simmons Construction is interested in temporarily securing eight off-street parking stalls for staging and mobilization while constructing a project in downtown Kirkland; and

WHEREAS, the City is willing to make eight parking stalls at its Auxiliary Lot at Lakeshore Plaza, Kirkland, Washington (the "Auxiliary Lot") available for such purposes;

NOW THEREFORE, the parties agree as follows:

1. Term.

The term of this Agreement shall commence on November _____, 2009, and shall expire April 30, 2010. Simmons Construction may request that the City extend the term of this Agreement on a month-to-month basis, by giving the City notice of its request at least two weeks prior to the expiration of this Agreement.

2. Rate.

The rate by Simmons Construction shall be $125.00, per space, per month, for a total amount of $1,000.00 per month.

3. Payments.

Simmons Construction agrees to pay City, without invoice, to the attention of: Teresa Levine, Accounting Manager, Finance and Administration, City Hall, 123 Fifth Avenue, Kirkland, Washington 98033, $1000.00 in advance of the commencement of the term of this Agreement, prorated on the basis of the number of days remaining in November, and thereafter, $1000.00 prior to the 25th day of each month, for each month.

4. Leasehold Excise Tax.

The use of the City parking stalls by Simmons Construction is subject to taxation under the laws of the State of Washington (RCW 82.29A.030(1) and RCW 82.29A.030(2)). The leasehold excise tax rate is twelve point eighty-four percent (12.84%), or as may be amended by Washington State legislation. The tax is calculated on the amount to be paid the City month under the terms of this Agreement. Simmons Construction shall pay the leasehold excise tax payment to the City at the same time the monthly payment is due and payable under this Agreement.

5. Hours of Use.

Simmons Construction shall have access and full use of the eight stalls 24 hours a day, seven days a week.

6. Stenciling New Stalls. In order to accommodate Simmons Construction's use of the parking stalls, nine current permit parking users will need to be relocated to the west side of the Auxiliary Lot. Simmons Construction agrees that it will stencil the new stalls, "Permit Only – (M-F) as shown on the attached map.

7. Assignment. It is agreed that this Agreement is personal to Simmons Construction and that Simmons Construction may not assign its rights under this Agreement to any other party without the prior written consent of the City, which consent may be withheld at City's sole discretion.

8. Hold Harmless Agreement.

Simmons Construction shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with this Agreement, except injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Simmons Construction and the City, its officers, officials, employees, and volunteers, Simmons Construction's liability hereunder shall be only to the extent of Simmons Construction's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Simmons Construction's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance.

Simmons Construction shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations and use of the City parking stalls by Simmons Construction, their agents, representatives, employees or subcontractors.

No Limitation. Simmons Construction's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Simmons Construction to the coverage provided by such insurance, or otherwise limit the City's recourse to any other remedy available at law or in equity.

A. Minimum Scope of Insurance.

Simmons Construction shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on Insurance Services Office

(ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability shall be endorsed to provide the Aggregate Per Project Endorsement ISO for CG 25 03 11 85. The City shall be named as an insured under Simmons Construction's Commercial General Liability insurance policy with respect to the this Agreement.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Simmons Construction shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and a $2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability:

1. Simmons Construction's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Simmons Construction's insurance and shall not contribute with it.

2. Simmons Construction's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to the City.

D. Simmons Construction's Insurance For Other Losses

Simmons Construction shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Simmons Construction's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Simmons Construction, or Simmons Construction's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. Verification of Coverage

Simmons Construction shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured

endorsement, evidencing the Automobile and Commercial General Liability insurance of Simmons Construction prior to the commencement of activities associated with this Agreement.

10. Notices.

All notices, demands, and requests to be given by either party to the other shall be in writing. All notices, demands and requests to the City shall be sent by United States registered or certified mail, postage prepaid, addressed to John Burkhalter, Senior Development Engineer, 123 Fifth Avenue, Kirkland, Washington 98102. All notices, demands, and requests to Simmons Construction shall be sent by United States registered or certified mail, postage prepaid address to Todd Hartmann, Project Manager, P.O. Box 27089, Seattle, Washington 98165.

11. Interpretation and Venue.

Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any mediation, arbitration, or lawsuit arising out of this Agreement.

12. Severability.

If one or more clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

13. Entire Agreement.

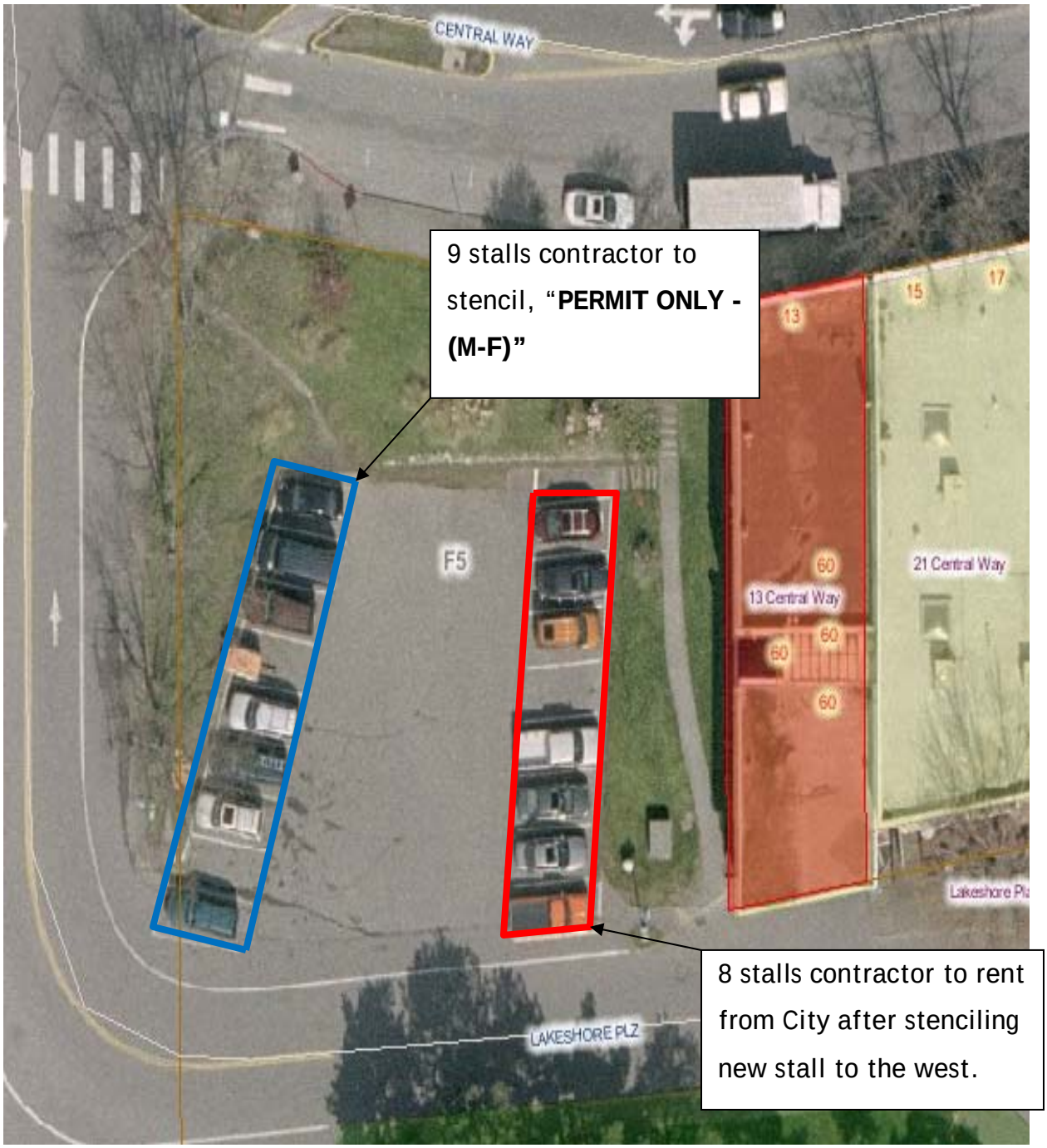
This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

CITY OF KIRKLAND	JOSEPH S. SIMMONS CONSTRUCTION, INC.
By:_____	By:_____
David Ramsay City Manager	Its:_____

APPROVED AS TO FORM:

_____
Kirkland City Attorney


CENTRAL WAY
9 stalls contractor to stencil, "**PERMIT ONLY - (M-F)**"
F5
13
15
17
60
13 Central Way
21 Central Way
Lakeshore Pl
8 stalls contractor to rent from City after stenciling new stall to the west.
LAKESHORE PLZ