

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH  
AND  
PARKMOBILE, LLC  
FOR  
MOBILE PARKING PAYMENT SYSTEM, PURSUANT TO  
REQUEST FOR QUALIFICATIONS 2023-051-WG**

This Professional Services Agreement (“PSA”) and the **ParkMobile, LLC**. Service Agreement (“Service Agreement”), collectively, the “Agreement” is entered into this \_\_\_\_\_ (“Effective Date”), between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (the “City”), and **ParkMobile, LLC**, a Delaware Limited Liability Corporation, whose address is 1100 Spring Street Northwest, Suite 200, Atlanta, GA 30309 (“Vendor” or “ParkMobile”).

**SECTION 1  
DEFINITIONS**

- Additional Parking Locations: As defined in Section 12.1 of the Agreement.
- Agreement: This Professional Services Agreement between the City and Vendor, including any exhibits and amendments thereto and the ParkMobile Service Agreement, collectively the “Agreement”.
- Authorized User: City’s employee, consultant, contractor, and agent who is authorized by City to access and use the Platform under the rights granted to City pursuant to this Agreement.
- City Manager: The chief administrative officer of the City.
- City Manager’s Designee: The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager’s designee shall be the Parking Department Director.
- Vendor: For the purposes of this Agreement, Vendor shall be deemed to be an independent contractor, and not an agent or employee of the City.
- IP Rights: Any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

- Parking Locations: The location or locations of City's on-street parking, off-street parking, reservation parking, parking lots, parking decks, permitted parking, and other facilities where ParkMobile Users may park.
- Platform: Access-controlled mobile and/or web applications, services or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile that are made available to Client to administer, configure, manage and/or monitor parking sessions, parking rates, and/or parking restrictions associated with City's Parking Locations.
- Services: The ParkMobile Application, the Platform, and all services, work and actions by the Vendor performed or undertaken pursuant to the Agreement.
- Transaction Fee: Exhibit B The Fee charged by the Vendor to the user per transaction as set forth in Exhibit B
- Parking Rate: The fee charged by the City for use of the parking space.
- ParkMobile Application: Any and all mobile and/or web applications, services, or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile and that are made available to the general public and that facilitate the payment of parking transactions.
- Proposal Documents: Proposal Documents shall mean City of Miami Beach **RFQ No. 2023-051-WG for Mobile Parking Payment System**, together with all amendments thereto, issued by the City in contemplation of this Agreement RFQ, and the Vendor's proposal in response thereto ("Proposal"), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: the Professional Services Agreement; the RFQ; the Services Agreement, and the Proposal.
- Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139; telephone number (305) 673-7000, Ext. 26724; and fax number (305) 673-7529.
- Transaction Data: Information and Data collected by the Vendor relating to drivers' parking sessions, which may include vehicle license plate, parking session date, time, duration, zone number and amount paid, details of parking fines/violation notices, and parking session details obtained through customer service center.
- User Profile Data: Any information about or with respect to ParkMobile users that is not related to parking sessions at the Parking Locations, including without

limitation, information provided by users upon registration for a ParkMobile account and data about the user's activity in the ParkMobile account or the Application.

Merchant of Record: Refers to the entity that is authorized to receive customer payments to its merchant account set up with its acquiring bank, including credit card and any digital wallet transactions for Services.

## **SECTION 2** **SCOPE OF SERVICES**

**2.1** In consideration of the Fee to be paid to Vendor by the City, Vendor shall provide the work and services described in Exhibit "A" hereto (the "Services").

Although the Vendor may be provided with a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Vendor; where the Services are performed (although the City will provide Vendor with the appropriate location to perform the Services); when the Services are performed, including how many days a week the Services are performed; how the Services are performed, or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Vendor shall be performed in accordance with the terms and conditions set forth in Exhibit "B" and to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, the Vendor should contact the following person:

Monica Beltran, Director, Parking Department  
1755 Meridian Avenue, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139  
(305) 673-7000 ext. 26863  
[MonicaBeltran@miamibeachfl.gov](mailto:MonicaBeltran@miamibeachfl.gov)

**2.2** Vendor's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit C hereto.

**2.3 Services Provided by ParkMobile.** During the Term (as defined herein), ParkMobile shall perform the services for the City as described in Exhibit A hereof (as amended, modified or supplemented from time to time upon the mutual written agreement of the parties, the "Services", as further defined in Section 1). ParkMobile shall render the Services faithfully and to the best of its ability and in compliance with all applicable laws, Federal, State, and local laws, codes, ordinances, resolutions, administrative policies and procedures and/or rules and regulations, (collectively, "Applicable Laws"), devoting such time as is reasonably necessary to provide the Services. The precise times and manner of the performance of Services shall be as reasonably requested by the City, consistent with a schedule to be reasonably agreed upon from time to time by ParkMobile and the City. In connection with ParkMobile's performance of the Services, and in addition to ParkMobile's compliance with Applicable Laws, ParkMobile shall also be subject to, and agrees to abide by, such policies, procedures, directions and restrictions as the City, in its sole and reasonable discretion, may establish from time to time. ParkMobile shall implement the service within sixty (60) days of the effective date of this Agreement.

If the City requires additional work and/or services that are not included in this Agreement, ParkMobile and the City shall negotiate such additional work and/or services, mutually agree on the amount of additional compensation, and memorialize the terms in a written amendment to this Agreement.

**2.4 Help and Support.** ParkMobile agrees to use its reasonable efforts to assist the City with any technical support that the City may reasonably require in relation to using the Services. In furtherance of the foregoing, ParkMobile agrees to provide the City with preventative maintenance, corrective maintenance, adaptive maintenance and online, on-site and telephone support with respect to the Services. Each of ParkMobile and the City shall promptly notify the other of any errors or interruptions that arise during the City's use of the Platform, the ParkMobile Application or the Services hereunder.

**2.5 Errors and Corrections.** In the event of any errors or interruptions in the Services, ParkMobile's sole and exclusive obligation shall be to use reasonable efforts to repair or restore that portion of the Services as promptly as possible. Repair may take the form, at the option of ParkMobile, as the case may be, of: (i) corrected software applicable to the Services; (ii) corrected materials in hard copy or electronic form describing the use and operation of the software applicable to the Services, including any manuals and programming tools; (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented; or (iv) correction/clarification of the functional definition of the Services.

**2.6 Publicity of Services.** All brochures and promotional materials to be distributed by ParkMobile and the City in connection with the Services shall be in a form mutually agreed upon by the parties.

**2.7 Authority of Parties; Cooperation.** Each party acknowledges and agrees that it has no authority to act on behalf of the other party other than as set forth in this Agreement or to enter into any contract or to incur any liability on behalf of the other party, except with prior written consent of an authorized officer of such party. Each party covenants that it shall not at any time represent, either orally or in writing, that it has any right, power, or authority with respect to the other party not expressly granted to the other party by such party.

Each party shall reasonably cooperate with the other party to permit such party to perform its duties and obligations under this Agreement in a timely manner.

**2.8 Technology Sublicense.** Subject to and conditioned on City's and its Authorized Users' compliance with the terms and conditions of this Agreement, all applicable laws and regulations, and City's payment of fees, ParkMobile hereby grants the City the nonexclusive, non-transferable, non-sub-licensable, revocable right and sublicense to access and use the Platform during the Term, as defined below. The City shall not use the Platform for any use other than in connection with the Services. The City acknowledges and agrees that (a) ParkMobile shall be its exclusive source of the Platform for the Term; and (b) all Services obtained by the City shall use the Platform as necessary. The City has no interest in or right to use the Platform or any improvements thereto or modifications thereof except as set forth herein. In all instances, the City's use of the Platform shall inure to both party's benefit. During the Term or at any time thereafter, the City shall not commit, or cause any third party to commit, any act challenging, contesting, or impairing or attempting to impair ParkMobile's right, title and interest in and to the Platform or the validity thereof.



**2.9 Proposal Documents.** Notwithstanding the description of ParkMobile's services and without limitation, ParkMobile shall provide any and all work and services as set forth in, and in accordance to the requirements of, the Proposal Documents (which are attached as Exhibit D hereto and are hereby deemed incorporated by reference as if fully set forth herein).

### **SECTION 3** **TERM**

The term of this Agreement ("Term") shall commence on the date identified in the notice provided by the City Manager's Designee stating that all initial signage contemplated under Section 10.11 has been installed ("Signage Installation Notice"), and shall have an initial term of Five (5) years, with two (2) additional two-year renewal options, to be exercised at the City Manager's sole option and discretion, by providing Vendor with written notice of same no less than thirty (30) days prior to the expiration of the initial term.

Notwithstanding the Term provided herein, Vendor shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit C hereto.

### **SECTION 4** **FEE**

**4.1** City shall reimburse ParkMobile as set forth in Exhibit B and in accordance with Section 4.6. ParkMobile may propose an increase in the end user fees outlined in Exhibit B, not more often than once in a calendar year, to adjust for inflation and any increase in the cost of ParkMobile providing the services to City. All adjustments to the fees shall be valid upon the prior written approval of the City Manager or City Manager's Designee. City rate structure is varied and includes flat and hourly rates that differ for residents and visitors. However, other rates and/or geographic areas may be added in the future. The rates specified herein shall commence on the date specified in the Signage Installation Notice to Proceed.

**4.2. Payment.** The City shall serve as the Merchant of Record for ParkMobile Application transaction fees and parking rates. ParkMobile shall invoice the City and the City shall issue a check to reimburse ParkMobile in accordance with Section 4.6.

**4.3 Taxes.** ParkMobile's prices do not include sales, use, revenue or excise taxes, and accordingly, in addition to the price specified herein, the amount of any sales, use, excise or other similar tax applicable to the Services provided hereunder shall be paid by the City, including any taxes applicable on fees paid by the consumer, or, in lieu thereof, City shall provide ParkMobile with a tax exemption certificate issued by the appropriate taxing authority.

**4.3. Billing Disputes.** The City shall not be entitled to suspend payment of any disputed invoices. Any disputes must be submitted to ParkMobile in writing and with an explanation of the reason for the dispute, within forty-five (45) days. In the event that any payment dispute is resolved in favor of the City, ParkMobile shall credit City on the immediately subsequent invoice issued to City.

**4.4. Expenses.** Except as otherwise provided herein, ParkMobile shall not charge the City any costs for the integration of its system(s) or for the management of the project and the Services.

ParkMobile shall charge the City for ordinary, necessary and reasonable third party costs only on direct cost basis and only after the prior written approval of the City.

**4.5 Merchant of Record for Prepayment Method.** For any fees collected by Parkmobile via prepaid cards, Google Pay, Apple Pay PayPal or a similar prepayment application, the parties designate ParkMobile as the merchant of record. On a monthly basis, ParkMobile shall provide the City a report of all transaction fees collected on their behalf and issue a reimbursement check to the City. All fees paid under this Section 4.5 shall be paid to the City no later than 45days after invoice.

**4.6 Invoices.** ParkMobile will issue invoices to the City on a monthly basis for all fees due to ParkMobile under this Agreement. All payments due under this Agreement shall be paid within thirty (45) days of the invoice date. All invoices shall include a detailed description of the Services (or portion thereof) provided. All invoices submitted to the City shall be submitted to the following address:

Accounts Payable: [Payables@miamibeachfl.gov](mailto:Payables@miamibeachfl.gov)

## **SECTION 5** **TERMINATION**

### **5.1 TERMINATION FOR CAUSE BY THE CITY**

a. If either party shall fail to fulfill or otherwise violate any of the covenants, agreements, or stipulations in this Agreement, and such material breach remains uncorrected for thirty (30) days after receipt of notice by the other party, the other party shall thereupon have the right to terminate the Agreement by giving thirty (30) days' written notice to the other party of such termination. If the breaching party fails to cure in that 30-day period or the breach is incapable of cure, then the Agreement shall so terminate.

b. In that event, the City shall compensate ParkMobile in accordance with the Agreement for all Services performed by ParkMobile prior to termination, net of any costs incurred by the City as a consequence of the default.

c. Notwithstanding the above, neither party shall be relieved of liability to the other party for damages sustained by virtue of any breach of the Agreement

### **5.2 TERMINATION FOR CONVENIENCE OF THE CITY**

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THIS AGREEMENT AND THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME WITHOUT CAUSE BY GIVING WRITTEN NOTICE TO PARKMOBILE OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE THIRTY (30) DAYS FOLLOWING RECEIPT BY PARKMOBILE OF SUCH NOTICE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SECTION, THE CITY SHALL COMPENSATE PARKMOBILE IN ACCORDANCE WITH THE AGREEMENT FOR ALL SERVICES ACTUALLY PERFORMED BY PARKMOBILE PRIOR TO TERMINATION. NO COMPENSATION SHALL BE DUE TO PARKMOBILE FOR ANY PROFITS THAT PARKMOBILE EXPECTED TO EARN ON THE BALANCE OF THE AGREEMENT. SUCH PAYMENTS

SHALL BE THE TOTAL EXTENT OF THE CITY'S LIABILITY TO PARKMOBILE UPON A TERMINATION AS PROVIDED FOR IN THIS SECTION.

ADDITIONALLY, IN THE EVENT OF A PUBLIC HEALTH, WELFARE, OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER, PURSUANT TO A VERBAL OR WRITTEN NOTIFICATION TO THE VENDOR, MAY IMMEDIATELY SUSPEND THE SERVICES UNDER THIS AGREEMENT FOR A TIME CERTAIN, OR IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE.

### **5.3 TERMINATION FOR CAUSE BY PARKMOBILE**

ParkMobile may terminate its performance under this Agreement only if the City defaults and fails to cure the default within forty-five (45) days of receiving written notice of a notice of default delivered pursuant to Section. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and ParkMobile wishes to terminate the Agreement, then ParkMobile must deliver a written notice to the City describing the default and the proposed termination date. The date must be at least thirty (30) days after the City receives notice. ParkMobile, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then ParkMobile may terminate its performance under this Agreement on the termination date.

### **5.4 TERMINATION FOR INSOLVENCY**

Should ParkMobile (i) make a general assignment for the benefit of creditors; (ii) institute liquidation proceedings or proceedings to be adjudicated as voluntarily bankrupt; (iii) consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in an insolvency covering all or substantially all of such party's property or providing for the liquidation or dissolution of such party's property or business affairs; then, in any such event, the City party, at its option and without prior notice, may terminate this Agreement effective immediately. In such event, the rights and obligations for the parties shall be the same as provided for in Section 5.5.

### **5.5 EFFECT OF TERMINATION**

a. Upon termination or expiration of this Agreement, (i) the City shall pay to ParkMobile any portion of the Fees then accrued and properly payable under this Agreement; (ii) City shall promptly return to ParkMobile all materials in its possession with the performance of the Services hereunder; and (iii) City shall discontinue all use of the Platform and intellectual property of ParkMobile.

b. Notwithstanding the exercise by any party of its rights under this Article 5, no termination of this Agreement shall relieve either party of its liability for the payment or performance of any obligation accrued prior to the termination date (including any indemnification obligation arising

hereunder, whether or not notice of such indemnification claim has been given before such termination, or of any rights or obligations under any other provisions, which, by their meaning or content, are intended to survive the termination hereof).

**SECTION 6**  
**INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**6.1 INDEMNIFICATION**

Each party agrees to indemnify, defend and hold harmless (the "Indemnifying Party") the other party and its officers, employees, agents, and contractors (the "Indemnified Party"), from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Indemnifying Party, its officers, employees, agents, contractors, or any other person or entity acting under Indemnifying Party control or supervision, in connection with, related to, or as a result of the Indemnifying Party performance under this Agreement. To that extent, the Indemnifying Party shall pay all such claims and losses and shall pay all such costs and judgments which may be issued from any lawsuit arising from such claims and losses, and shall pay all costs and attorney's fees expended by the Indemnified Party in the defense of such claims and losses, including appeals. The Indemnifying Party expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Indemnifying Party shall in no way limit the Indemnifying Party's responsibility to indemnify, keep, and save harmless and defend the Indemnified Party or its officers, employees, agents, and instrumentalities as herein provided.

**6.2 INSURANCE REQUIREMENTS**

The Vendor shall maintain the below-required insurance in effect prior to awarding the agreement and for the duration of the agreement. The maintenance of proper insurance coverage is a material element of the agreement and failure to maintain or renew coverage may be treated as a material breach of the contract, which could result in termination of the Agreement.

A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should the Vendor be exempt from this Statute, the Vendor and each employee shall hold the City harmless from any injury incurred during the performance of the Contract. The exempt Vendor shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this contract or (ii) a copy of a Certificate of Exemption.

B. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.

C. Automobile Liability Insurance covering any automobile, if the vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with a limit no less than \$1,000,000 combined per accident for bodily injury and property damage.

D. Umbrella Liability Insurance in an amount no less than \$5,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.

**Additional Insured** – City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Vendor's insurance.

**Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

**Waiver of Subrogation** – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

**Acceptability of Insurers** – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

**Verification of Coverage** – Vendor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**CERTIFICATE HOLDER ON ALL COI MUST READ:**

CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 947  
Murrieta, CA 92564

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

**Special Risks or Circumstances** - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.



**SECTION 7**  
**LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER**

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Vendor and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

**SECTION 8**  
**LIMITATION OF CITY'S LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds one times the total amounts paid to ParkMobile under this agreement in the 12 month period preceding the event giving rise to the claim. Vendor hereby expresses its willingness to enter into this Agreement with Vendor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of one times the total amounts paid to ParkMobile under this agreement in the 12 month period preceding the event giving rise to the claim.

Accordingly, and notwithstanding any other term or condition of this Agreement, Vendor hereby agrees that the City shall not be liable to the Vendor for damages in an amount in excess of one times the total amounts paid to ParkMobile under this agreement in the 12 month period preceding the event giving rise to the claim for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

In no event shall any party be liable for consequential, special, indirect or incidental damages, including but not limited to any damages resulting from loss of use or profits arising out of or in connection with this agreement, whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.

**SECTION 9**  
**DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT;  
AND CONFIDENTIAL FINDINGS**

**9.1 DUTY OF CARE**

With respect to the performance of the Services contemplated herein, Vendor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable work and/or services.



**9.2 COMPLIANCE WITH APPLICABLE LAWS**

In its performance of the Services, Vendor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

**9.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS**

a. ParkMobile agrees to defend and indemnify City for all losses, costs and damages resulting from a claim and/or determination that the Services as supplied to the City infringe any United States patent rights, copyrights or trademarks provided that: City promptly notifies ParkMobile in writing upon City becoming aware of the existence of any such suit, action, proceeding or threat; allows ParkMobile sole control of the defense and/or settlement thereof; provides such reasonable cooperation as ParkMobile may require; and, makes no admissions or other statements which may be prejudicial to ParkMobile. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without ParkMobile's express prior written consent. In no event will ParkMobile be liable for the payment of any amount agreed to in settlement without its express consent.

b. In the event that the City is enjoined from its use of the Services due to a proceeding based upon the infringement of patent, copyright or trademark in the United States, ParkMobile shall, at its option, either:

- i. promptly render the Services non-infringing and capable of providing services as intended; or
- ii. procure for City and its customers the right to continue using the Services; or
- iii. replace the Services with non-infringing goods; or
- iv. remove the Services and refund any expense of the City.

c. ParkMobile shall have no liability in respect of any claim based upon:

- i. use, operation or combination of the Services with software, hardware, data, or equipment not supplied by ParkMobile if such infringement would have been avoided but for such use, operation or combination; or
- ii. use of the Services other than in accordance with ParkMobile's specifications if such infringement would have been avoided but for use of the Services not in accordance with ParkMobile specifications; or
- iii. Services that have been modified by any party other than DPT if such infringement would have been avoided but for such modification.

d. Neither party will disclose the other party's or its affiliates' confidential or proprietary information, including Transaction Data and User Profile Data ("Confidential Information") (including the terms of this Agreement and any information provided by the other party that is confidentially maintained or proprietary or which derives value from not being generally known to persons who can obtain economic value from its disclosure or use or that a reasonable person would consider confidential, given the context) except:

- i. with the other party's consent;
- ii. to employees, agents and contractors who have a need to know in the discharge of their duties and who are subject to a contractual obligation to keep such information confidential that is at least as restrictive as this Agreement; or
- iii. when required to do so by law or by any binding rule, order or request.

For purposes of this Section 9, the parties agree that confidential or proprietary information does not include any information that is:

- i. already known to the receiving party at the time of disclosure hereunder (other than from the other party or its affiliates) as demonstrated by its written records;
- ii. now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or anyone to whom the receiving party disclosed such information;
- iii. disclosed to the receiving party, by a third party, under no obligation of confidentiality to the disclosing party or any other party; or
- iv. independently developed by the receiving party without reliance on the confidential information of the disclosing party as shown by its written records.

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it. The parties agree that an actual or threatened breach of this provision would result in irreparable harm to the party whose confidential information would be disclosed in breach, and shall entitle that party to temporary or permanent injunctive relief without proof of actual damages.

## **SECTION 10** **GENERAL PROVISIONS**

### **10.1 AUDIT AND INSPECTIONS**

Upon reasonable verbal or written notice to Vendor, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager at ParkMobile's headquarters, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Vendor shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

### **10.2 INSPECTOR GENERAL AUDIT RIGHTS**

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Vendor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) business days written notice to the Vendor, the Vendor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Vendor its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Vendor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, except to the extent such records contain personally identifiable information, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Vendor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

- i. If this Agreement is completely or partially terminated, the Vendor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
  - ii. The Vendor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Vendor, its officers, agents, employees, subcontractors and suppliers. The Vendor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Vendor in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Vendor or third parties.

### **10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING**

With the exception of an assignment to ParkMobile's parent company, Vendor shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this section, and any attempt to make such assignment (unless approved) shall be void.

### **10.4 PUBLIC ENTITY CRIMES**

Prior to commencement of the Services, the Vendor shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

### **10.5 NO DISCRIMINATION**

In connection with the performance of the Services, the Vendor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Vendor shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

### **10.6 CONFLICT OF INTEREST**

Vendor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, as may be amended from time to time; and by the City of Miami Beach Charter and Code,

as may be amended from time to time; both of which are incorporated by reference as if fully set forth herein.

Vendor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. Vendor further covenants that in the performance of this Agreement, Vendor shall not employ any person having any such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

**10.7 VENDOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

- (A) Vendor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Vendor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Vendor shall:
  - (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Vendor does not transfer the records to the City;
  - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Vendor or keep and maintain public records required by the City to perform the service. If the Vendor transfers all public records to the City upon completion of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Agreement, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (D) **REQUEST FOR RECORDS; NONCOMPLIANCE.**
  - (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Vendor of the request, and the Vendor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.



- (2) Vendor's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
  - (3) A Vendor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.
- (E) CIVIL ACTION.
- (1) If a civil action is filed against a Vendor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Vendor the reasonable costs of enforcement, including reasonable attorneys' fees, if:
    - a. The court determines that the Vendor unlawfully refused to comply with the public records request within a reasonable time; and
    - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Vendor has not complied with the request, to the City and to the Vendor.
  - (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Vendor at the Vendor's address listed on its contract with the City or to the Vendor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
  - (3) A Vendor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

**10.8 FORCE MAJEURE**

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Vendor or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include



events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.

- (B) If the City or Vendor's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Vendor of such termination. If the Agreement is terminated pursuant to this section, Vendor shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

**10.9 E-VERIFY**

- (A) Vendor shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Vendor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Vendor shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Vendor enters into a contract with an approved subcontractor, the subcontractor must provide the Vendor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.
- (B) **TERMINATION RIGHTS.**
- (1) If the City has a good faith belief that Vendor has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Vendor for cause, and the City shall thereafter have or owe no further obligation or liability to Vendor.
  - (2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 10.9(A), but the Vendor otherwise complied with such subsection, the City will promptly notify the Vendor and order the Vendor to immediately terminate the Agreement with the subcontractor. Vendor's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the Vendor's contract for cause.
  - (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
  - (4) The City or Vendor or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
  - (5) If the City terminates the Agreement with Vendor under the foregoing Subsection (B)(1), Vendor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
  - (6) Vendor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

**10.10 TRADEMARKS; PROMOTION MATERIALS**

Parkmobile hereby grants the City a non-transferable, non-sublicensable, non-exclusive license to use its name and trademarks, without modification unless approved by Parkmobile, solely in connection with the City's marketing and use of the Services in the City facilities.

**10.11 STATUS MEETINGS**

On periodic basis, but not less than quarterly, upon request, an appropriate representative of each party shall conduct a joint meeting to discuss the status of the Services, as well as to answer questions, gather information and resolve disputes that may occur from time to time. It is the expectation of the parties that the representatives of the parties shall communicate directly with

one another and work directly with one another to ensure that all Services provided hereunder are completed on a timely and complete basis. All meetings pursuant to this Section 10.11 may be face to face, video or telephonic meetings as may be agreed upon by the parties. Each party shall bear its own costs of attending or participating in such meetings.

#### **10.12 SIGNAGE**

ParkMobile shall, at no cost to the City, coordinate with PayByPhone to design, procure, and deliver all signage for the Parking Locations, including any signage necessary to replace outdated signage placed at a Parking Location under a previous agreement. All signage shall include information for both the City's other mobile parking payment provider, PayByPhone, and ParkMobile equally. ParkMobile and PayByPhone shall coordinate the production of the Signage and shall secure the prior written approval of the City. Upon receiving approval from the City, ParkMobile and PayByPhone shall produce and deliver all Signage to the City. The City shall be responsible for the costs of all subsequent Signage for go-live or additional phase areas. The City is responsible for the installation of all signs and decals.

The number of signs included for a Parking Location shall be mutually agreed upon by the City, PayByPhone, and ParkMobile for each Parking Location.

### **SECTION 11 NOTICES**

Until changed by notice, in writing, all such notices and communications shall be addressed as follows:

**TO VENDOR:**

ParkMobile, LLC  
1100 Spring Street Northwest, Suite 200  
Atlanta, GA 30309  
Attn: Brooke Krieger

**For legal notices:**

With a copy to ParkMobile's Legal Department at the above address and to [legal-notices@parkmobile.io](mailto:legal-notices@parkmobile.io)

**TO CITY:**

City of Miami Beach, Parking Department  
C/O Parking Director  
1755 Meridian Avenue, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139  
[MonicaBeltran@miamibeachfl.gov](mailto:MonicaBeltran@miamibeachfl.gov)

All notices mailed electronically to either party shall be deemed to be sufficiently transmitted.

### **SECTION 12 MISCELLANEOUS PROVISIONS**

#### **12.1 CHANGES AND ADDITIONS**

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein

shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. In the event Client wishes to add new Parking Locations in addition to the Initial Parking Locations (the "Additional Parking Locations") or to add parking spaces to an existing Parking Location, the amendment will be effective against both parties if it is in the form of email between implementation personnel of the parties and, effective the date of such email, the Appendix A will be read to include these Additional Parking Locations or parking spaces.

## **12.2 SEVERABILITY**

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

## **12.3 WAIVER OF BREACH**

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

## **12.4 JOINT PREPARATION**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

## **12.5 REPRESENTATIONS and WARRANTIES**

Each of ParkMobile and City hereby represents, warrants, and covenants to the other party hereto as follows:

- (a) It is duly organized and validly existing under the laws of the state of its incorporation and has full power and authority to carry on its business as it is now being conducted and to own and operate its properties and assets;
- (b) The execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or limited liability company action, as applicable;
- (c) It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and
- (d) The execution, delivery and performance by it of this Agreement and its compliance with the terms and provisions hereof do not and will not conflict with or result in a breach of any of the terms or provisions of or constitute a default under the provisions of its charter documents or bylaws, or any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

**12.6 DISCLAIMER OF WARRANTIES**

THE SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS RELATED TO ANY THIRD PARTY HARDWARE OR EQUIPMENT AS MAY BE REQUIRED FOR USE OF THE PARKMOBILE SERVICE. PARKMOBILE DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, DIRECTLY OR INDIRECTLY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF USE WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH ANY THIRD PARTY HARDWARE USED IN CONNECTION WITH THE SERVICES TO BE PERFORMED HEREUNDER BY SUCH PARTY OR THE RESULTS OBTAINED THEREBY.

**12.7 ENTIRETY OF AGREEMENT**

The City and Vendor agree that this is the entire agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

**CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Rafael E. Granado, City Clerk

\_\_\_\_\_  
Alina T. Hudak, City Manager

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

FOR VENDOR:

**PARKMOBILE, LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

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

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

*John H. Rotundo* 12/21/23  
City Attorney *SR* Date



Contract no.23-051-01

**EXHIBIT A  
SERVICE AGREEMENT**

**EXHIBIT B  
FEE SCHEDULE**

**ParkMobile shall charge the end user an end-user fee as outlined in the pricing below:**

Convenience Fee paid by Residents	\$No Fee
Convenience Fee paid by Non-Residents utilizing ParkMobile Wallet	\$0.30
Convenience Fee paid by Non-Residents without utilizing ParkMobile Wallet	\$0.35

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH  
AND  
PAYBYPHONE US INC.  
FOR  
MOBILE PARKING PAYMENT SYSTEM, PURSUANT TO  
REQUEST FOR QUALIFICATIONS 2023-051-WG**

This Professional Services Agreement ("PSA") and the **PayByPhone US Inc.**, Service Agreement ("Service Agreement"), collectively, the "Agreement" is entered into this \_\_\_\_\_ ("Effective Date"), between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (the "City" or "Client"), and **PayByPhone US Inc.**, a Delaware Corporation, whose address is 48 Wall Street, Suite 1100, New York, New York 10005 ("Vendor" or "PayByPhone").

**SECTION 1  
DEFINITIONS**

- Additional  
Parking Locations: As defined in Section 12.1 of the Agreement.
- Agreement: This Professional Services Agreement between the City and Vendor, including any exhibits and amendments thereto and the PayByPhone Service Agreement, collectively the "Agreement".
- City Manager: The chief administrative officer of the City.
- City Manager's  
Designee: The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager's designee shall be the Parking Department Director.
- Vendor: For the purposes of this Agreement, Vendor shall be deemed to be an independent contractor, and not an agent or employee of the City.
- IP Rights: Any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

Parking Locations:	The location or locations of City's on-street parking, off-street parking, reservation parking, parking lots, parking decks, permitted parking, and other facilities where PayByPhone users may park.
Platform:	Access-controlled mobile and/or web applications, services or interfaces developed, hosted, or managed by, on behalf of, or in partnership with PayByPhone that are made available to Client to administer, configure, manage and/or monitor parking sessions, parking rates, and/or parking restrictions associated with City's Parking Locations.
Services:	The PayByPhone applications, the Platform and all services, work and actions by the Vendor performed or undertaken pursuant to the Agreement.
Convenience Fee:	The fee charged to the user by the City, as set forth in Exhibit B, that is non-embedded and on top of the Parking Rate.
Parking Rate:	The fee charged to the user by the City for use of the parking space.
Transaction Fee:	The fee charged by the Vendor to the City per Transaction as set forth in Exhibit B.
Proposal Documents:	Proposal Documents shall mean City of Miami Beach <b>RFQ No. 2023-051-WG for Mobile Parking Payment System</b> , together with all amendments thereto, issued by the City in contemplation of this Agreement RFQ, and the Vendor's proposal in response thereto ("Proposal"), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: the Professional Services Agreement; the RFQ; the Services Agreement, and the Proposal.
Risk Manager:	The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139; telephone number (305) 673-7000, Ext. 26724; and fax number (305) 673-7529.
Transaction Data:	Information and data collected by the Vendor relating to drivers' parking sessions at the Parking Locations, which may include vehicle license plate, parking session date, time, duration, zone number and amount paid, details of parking fines/violation notices, and parking session details obtained through customer service center.
User Profile Data:	Any information about or with respect to PayByPhone service users that is not related to parking sessions at the Parking Locations, including without limitation, information provided by users upon registration for a PayByPhone account and data about the user's activity in the PayByPhone account or the PayByPhone applications.

Merchant of Record: Refers to the entity that is authorized to receive customer payments to its merchant account set up with its acquiring bank, including credit card and any digital wallet transactions for Services.

**SECTION 2**  
**SCOPE OF SERVICES**

**2.1** In consideration of the Fee to be paid to Vendor by the City, Vendor shall provide the work and services described in Exhibit "A" hereto (the "Services").

Although the Vendor may be provided with a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Vendor; where the Services are performed (although the City will provide Vendor with the appropriate location to perform the Services); when the Services are performed, including how many days a week the Services are performed; how the Services are performed, or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Vendor shall be performed in accordance with the terms and conditions set forth in Exhibit "A" and to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, the Vendor should contact the following person:

Monica Beltran, Director, Parking Department  
1755 Meridian Avenue, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139  
(305) 673-7000 ext. 26863  
[MonicaBeltran@miamibeachfl.gov](mailto:MonicaBeltran@miamibeachfl.gov)

**2.2** Vendor's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit C hereto.

**2.3** **Services Provided by PayByPhone.** During the Term (as defined herein), PayByPhone shall perform the services for the City as described in Exhibit A hereof (as amended, modified or supplemented from time to time upon the mutual written agreement of the parties, the "Services"). PayByPhone shall render the Services faithfully and to the best of its ability and in compliance with all applicable laws, Federal, State, and local laws, codes, ordinances, resolutions, administrative policies and procedures and/or rules and regulations, (collectively, "Applicable Laws"), devoting such time as is reasonably necessary to provide the Services. The precise times and manner of the performance of Services shall be as reasonably requested by the City, consistent with a schedule to be reasonably agreed upon from time to time by PayByPhone and the City. In connection with PayByPhone's performance of the Services, and in addition to PayByPhone's compliance with Applicable Laws, PayByPhone shall also be subject to, and agrees to abide by, such applicable policies, procedures, directions and restrictions as the City, in its sole and reasonable discretion, may establish from time to time and as communicated to PayByPhone. PayByPhone shall implement the Services within sixty (60) days of the Effective Date of this Agreement. The City acknowledges and agrees that PayByPhone is not liable or responsible for any delay in the implementation of the Services that is caused by any act or event outside the direct control of PayByPhone, including, but not limited to, a third party delaying integration set up.

If the City requires additional work and/or services that are not included in this Agreement, PayByPhone and the City shall negotiate such additional work and/or services, mutually agree on the amount of additional compensation, and memorialize the terms in a written amendment to this Agreement.

**2.4 Help and Support.** PayByPhone agrees to use its reasonable efforts to assist the City with any technical support that the City may reasonably require in relation to using the Services. In furtherance of the foregoing, PayByPhone agrees to provide the City with preventative maintenance, corrective maintenance, adaptive maintenance for the Platform and will provide City administrative staff email and telephone support with respect to the Services between 7 am to 4 pm EST, Monday to Friday. Each of PayByPhone and the City shall promptly notify the other of any errors or interruptions that arise during the City's use of PayByPhone's software or the Services hereunder.

**2.5 Errors and Corrections.** In the event of any errors or interruptions in the Services, PayByPhone's sole and exclusive obligation shall be to use reasonable efforts to repair or restore that portion of the Services as promptly as possible. Repair may take the form, at the option of PayByPhone, as the case may be, of: (i) corrected software applicable to the Services; (ii) corrected materials in hard copy or electronic form describing the use and operation of the software applicable to the Services, including any manuals and programming tools; (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented; or (iv) correction/clarification of the functional definition of the Services.

**2.6 Publicity of Services.** All brochures and promotional materials to be distributed by PayByPhone and the City in connection with the Services shall be in a form mutually agreed upon by the parties.

**2.7 Authority of Parties; Cooperation.** Each party acknowledges and agrees that it has no authority to act on behalf of the other party other than as set forth in this Agreement or to enter into any contract or to incur any liability on behalf of the other party, except with prior written consent of an authorized officer of such party. Each party covenants that it shall not at any time represent, either orally or in writing, that it has any right, power, or authority with respect to the other party not expressly granted to the other party by such party.

Each party shall reasonably cooperate with the other party to permit such party to perform its duties and obligations under this Agreement in a timely manner.

**2.8 Technology Sublicense.** PayByPhone hereby grants the City the nonexclusive, non-transferable, non-sub-licensable, revocable right and sublicense to use any applicable proprietary technology that PayByPhone licenses but does not own and relates to the Services (the "Technology") in connection with the Services. The City shall not use the Technology for any use other than in connection with the Services. The City acknowledges and agrees that (a) PayByPhone shall be its exclusive source of the Technology for the Term; and (b) all Services obtained by the City shall use the Technology as necessary. The City has no interest in or right to use the Technology or any improvements thereto or modifications thereof except as set forth herein. In all instances, the City's use of the Technology shall inure to both party's benefit. During the Term or at any time thereafter, the City shall not commit, or cause any third party to commit, any act challenging, contesting, or impairing or attempting to impair PayByPhone's right, title and interest in and to the Technology or the validity thereof.



**2.9 Proposal Documents.** Notwithstanding the description of PayByPhone's services and without limitation, PayByPhone shall provide any and all work and services as set forth in, and in accordance to the requirements of, the Proposal Documents (which are attached hereto and are hereby deemed incorporated by reference as if fully set forth herein).

### **SECTION 3** **TERM**

The term of this Agreement ("Term") shall commence on the date identified in the notice provided by the City Manager's Designee stating that all initial signage contemplated under Section 10.12 has been installed ("Signage Installation Notice"), and shall have an initial term of Five (5) years, with two (2) additional two-year renewal options, to be exercised at the City Manager's sole option and discretion, by providing Vendor with written notice of same no less than thirty (30) days prior to the expiration of the initial term.

Notwithstanding the Term provided herein, Vendor shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit C hereto.

### **SECTION 4** **FEE**

**4.1** City shall pay PayByPhone as set forth in Exhibit B and in accordance with Section 4.2. PayByPhone may propose an increase in the Transaction Fees outlined in Exhibit B, not more often than once in a calendar year, to adjust for inflation and any increase in the cost of PayByPhone providing the services to City. All adjustments to the Transaction Fees shall be valid upon the prior written approval of the City Manager or City Manager's Designee. City parking rate structure is varied and includes flat and hourly rates that differ for residents and visitors. However, other rates and/or geographic areas may be added in the future. The rates specified herein shall commence on the date specified in the Signage Installation Notice to Proceed.

**4.2. Payment.** The City will serve as the Merchant of Record for Parking Rates and any Convenience Fees. PayByPhone shall invoice the City the applicable fees as set forth in Exhibit B. The City will issue a check to pay the Vendor on a monthly basis. Payment is due no later than forty-five (45) days after invoice. Invoices shall include a detailed description of the Services (or portions thereof) provided, and shall be submitted to the City at the following address:

Accounts Payable: [Payables@miamibeachfl.gov](mailto:Payables@miamibeachfl.gov)

**4.3 Taxes.** PayByPhone's prices do not include sales, use, revenue or excise taxes, and accordingly, in addition to the price specified herein, the amount of any sales, use, excise or other similar tax applicable to the Services provided hereunder shall be paid by the City, including any taxes applicable on fees paid by the consumer, or, in lieu thereof, City shall provide PayByPhone with a tax exemption certificate issued by the appropriate taxing authority.

**4.3. Billing Disputes.** The City shall not be entitled to suspend payment of any disputed invoices. Any disputes must be submitted to PayByPhone in writing and with an explanation of the reason for the dispute, within forty-five (45) days. In the event that any payment dispute is

resolved in favor of the City, PayByPhone shall credit City on the immediately subsequent invoice issued to City.

**4.4. Expenses.** Except as otherwise provided herein, PayByPhone shall not charge the City any costs for one (1) integration of its system(s) with the City's enforcement software solution, or for the management of the project and the Services. PayByPhone shall charge the City for ordinary, necessary and reasonable third party costs only on direct cost basis and only after the prior written approval of the City.

## **SECTION 5** **TERMINATION**

### **5.1 TERMINATION FOR CAUSE BY THE CITY**

a. If either party shall fail to fulfill or otherwise violate any of the covenants, agreements, or stipulations in this Agreement, and such material breach remains uncorrected for thirty (30) days after receipt of notice by the other party, the other party shall thereupon have the right to terminate the Agreement by giving thirty (30) days' written notice to the other party of such termination. If the breaching party fails to cure in that 30-day period or the breach is incapable of cure, then the Agreement shall so terminate.

b. In that event, the City shall compensate PayByPhone in accordance with the Agreement for all Services performed by PayByPhone prior to termination, net of any costs incurred by the City as a consequence of the default.

c. Notwithstanding the above, neither party shall be relieved of liability to the other party for damages sustained by the City by virtue of any breach of the Agreement.

### **5.2 TERMINATION FOR CONVENIENCE OF THE CITY**

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THIS AGREEMENT AND THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME WITHOUT CAUSE BY GIVING WRITTEN NOTICE TO PAYBYPHONE OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE THIRTY (30) DAYS FOLLOWING RECEIPT BY PAYBYPHONE OF SUCH NOTICE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SECTION, THE CITY SHALL COMPENSATE PAYBYPHONE IN ACCORDANCE WITH THE AGREEMENT FOR ALL SERVICES ACTUALLY PERFORMED BY PAYBYPHONE PRIOR TO TERMINATION. NO COMPENSATION SHALL BE DUE TO PAYBYPHONE FOR ANY PROFITS THAT PAYBYPHONE EXPECTED TO EARN ON THE BALANCE OF THE AGREEMENT. SUCH PAYMENTS SHALL BE THE TOTAL EXTENT OF THE CITY'S LIABILITY TO PAYBYPHONE UPON A TERMINATION AS PROVIDED FOR IN THIS SECTION.

ADDITIONALLY, IN THE EVENT OF A PUBLIC HEALTH, WELFARE, OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER, PURSUANT TO A VERBAL OR WRITTEN NOTIFICATION TO THE VENDOR, MAY SUSPEND THE SERVICES UNDER THIS AGREEMENT WITH TEN (10) DAYS PRIOR NOTICE TO VENDOR FOR A TIME

CERTAIN, OR IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE.

**5.3 TERMINATION FOR CAUSE BY PAYBYPHONE**

PayByPhone may terminate its performance under this Agreement only if the City defaults and fails to cure the default within forty-five (45) days of receiving written notice of a notice of default delivered pursuant to Section. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and PayByPhone wishes to terminate the Agreement, then PayByPhone must deliver a written notice to the City describing the default and the proposed termination date. The date must be at least thirty (30) days after the City receives notice. PayByPhone, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then PayByPhone may terminate its performance under this Agreement on the termination date.

**5.4 TERMINATION FOR INSOLVENCY**

Should PayByPhone (i) make a general assignment for the benefit of creditors; (ii) institute liquidation proceedings or proceedings to be adjudicated as voluntarily bankrupt; (iii) consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in an insolvency covering all or substantially all of such party's property or providing for the liquidation or dissolution of such party's property or business affairs; then, in any such event, the City party, at its option and without prior notice, may terminate this Agreement effective immediately. In such event, the rights and obligations for the parties shall be the same as provided for in Section 5.5.

**5.5 EFFECT OF TERMINATION**

a. Upon termination or expiration of this Agreement, (i) the City shall pay to PayByPhone any portion of the Fees then accrued and properly payable under this Agreement; (ii) City shall promptly return to PayByPhone all materials in its possession with the performance of the Services hereunder; and (iii) City shall discontinue all use of the Technology and intellectual property of PayByPhone.

b. Notwithstanding the exercise by any party of its rights under this Article 5, no termination of this Agreement shall relieve either party of its liability for the payment or performance of any obligation accrued prior to the Termination Date (including any indemnification obligation arising hereunder, whether or not notice of such indemnification claim has been given before such termination, or of any rights or obligations under any other provisions, which, by their meaning or content, are intended to survive the termination hereof).

**SECTION 6**  
**INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**6.1 INDEMNIFICATION**

Each party agrees to indemnify, defend and hold harmless (the "Indemnifying Party") the other party and its officers, employees, agents, and contractors (the "Indemnified Party"), from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Indemnifying Party, its officers, employees, agents, contractors, or any other person or entity acting under Indemnifying Party control or supervision, in connection with, related to, or as a result of the Indemnifying Party performance under this Agreement. To that extent, the Indemnifying Party shall pay all such claims and losses and shall pay all such costs and judgments which may be issued from any lawsuit arising from such claims and losses, and shall pay all costs and attorney's fees expended by the Indemnified Party in the defense of such claims and losses, including appeals. The Indemnifying Party expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Indemnifying Party shall in no way limit the Indemnifying Party's responsibility to indemnify, keep, and save harmless and defend the Indemnified Party or its officers, employees, agents, and instrumentalities as herein provided.

**6.2 INSURANCE REQUIREMENTS**

The Vendor shall maintain the below-required insurance in effect prior to awarding the agreement and for the duration of the agreement. The maintenance of proper insurance coverage is a material element of the agreement and failure to maintain or renew coverage may be treated as a material breach of the contract, which could result in withholding of payments or termination of the Agreement.

A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should the Vendor be exempt from this Statute, the Vendor and each employee shall hold the City harmless from any injury incurred during the performance of the Contract. The exempt Vendor shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this contract or (ii) a copy of a Certificate of Exemption.

B. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.

C. Automobile Liability Insurance covering any automobile, if the vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with a limit no less than \$1,000,000 combined per accident for bodily injury and property damage.

D. Umbrella Liability Insurance in an amount no less than \$5,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.

**Additional Insured** – City of Miami Beach must be included by endorsement as an additional insured with respect to all commercial general liability policies arising out of work or operations performed on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Vendor's insurance.

**Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

**Waiver of Subrogation** – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

**Acceptability of Insurers** – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

**Verification of Coverage** – Vendor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

**CERTIFICATE HOLDER ON ALL COI MUST READ:**

CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 947  
Murrieta, CA 92564

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

[Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

**Special Risks or Circumstances** - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

**SECTION 7**  
**LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER**

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Vendor and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

**SECTION 8**  
**LIMITATION OF CITY'S LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds one times the total amounts paid to PayByPhone under this agreement in the 12 month period preceding the event giving rise to the claim. Vendor hereby expresses its willingness to enter into this Agreement with Vendor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of one times the total amounts paid to PayByPhone under this agreement in the 12 month period preceding the event giving rise to the claim.

Accordingly, and notwithstanding any other term or condition of this Agreement, Vendor hereby agrees that the City shall not be liable to the Vendor for damages in an amount in excess of one times the total amounts paid to PayByPhone under this agreement in the 12 month period preceding the event giving rise to the claim for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

In no event shall any party be liable for consequential, special, indirect or incidental damages, including but not limited to any damages resulting from loss of use or profits arising out of or in connection with this agreement, whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.

**SECTION 9**  
**DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT;  
AND CONFIDENTIAL FINDINGS**

**9.1 DUTY OF CARE**

With respect to the performance of the Services contemplated herein, Vendor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable work and/or services.



**9.2 COMPLIANCE WITH APPLICABLE LAWS**

In its performance of the Services, Vendor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

**9.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS**

a. PayByPhone agrees to defend and indemnify City for all losses, costs and damages resulting from a claim and/or determination that the Services as supplied to the City infringe any United States patent rights, copyrights or trademarks provided that: City promptly notifies PayByPhone in writing upon City becoming aware of the existence of any such suit, action, proceeding or threat; allows PayByPhone sole control of the defense and/or settlement thereof; provides such reasonable cooperation as PayByPhone may require; and, makes no admissions or other statements which may be prejudicial to PayByPhone. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without PayByPhone's express prior written consent. In no event will PayByPhone be liable for the payment of any amount agreed to in settlement without its express consent.

b. In the event that the City is enjoined from its use of the Services due to a proceeding based upon the infringement of patent, copyright or trademark in the United States, PayByPhone shall, at its option, either:

- i. promptly render the product non-infringing and capable of providing services as intended; or
- ii. procure for City and its customers the right to continue using its product; or
- iii. replace the product with non-infringing goods; or
- iv. remove the product and refund any expense of the City.

c. PayByPhone shall have no liability in respect of any claim based upon:

- i. use, operation or combination of its product with software, hardware, data, or equipment not supplied by PayByPhone if such infringement would have been avoided but for such use, operation or combination; or
- ii. use of products other than in accordance with PayByPhone's specifications if such infringement would have been avoided but for use of the Products not in accordance with PayByPhone specifications; or
- iii. its products that have been modified by any party other than PayByPhone if such infringement would have been avoided but for such modification.

d. Neither party will disclose the other party's or its affiliates' confidential or proprietary information, including Transaction Data and User Profile Data ("Confidential Information") (including the terms of this Agreement and any information provided by the other party that is confidentially maintained or proprietary or which derives value from not being generally known to persons who can obtain economic value from its disclosure or use or that a reasonable person would consider confidential, given the context) except:

- i. with the other party's consent;

- ii. to employees, agents and contractors who have a need to know in the discharge of their duties and who are subject to a contractual obligation to keep such information confidential that is at least as restrictive as this Agreement; or
- iii. when required to do so by law or by any binding rule, order or request.

For purposes of this Section 9.3, the parties agree that confidential or proprietary information does not include any information that is:

- i. already known to the receiving party at the time of disclosure hereunder (other than from the other party or its affiliates) as demonstrated by its written records;
- ii. now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or anyone to whom the receiving party disclosed such information;
- iii. disclosed to the receiving party, by a third party, under no obligation of confidentiality to the disclosing party or any other party; or
- iv. independently developed by the receiving party without reliance on the confidential information of the disclosing party as shown by its written records.

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it. The parties agree that an actual or threatened breach of this provision would result in irreparable harm to the party whose confidential information would be disclosed in breach, and shall entitle that party to temporary or permanent injunctive relief without proof of actual damages.

## **SECTION 10** **GENERAL PROVISIONS**

### **10.1 AUDIT AND INSPECTIONS**

Upon reasonable verbal or written notice to Vendor, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Vendor shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

### **10.2 INSPECTOR GENERAL AUDIT RIGHTS**

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Vendor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Vendor, the Vendor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Vendor its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Vendor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Vendor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- i. If this Agreement is completely or partially terminated, the Vendor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

- ii. The Vendor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Vendor, its officers, agents, employees, subcontractors and suppliers. The Vendor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Vendor in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Vendor or third parties.

### **10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING**

With the exception of an assignment to PayByPhone's parent company, Vendor shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this section, and any attempt to make such assignment (unless approved) shall be void.

### **10.4 PUBLIC ENTITY CRIMES**

Prior to commencement of the Services, the Vendor shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

### **10.5 NO DISCRIMINATION**

In connection with the performance of the Services, the Vendor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Vendor shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

### **10.6 CONFLICT OF INTEREST**

Vendor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time; both of which are incorporated by reference as if fully set forth herein.

Vendor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. Vendor further covenants that in the performance of this Agreement, Vendor shall not employ any person having any such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

**10.7 VENDOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

- (A) Vendor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Vendor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Vendor shall:
  - (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Vendor does not transfer the records to the City;
  - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Vendor or keep and maintain public records required by the City to perform the service. If the Vendor transfers all public records to the City upon completion of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Agreement, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (D) REQUEST FOR RECORDS; NONCOMPLIANCE.
  - (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Vendor of the request, and the Vendor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
  - (2) Vendor's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.



- (3) A Vendor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(E) CIVIL ACTION.

- (1) If a civil action is filed against a Vendor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Vendor the reasonable costs of enforcement, including reasonable attorneys' fees, if:
  - a. The court determines that the Vendor unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Vendor has not complied with the request, to the City and to the Vendor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Vendor at the Vendor's address listed on its contract with the City or to the Vendor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) A Vendor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV  
PHONE: 305-673-7411**

**10.8 FORCE MAJEURE**

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Vendor or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility,



inclement weather, or failure to secure any of the required permits pursuant to the Agreement.

- (B) If the City or Vendor's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Vendor of such termination. If the Agreement is terminated pursuant to this section, Vendor shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

**10.9 E-VERIFY**

- (A) Vendor shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-

Verify Statute”), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Vendor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement, provide an affidavit stating that the Vendor does not employ, contract with, or subcontract with an unauthorized alien, or, upon the City’s written request, otherwise demonstrate Vendor’s compliance with Section 448.095 as described therein. Additionally, Vendor shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term, as applicable. If Vendor enters into a contract with an approved subcontractor, the subcontractor must provide the Vendor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

(B) **TERMINATION RIGHTS.**

- (1) If the City has a good faith belief that Vendor has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Vendor for cause, and the City shall thereafter have or owe no further obligation or liability to Vendor.
- (2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 10.9(A), but the Vendor otherwise complied with such subsection, the City will promptly notify the Vendor and order the Vendor to immediately terminate the Agreement with the subcontractor. Vendor’s failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the Vendor’s contract for cause.
- (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
- (4) The City or Vendor or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If the City terminates the Agreement with Vendor under the foregoing Subsection (B)(1), Vendor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- (6) Vendor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

10.10 **TRADEMARKS; PROMOTION MATERIALS**

PayByPhone hereby grants the City a non-transferable, non-sublicensable, non-exclusive license to use its name and trademarks, without modification unless approved by PayByPhone, solely in connection with the City’s marketing and use of the Services in the City facilities.

10.11 **STATUS MEETINGS**

On periodic basis, but not less than quarterly, an appropriate representative of each party shall conduct a joint meeting to discuss the status of the Services, as well as to answer questions, gather information and resolve disputes that may occur from time to time. It is the expectation of the parties that the representatives of the parties shall communicate directly with one another and

work directly with one another to ensure that all Services provided hereunder are completed on a timely and complete basis. All meetings pursuant to this Section 10.11 may be face to face, video or telephonic meetings as may be agreed upon by the parties. Each party shall bear its own costs of attending or participating in such meetings.

#### **10.12 SIGNAGE**

PayByPhone shall, at no cost to the City, coordinate with the City's other mobile parking payment provider, ParkMobile, to design, procure, and deliver all signage for the Parking Locations, including any signage necessary to replace outdated signage placed at a Parking Location under a previous agreement. All signage shall include information for both ParkMobile and PayByPhone equally. ParkMobile and PayByPhone shall coordinate the production of the Signage and shall secure the prior written approval of the City. Upon receiving approval from the City, PayByPhone and ParkMobile shall produce and deliver all signage to the City. The City shall be responsible for the costs of all subsequent Signage for go-live or additional phase areas. The City is responsible for the installation of all signs and decals.

The number of signs included for a Parking Location shall be mutually agreed upon by the City, PayByPhone, and ParkMobile for each Parking Location.

### **SECTION 11** **NOTICES**

Until changed by notice, in writing, all such notices and communications shall be addressed as follows:

**TO VENDOR:**

PayByPhone US Inc.  
c/o PayByPhone Technologies Inc.  
600-1290 Homer Street  
Vancouver, BC V6B 2Y5  
Canada  
Attn: Legal

**With a copy to:** [legal@paybyphone.com](mailto:legal@paybyphone.com)

**TO CITY:**

City of Miami Beach, Parking Department  
C/O Parking Director  
1755 Meridian Avenue, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139  
[MonicaBeltran@miamibeachfl.gov](mailto:MonicaBeltran@miamibeachfl.gov)

All notices mailed electronically to either party shall be deemed to be sufficiently transmitted.

**SECTION 12**  
**MISCELLANEOUS PROVISIONS**

**12.1 CHANGES AND ADDITIONS**

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. In the event Client wishes to add new Parking Locations in addition to the Initial Parking Locations (the "Additional Parking Locations") or to add parking spaces to an existing Parking Location, the amendment will be effective against both parties if it is in the form of email between implementation personnel of the parties and, effective the date of such email, the Exhibit B will be read to include these Additional Parking Locations or parking spaces.

**12.2 SEVERABILITY**

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**12.3 WAIVER OF BREACH**

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**12.4 JOINT PREPARATION**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

**12.5 REPRESENTATIONS and WARRANTIES**

Each of PayByPhone and City hereby represents, warrants, and covenants to the other party hereto as follows:

- (a) It is duly organized and validly existing under the laws of the state of its incorporation and has full power and authority to carry on its business as it is now being conducted and to own and operate its properties and assets;
- (b) The execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or limited liability company action, as applicable;
- (c) It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and

(d) The execution, delivery and performance by it of this Agreement and its compliance with the terms and provisions hereof do not and will not conflict with or result in a breach of any of the terms or provisions of or constitute a default under the provisions of its charter documents or bylaws, or any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

**12.6 DISCLAIMER OF WARRANTIES**

THE SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS RELATED TO ANY THIRD PARTY HARDWARE OR EQUIPMENT AS MAY BE REQUIRED FOR USE OF THE PAYBYPHONE SERVICE. PAYBYPHONE DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, DIRECTLY OR INDIRECTLY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF USE WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH ANY THIRD PARTY HARDWARE USED IN CONNECTION WITH THE SERVICES TO BE PERFORMED HEREUNDER BY SUCH PARTY OR THE RESULTS OBTAINED THEREBY.

**12.7 ENTIRETY OF AGREEMENT**

The City and Vendor agree that this is the entire agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

**CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Rafael E. Granado, City Clerk

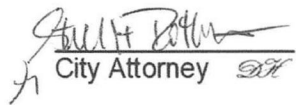
\_\_\_\_\_  
Alina T. Hudak, City Manager

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

FOR VENDOR:

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

**PAYBYPHONE US INC.**

  
\_\_\_\_\_  
City Attorney *SH* Date 12/22/23

By: \_\_\_\_\_

\_\_\_\_\_  
Satyajit (Sonny) Samra, President

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



**EXHIBIT A  
SERVICE AGREEMENT**

**EXHIBIT A**  
**COOPERATION AND SERVICE AGREEMENT**

For the purposes of this Exhibit C – Cooperation and Service Agreement, “PayByPhone” shall mean PayByPhone US Inc., a provider of enhanced mobile commerce solutions, a Delaware corporation with its address at 48 Wall Street, Suite 1100, New York, New York 10005 and “Client” shall mean the City of Miami Beach, a provider of parking services with its address at: 1700 Convention Center Drive, Miami Beach, Florida, 33139.

**AGREEMENT**

**Section 1 THE PAYBYPHONE MOBILE PAYMENT PLATFORM AND APPLICATIONS**

**1.1 PAYBYPHONE MOBILE PAYMENT APPLICATION**

PayByPhone agrees to roll out the PayByPhone mobile payment service for use at Client’s managed and owned parking facilities as agreed upon by PayByPhone and Client, to allow for consumers to pay for the use of Client’s parking facilities through personal wireless devices (e.g., cellular telephones) or other wireless systems. QR code access to the payment service is not included.

**1.2 PAYBYPHONE MANAGEMENT INFORMATION SYSTEM**

PayByPhone will operate and manage a software application for Client that will provide near real time information and management reports on the transactions conducted utilizing the PayByPhone mobile payment service (the “Portal”). PayByPhone will host the Portal on its network. Client will access the Portal through a browser-based program installed on Client’s computer hardware.

**1.3 COMPUTER, NETWORKING AND TELECOMMUNICATION SYSTEMS**

PayByPhone will own or possess, and will operate and maintain, all computer and networking hardware and software and data required to operate the PayByPhone mobile payment services service as contemplated in this Agreement, other than Client’s existing computer and telecommunications systems.

**1.4 MOBILE PAYMENT SERVICE ENFORCEMENT**

Client agrees to supply Wireless Devices to employees in the field to provide real time confirmation of validly parked vehicles.

**1.5 REPORTS**

PayByPhone will provide Client with a set of standard self-serve reports in the Portal. Any changes or customizations to the standard set of reports will be subject to PayByPhone’s prior approval and then-current PayByPhone professional services fees.

See [https://www.paybyphone.com/pdf/us/pbp\\_professionalservicesamplerates.pdf](https://www.paybyphone.com/pdf/us/pbp_professionalservicesamplerates.pdf) for sample rates.

**1.6 PAYBYPHONE INTERACTIVE VOICE RESPONSE**

PayByPhone will provide the PayByPhone interactive voice response solution (“IVR”) for use at Client’s managed and/or owned parking facilities, as agreed upon by PayByPhone and Client, to allow for consumers to call and pay for the use of the Parking Location by calling the applicable service number displayed on the parking sign, parking meter, and/or pay station. Client is responsible for paying all Transaction Fees, as outlined in Appendix A, for each Transaction made through IVR.

**1.7 PAYBYPHONE RIGHTS & RATES**

PayByPhone will provide Client with the PayByPhone Rights & Rates service (“Rights & Rates”) to allow Client to control eligibility to park at Client parking facilities and to assign special parking rules and prices to select segments of drivers. In this Agreement, a “Right” is the entitlement to start a parking session at a Parking Location and/or qualify for a specific rate/restriction. Client is responsible for paying the Rights & Rates implementation and

subscription fees, as outlined in Appendix A, for the number of Client parking spaces as agreed upon between PayByPhone and Client.

### **1.8 USE OF QR CODE**

At Client's request, as part of the PayByPhone mobile payment service, PayByPhone will provide to Client, and include on the relevant signage at Client's parking facilities or in marketing materials, QR codes which will allow consumers to access the PayByPhone mobile payment service through QR code scanning, at no additional cost. Client acknowledges that inclusion of QR codes in the payment service is associated with a material risk of fraudulent activity by third parties who may manually replace QR codes on Client signage with their own codes and redirect the consumers to their sites for payment, resulting in losses to Client, PayByPhone and consumers. Client releases PayByPhone from any liability for any claims, actions or losses resulting from or associated with such fraudulent activity at Client's parking facilities and, to the extent permitted by law, agrees to indemnify PayByPhone against any and all third party claims, actions, losses resulting from or arising out of such fraudulent activity, as set out in section 8.2 of this Agreement. Client will reimburse PayByPhone for the cost of removing fraudulent QR signage from Client's parking facilities and for the costs of customer support and call centre fees associated with calls related to fraudulent signage at Client's parking spaces. PayByPhone will provide evidence supporting determination of the costs, but PayByPhone's calculations will be conclusive of the same. PayByPhone reserves the right to discontinue the support for the QR code feature with 10 day written notice to Client if the fraudulent activity at Client's parking facilities persists for longer than 6 weeks.

### **1.9 PAYBYPHONE VALIDATIONS PORTAL**

Subject to the terms and conditions of this Agreement, PayByPhone will provide Client a parking validation subscription service, which allows Client to access a web-based parking validation and complimentary parking management portal to enter and manage license plate information to validate consumer parking sessions (the "Validations Portal"). Client is responsible for paying all Validations Portal fees, as set out in Appendix A, for the Parking Location(s), as agreed upon between PayByPhone and Client. Notwithstanding anything contrary to this Agreement, Client may not terminate its subscription to the Validations Portal for any reason for six months from the date the Validations Portal is set up for Client. Client shall not: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, know-how or algorithms relevant to the Validations Portal; (b) create derivative works based on the Validations Portal; or (c) encourage or assist any third party to do the foregoing.

## **Section 2 FEES AND PAYMENTS**

### **2.1 MERCHANT ACCOUNT**

Merchant account refers to Client's merchant account set up with Client's acquiring bank. PayByPhone will cover the cost of linking one (1) Client merchant account with PayByPhone's gateway provider. Client agrees to cover the cost of merchant account updates including all third party fees and then-current PayByPhone professional services

### **2.2 TRANSACTION TESTING**

PayByPhone reserves the right to execute test transactions from time to time to ensure top performance of the system and account. PayByPhone may execute up to ten test transactions per month without adjusting the Client invoice.

### **2.3 THIRD PARTY INTEGRATION**

In the event that system changes (such as upgrades) by a third party that will impact the PayByPhone integration with Client sub-systems such as enforcement, Client agrees to pay for all PayByPhone development costs required to maintain such integration. PayByPhone will notify Client, in advance, of any such integration costs that could be added.

## **Section 3 EXCLUSIVITY**

The parties expressly acknowledge that Client currently engages, and/or may in the future, at its option, add, other providers of mobile parking payment applications (“Third Party Providers”), through contracts for the same parking facilities and metered stalls covered by this Agreement.

#### **Section 4 MARKETING, PROMOTION AND USER EDUCATION**

##### **4.1 MARKETING EVENTS**

PayByPhone may conduct on-site marketing events and campaigns for its service, whereby PayByPhone will inform parking lot consumers of the availability of the PayByPhone mobile payment services as well as any promotions available, with the knowledge and approval of Client which is not to be unreasonably withheld.

##### **4.2 CLIENT TRAINING**

PayByPhone will provide initial training to Client using a “Train the Trainer” (the “Client Trainer”) model on the self-served PayByPhone Service Management Interface (SMI). The said Client Trainer will, at its own expense, train its staff and employees, including patrollers, to operate the mobile payment services and related applications and technology. Additional training sessions are available at the then current professional services rates. See [https://www.paybyphone.com/pdf/us/pbp\\_professionalservicesamplerates.pdf](https://www.paybyphone.com/pdf/us/pbp_professionalservicesamplerates.pdf) for sample rates.

#### **Section 5 INTELLECTUAL PROPERTY**

##### **5.1 INTELLECTUAL PROPERTY RIGHTS**

5.1.1 The parties acknowledge and agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyrights or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively “Intellectual Property”) belonging to the other party, given to them under this Agreement is and shall remain the property of that party for the duration of the Term of this Agreement.

5.1.2 Except as expressly stated, nothing in this Agreement shall be deemed or interpreted to convey, transfer or assign any Intellectual Property rights to the other party.

5.1.3 Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in upon the advance written approval or as previously agreed upon in writing by the parties.

5.1.4 Upon termination of this Agreement for any reason the parties will use reasonable endeavours to ensure that all such Intellectual Property and material are removed from display and/or destroyed at the request of the other party save where such Intellectual Property is held by the parties in compliance with any statutory obligations and/or the maintenance of proper records.

5.1.5 The parties undertake that they have all necessary permissions, licenses and rights to use the Intellectual Property of third parties for the purposes of this Agreement.

5.1.6 To the extent permitted by law, each party shall indemnify (for the purposes of this clause, the “Indemnifying Party”) the other (for the purposes of this clause the “Indemnified Party”) against all actions, claims, proceedings, costs and expenses (including reasonable legal fees) arising from any actual infringement of Intellectual Property rights of whatever nature insofar as these relate to the Intellectual Property rights developed and owned by the Indemnifying Party or licensed to the Indemnified Party which claims, actions or proceedings arise as a result of the Indemnified Party’s use of any of the Services, except that the indemnity shall not apply to any actions, claims or proceedings which are attributable to any breach of contract or negligent act or omission on the part of the Indemnified Party or where such actions, claims or proceedings relate to any developments of the services carried out by or at the request of the Indemnified Party except where the Indemnifying Party knew or ought to have known that such

development of the services requested by the Indemnified Party would result in an infringement of Intellectual Property rights.

5.1.7 The Indemnified Party shall notify the Indemnifying Party in writing of any such action, claim or proceeding and shall not make any admission unless the Indemnifying Party gives prior written consent.

5.1.8 At the Indemnifying Party's request and expense, the Indemnified Party shall permit the Indemnifying Party to conduct all negotiations and litigation. The Indemnified Party shall give all assistance as the Indemnifying Party may reasonably request and the Indemnifying Party shall pay the Indemnified Party's costs and expenses so incurred.

5.1.9 The Indemnifying Party may, at its expense: (i) obtain a license to enable the Indemnified Party to continue to use the Services, or (ii) modify or replace the Services to avoid any alleged or actual infringement or breach, or (iii) terminate the provision of the affected elements of the Services. Where the Indemnifying Party exercises options (i) or (ii) the functionality of such modification or replacement shall not materially affect the performance of the Services.

## **5.2 CLIENT INFORMATION**

5.2.1 "Client Data" means all data provided directly by the Client to PayByPhone in relation to this Agreement, including Client's parking rates, Client's identifiers for Parking Locations and parking stalls, merchant account information, enforcement equipment and practices, and parking policies.

5.2.2 During the term of this Agreement and for such time after as not expressly prohibited, PayByPhone may obtain, store and use such Client Data for any purpose, including without limitation providing and improving services under this Agreement, so long as it complies with applicable data protection laws, contractual obligations and any other applicable requirements with respect to the Client Data. PayByPhone shall retain exclusive ownership of all rights in any derivative data it develops based on Client Data.

5.2.3 Following termination of this Agreement, PayByPhone will, at Client's written request, return to Client or destroy all Client Data and copies thereof. Notwithstanding the foregoing, PayByPhone shall be permitted to retain such copies of, or any computer records or files containing, the Client Data: (a) that has been archived by PayByPhone's automatic electronic archiving and back-up procedures, to the extent created and retained in a manner consistent with PayByPhone's standard archiving and back-up procedures; and (b) to the extent required by applicable law.

## **5.3 CUSTOMER INFORMATION**

5.3.1 The parties will share information and data directly relating to drivers' parking sessions through the PayByPhone service at the Parking Locations ("Parking Sessions") and as may be required by the Client for parking enforcement, fines, and proceedings ("Transaction Data"). Transaction Data may include vehicle license plate, parking session date, time, duration, zone number and amount paid, details of parking fines/violation notices, and parking session details obtained through customer service centre, and does not include User Profile Data (defined below).

5.3.2 In using, sharing, or otherwise processing Transaction Data, PayByPhone and Client must comply with applicable data protection laws, contractual obligations and any other applicable requirements. Each party is responsible to the PayByPhone service users and other third parties for its respective use, sharing and processing of Transaction Data, whether it performs such use, sharing and processing directly or through third parties. Each party acts as a "data controller" with respect to Transaction Data for the purposes any privacy legislation that uses that

concept and is applicable to the party's activities. Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with the applicable data protection laws.

5.3.3 Any information about or with respect to PayByPhone service users that is not related to parking sessions at the Parking Locations, including without limitation, information provided by users upon registration for a PayByPhone account and data about the user's activity in the PayByPhone account or the PayByPhone applications ("User Profile Data") shall be exclusively owned by PayByPhone. PayByPhone shall retain exclusive ownership of all rights in any derivative data it develops based on Transaction Data and User Profile Data.

#### **5.4 PAYBYPHONE'S SERVICES TO CUSTOMERS**

The parties acknowledge that PayByPhone service users hold the PayByPhone account under terms of service established by PayByPhone. Under these terms of service, PayByPhone may offer users an option to receive service communications by SMS text ("SMS Communications"), including reminders to extend a parking session and confirmations of successful registration for a parking session. Client agrees that, at any time during the Term, PayByPhone may charge any users who opt into these services a fee ("SMS Fee") for each SMS Communication sent by PayByPhone with respect to an initial parking session or extension of a parking session and may set the amount of the SMS Fee with reference to the cost PayByPhone incurs in delivering this optional service. At the time of entering into this Agreement, the SMS Fee is equal to \$0.15 inclusive of taxes payable by the user. PayByPhone will provide Client with 30 day written notice of an increase in the amount of the SMS Fee. PayByPhone shall be responsible for any taxes applicable to the SMS Fees. PayByPhone records will be conclusive evidence with respect to the amount of SMS Fees collected during a billing period. The SMS Fees will be added to the total charged to the user in respect of a parking session or extension of a parking session.

Unless under the terms of the Agreement PayByPhone is designated as the merchant of record for parking fees paid using PayByPhone mobile payment service, PayByPhone and Client agree to designate Client as the merchant of record for any SMS Fees only. In that case, Client will collect PayByPhone's SMS Fees and remit to PayByPhone. Remittance will be made via electronic payment or cheque and may be included in the amount that also includes fees payable by Client to PayByPhone under this Agreement.

### **Section 6 INTENTIONALLY OMITTED**

### **Section 7 DISCLAIMER, INDEMNIFICATION AND LIMITATION OF LIABILITY**

#### **7.1 DISCLAIMER**

Except as expressly set forth in this agreement, PayByPhone does not make, and hereby specifically disclaims, any representations or warranties, express or implied, regarding the PayByPhone mobile payment services, including any implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. Client acknowledges that the PayByPhone mobile payment services and services furnished by PayByPhone under this agreement (including, without limitation, any servers or other hardware, software, applications and any other items used or provided by PayByPhone or any third parties in connection with providing access to or hosting any of the foregoing or the performance of any services by PayByPhone under this agreement) are provided by PayByPhone "as is".

#### **7.2 PARKING RATES**

Client will be given access to parking rate data in order to confirm the parking rates at each Parking Location via the Portal. PayByPhone will make every attempt at ensuring the rates are configured correctly; upon completion of each Parking Location setup, it is the Client's responsibility to ensure all rates are configured correctly. Failing to do so shall exclude PayByPhone from any liability. Client shall implement any parking rate changes via the Portal following the Parking Location setup. In the event Client requests that PayByPhone configure the parking rate changes after the Parking Location setup, Client shall provide PayByPhone with sufficient notice of the rate changes and such work



will be subject to PayByPhone’s prior approval and then-current PayByPhone professional services fees. See [https://www.paybyphone.com/pdf/us/pbp\\_professionalservicesamplerates.pdf](https://www.paybyphone.com/pdf/us/pbp_professionalservicesamplerates.pdf) for sample fees.

**Section 8 MISCELLANEOUS**

**INTENTIONALLY OMITTED**

**8.1 NO AGENCY**

Each party, in all matters relating to this Agreement, will act as an independent contractor and independent employers. Except as otherwise expressly set forth herein, neither party will have authority and will not represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other, or to represent the other as an agent, employee or in any other capacity. Except as otherwise expressly set forth herein, nothing in this Agreement shall be construed to have established any agency, joint venture or partnership between the parties. Neither party shall make any warranties or representations on behalf of the other party.

**8.2 COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. The parties further agree that a signature transmitted via facsimile shall be deemed original for all purposes hereunder.

**8.3 CAPTIONS**

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provision set forth herein.

**8.4 CLIENT’S CONDUCT OF BUSINESS THROUGH AFFILIATES**

The parties acknowledge that Client may carry out its business through affiliates. Client agrees to cause its affiliates to take such actions and to execute such documents as may be reasonably required to give effect to this Agreement as though references to Client in this Agreement were references to Client and those of its affiliates through which it carries on the business of owning and operating parking facilities.

**8.5 PCI-DSS: PAYMENT CARD INDUSTRY DATA SECURITY STANDARD**

PayByPhone is responsible for the security of cardholder data which PayByPhone possesses or otherwise stores, processes, or transmits on behalf of the Client. PayByPhone abides by the rules and regulations set forth in the PCI-DSS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**The City of Miami Beach**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PayByPhone US Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attest.**

Signature: \_\_\_\_\_

Name: Rafael E. Granado, City Clerk

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

Contract no. 23-051-02

**EXHIBIT B  
FEE SCHEDULE**

**EXHIBIT B  
PAYBYPHONE FEES**

All amounts are exclusive of any and all taxes, including taxes applicable on fees paid by the driver. For the purposes of this Agreement, “Transaction” includes (a) user registration for a parking session, permit, validation or extension at a Parking Location through the PayByPhone mobile payment service (whether or not any amount is payable to Client by the user), (b) a refund, (c) a charge reversal and (d) any other operation for which PayByPhone incurs a fee from its gateway provider or an acquirer, if applicable.

<i>ITEM</i>	<i>PRICE</i>
<b>ONE-TIME SETUP FEES</b>	
Signage – first round of signage production at service launch (installation not included)	Included
Training, consulting, marketing, and customer support as described in the Agreement <i>Marketing includes a standard launch package</i>	Included
Mobile payment services setup fee for all Initial Parking Locations	Waived <sup>1</sup>
Integration with enforcement solution software: PayByPhone will include 1 complimentary enforcement integration	Included
Standard PayByPhone city dynamic label	Included
<b>TRANSACTION FEES</b>	
<b>Hourly Parking:</b> Client pays to PayByPhone per Transaction—City serves as Merchant of Record (Client may charge user a non-embedded, on top of price of Convenience Fee of \$0.35)	\$0.35 <sup>2</sup>
<b>Monthly Parking Option:</b> Client pays to PayByPhone per Transaction—City serves as Merchant of Record (Client may charge user a non-embedded, on top of price of Convenience Fee of \$1.00)	\$1.00 <sup>2</sup>
<b>Resident Rate Zero Fee Offering:</b> Verified via PayByPhone’s Rights & Rates solution (priced below), residents will receive a \$0 cost Convenience Fee if the “double code offering” (see description below) is utilized.	\$0.00 per authorized resident
Monthly minimum of total Transaction Fees	Waived
<b>OPTIONAL FEES</b>	
Additional Custom dynamic label	\$1,000
Mobile payment service setup fee for Additional Parking Locations	Waived
IVR setup fee	Waived
IVR additional per transaction fee <sup>4</sup>	Waived—Included with standard transaction fee
Rights & Rates setup fee	Reduced \$500
Rights & Rates monthly subscription fee for one (1) Right	\$199 per month
Validation Portal setup fee	\$1,500

**EXHIBIT B  
PAYBYPHONE FEES**

Validation Portal monthly subscription fee	\$250 per Parking Location/mo.
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**NOTES:**

1. Mobile payment services setup fee (if applicable) includes configuration, testing, and implementation of a dedicated client account within the PayByPhone system; merchant account integration and testing; set up and training on reporting, customer service, and other elements of the PayByPhone Portal.
2. Any change in the Parking Rates will not affect the price the Client will pay to PayByPhone per Transaction. The Convenience Fee may only be increased by mutual agreement of both parties. Services covered by the Transaction Fee include interactive voice response solution (IVR). Client is responsible for paying all Transactions Fees for all Transactions made through the PayByPhone mobile application, web application, and/or IVR (if applicable).
3. Client is responsible for paying its own credit card processing and merchant banking fees, if Client is merchant of record (MOR).

**Double Code Offering:** PayByPhone assigns a location code for the area plus a resident location code that will be used by residents only, which provides a \$0 Convenience Fee option for residents.

- a. If a non-resident were to try to use this resident location and they were not authorized via Rights & Rates, they would be instructed to utilize the standard location code.

## EXHIBIT C TIMELINE/ SCHEDULE/SIGNAGE

PayByPhone & City of Miami Beach							
Planned Scope of Work & Timeline - Mobile Payments							
*All estimated dates and timeframes are dependent upon information being provided to PayByPhone by the City.							
Anticipated State Date	Task Description	Initiating Lead Designation	PBP Team Member(s)	City Team Member(s)	Task Duration	Estimated Completion Date	Deliverable
11/1/2023	Contract Negotiation	Mutual	Sales, Legal	Procurement, City Manager, Parking, Legal	3 Weeks	22-Nov-23	Fully Executed Agreement
11/29/2023	Project Kickoff Call	PayByPhone	Sales, Implementation, Account Management, Integrations	Parking Admin, Finance, IT, Integration/Enforcement	1 Hour	11/29/2023	Workbook provided, which includes all information needed by PBP to work on the City's implementation for mobile payments. Clearly defined expectations and timelines will be discussed
11/29/2023	Workbook Complete	City		All relevant city/parking team members	2 weeks	12/13/2023	Workbook returned to PayByPhone with completed materials
11/29/2023	Merchant Account Setup	City	Implementation	Finance, Parking Admin	3-4 Weeks	12/27/2023	City to begin setting up merchant account ASAP to ensure available for test transactions necessary prior to go live.
12/13/2023	Enforcement Engaged	PayByPhone	Implementation	Parking Admin & Enforcement	3-4 weeks	1/3/2024	Upon City providing contact information for enforcement partner, PayByPhone will engage with provider to set up integration for enforcement purposes
12/6/2023	Signage Discussion	PayByPhone	Implementation	Parking Admin & Enforcement	2 weeks	12/27/2023	PayByPhone will discuss signage during weekly calls and create mock-ups for approval by City. Upon approval, signage will be ordered for delivery prior to estimated go live.
12/27/2023	Marketing Discussion	PayByPhone	Implementation	Parking Admin & Marketing	Ongoing	TBD	PayByPhone will discuss marketing strategies available to the City and discuss the City's marketing desires to plan marketing efforts to announce mobile payment launch within the City.
1/1/2024	Test Transactions - Merchant	PayByPhone	Implementation	Parking Admin & Finance	1-2 Weeks	1/15/2024	Test transactions will be submitted with cooperation from the City to verify visibility within merchant account.
1/1/2024	Test Transactions - Enforcement	PayByPhone	Implementation	Parking Admin & Enforcement	1-2 Weeks	1/15/2024	Test transactions will be submitted with cooperation from the City to verify visibility within enforcement devices
1/1/2024	Signage Installation Planning	City		Parking Admin	1-2 Weeks	1/19/2024	City to install signage and decals with plans to have system live upon install.
1/23/2024	Go Live	PayByPhone	Implementation	Parking Admin	Ongoing	1/23/2024	Go live date may vary based on when signs are installed.