

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
PARKEON INC.
for
Pay and Display Parking Pay
Stations**

MA 5600 NS170000055

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Parkeon, Inc. ("Contractor"), having offices at 40 Twosome Drive, Unit 7, Moorestown, NJ 08057.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Contractor. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the City's Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Ronald Kroes; Phone: 856-234-8000 ext 397 Email: rkroes@parkeon.com The City's Contract Manager for the engagement shall be David Smith, (512) 974-1553, Email Address: DavidR.Smith@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 Tasks. Contractor shall deliver parking pay station equipment, products and services to the City in accordance with the terms of this Contract. The specific products and services and their descriptions and functionality are outlined in Exhibit A attached hereto. Quantities and types of services or products shall be determined from time to time by the City by issuing a Department Order against this Contract.

SECTION 3.COMPENSATION

3.1 Contract Amount. The Contractor shall be paid an amount not-to-exceed \$9,035,370.00. .

3.2 Invoices.

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attn:	Accounts Payable
Email Address:	CTMAPInvoices@austintexas.gov

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment.

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-

3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 Non-Appropriation. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Travel Expenses. Travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/2127>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 Final Payment and Close Out

3.6.1 If an MBE/WBE Program Compliance Plan is required, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBEI/WBE Compliance Report to the project manager or City Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 Term of Contract. This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect for a period of sixty (60) months or the City terminates the Contract.

4.2 Right To Assurance. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 Default. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance. The following insurance requirements apply.

5.1.1 General Requirements

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other insurance" clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense to the Contractor, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated

within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 *The Contractor's policy shall apply to the State of Texas.*

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1.2.5 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

5.2 Contractor To Package Deliverables. The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) the Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the Master Agreement number if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5.3 Shipment Under Reservation Prohibited. The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.4 Title & Risk of Loss. Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

5.5 Right Of Inspection And Rejection. The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.6 No Replacement Of Defective Tender. Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.

5.7 Equal Opportunity.

5.7.1 Equal Employment Opportunity: No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid or Offer submitted to the City shall be considered, nor any Purchase Order issued, or any contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination

of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.7.2 Americans With Disabilities Act (ADA) Compliance: Contractor, nor Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.8 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.9 Delays.

5.9.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the

Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.9.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.10 Rights to Proposal and Contractual Material. All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.11 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty-Price.

6.1.1 The Contractor warrants the prices quoted on Exhibit B are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices listed on Exhibit B have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 Warranty - Services. The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

6.3 Warranty -- Pay Stations. The Contractor warrants and represents that all deliverables sold to the City

under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Contract, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Contract, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

6.3.1 Recycled deliverables shall be clearly identified as such.

6.3.2 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

6.3.3 Unless otherwise specified in the Contract, the warranty period on new Pay Stations shall be five (5) years from the Pay Station being put into use by the City; provided however that if a part needs to be replaced during the warranty period, the new part will only be warranted for the remainder of such warranty period. For all other parts the warranty period shall be twelve (12) months from the part being put into use by the City. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.3.4 If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

6.3.5 If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

7.2.2.1.1 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the City Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets:

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known sale, merger, or acquisition;

7.4.8 known, stock sales; or

7.4.9 significant change in market share or product focus.

7.5 **Right To Audit**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon written notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties).

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.7.3 Waiver of consequential damages: Under no circumstances shall either party be liable to the other for consequential or indirect damages of any nature

7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, electronic mail or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin, Purchasing Office
ATTN: Jane Neal Procurement

Specialist II
P O Box 1088

Austin, TX 78767

To: the Contractor: Parkeon, Inc. ATTN: Ronald Kroes
40 Twosome Drive, Unit 7
Moorestown, NJ 08057

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a

waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any of the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors

7.22.1 If the Contractor identified Subcontractors in an MBEJWBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-98, 2-9C, and 2-90, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-98, 2-9C and 2-90, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the City Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear, and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) days after receipt of payment from the City.

7.23 Living Wages

The City's Living Wage Program, Rule R161-17.14, is located at:

<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$13.50 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$13.50 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision...

7.24 Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.25 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Software Escrow Account.** The City shall have the option to be added as a beneficiary under the escrow account for the ParkFolio software.

7.28 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin contracts. By accepting a contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.29 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

PARKEON, INC.

Signature

Benoit Reliquet
Printed Name of Authorized Person

President
Title

9/5/2017
Date

CITY OF AUSTIN

Signature

Jane Neal
Printed Name of Authorized Person

Procurement Specialist II
Title

9/5/2017
Date

JAMES T. HOWARD
Procurement Manager
11/20/17

Exhibit A	Products and Services
Exhibit B	Pricing
Exhibit C	Non Discrimination Certification
Exhibit D	Non- Suspension or Debarment Certification

Exhibit A Products and Services

Parkfolio Software

1. Contractor will provide the following Parkfolio software support to the City for the subscription rate shown in Exhibit B. The software support will include the following:

- Provide full support, managing and hosting of server, for all aspects of the Parkfolio system. City staff will not be required to provide any application support. Cost of this support is included in the monthly Parkfolio subscription fee.
- Add new pay stations to the Parkfolio environment to meet the City's installation and start-up schedule.
- Create semi-custom environment on web page as specified by City, including organizing machines into zones/circuit/groups.
- Ensure successful City system upgrade migrations by providing updated system documentation and any necessary training and issue resolution support required by City personnel.
- Revise up to six (6) machine software originations (customizations) per year for the programming of the pay stations through Parkfolio as requested by City. Contractor will make their best efforts to make changes within five (5) business days of receipt of the change request.
- Provide the results of any research required by disputed transactions.
- Create and reset passwords as requested by the City.
- Monitor Parkfolio and report monthly on error trends such as machines failing to communicate.
- Maintain and regularly update the Parkfolio system software and hardware as required to ensure effective and secure City operations.
- Provide requested custom reports to the city as well as assist- the city to develop custom reports and data sets by providing access to all data via Parkfolio interface and manual Parkfolio export tool. Provide city with export engine to automatically export all Parkfolio data (monthly or daily) to a secure location in a .csv format that can be used by the City to create their own custom reports.

2. Contractor will provide real-time credit card authorization and transaction data communications services, including wireless communication links for transmitting all transaction information from the pay stations to the merchant processor, to meet City credit card transaction security requirements, at an installed volume-based monthly price per unit

3. Contractor will provide real-time credit card authorization services. City reserves the right to approve any change in credit card authorization service provider. Such approval not to be unreasonably withheld.

4. Contractor will provide the City free of charge any new software releases (including parking management and printer software) for a period of five (5) years from date of installation. Specific chargeable developments made for the City under this Contract will not be included in future standard releases unless agreed to in writing by the Contractor. For the first five (5) years this will cover applicable terminal, hardware, and back-office

management standard software releases free of charge. After five (5) years the changes in terminal software will be billable unless the City chooses to go on a maintenance contract. For the back-office management software, standard software releases will be provided free of charge as part of the monthly fee. Note: In all cases Contractor will provide the new release of terminal software but is not obligated to install it on the terminals. Contractor will assist in the upgrade of the back-office management software at no charge.

Strada Pay Stations

1. The City will receive a twenty-percent (20%) price discount for all parts purchased through Contractor, including repair materials, parts supplies, and new features purchased within the terms of this Contract. Spare parts are listed in Exhibit B. The Contractor guarantees that parts or parts compatible with parts currently used for the pay stations will be available for ten (10) years from the Effective Date of this Contract.
2. Contractor will configure the Strada Pay Stations to City specifications, within pay station's current capabilities, including mode of operation, coin and token acceptance, software, languages, and periods of operation. Cost is included in price of Strada units.
4. Contractor will provide an on-site project manager or a senior technician as needed to provide on-going technical support for the duration of the warranty period. Cost is included in price of Strada units.
5. Contractor will provide delivery of operable, configured units to the designated City site for installation. Cost is included in price of Strada units.
6. The Contractor guarantees, for a period of five (5) years from the date of installation, to repair and/or replace any part or modular component within Forty Eight (48) hours that are determined by the City to be defective in material or workmanship under normal use and service at no additional cost to the City.
7. Contractor will facilitate the meter installation and activation: \$150.00 per meter maximum (included in Contract amount)
 - Installation of meters onto pre-mounted bolts.
 - Deployment and commissioning of meter for revenue service
 - City is responsible to do all site preparation, including all civil work necessary to provide a level site pad and placement of mounting bolts. Mounting bolts will be provided by Contractor.
8. Contractor will provide Color Zone Caps as per pricing in exhibit B
 - No charge for installation if ordered at time of meter purchase. If ordered after meter installation, pricing does not include Contractor labor to retrofit into meters.
9. Optional: Pay by Space: as per pricing in exhibit B
 - Addition of keypad for space entry
 - "Add-time at a meter" capability
 - Installation only included if option exercised at time of meter order

10. Optional: Fine Payment at Meter: as per pricing in exhibit B
- \$175.00 if not placed at time of order (Does not include Parkeon labor to retrofit into meters)
 - Addition of yellow "user" button
 - Four additional user types available for fine or different rate payment
 - No set up fee if done at time of initial meter configuration
 - Subject to "Persochange fee if done at later date
11. Rate Change Download Fee:
- \$5/Meter (1-100), \$3.50/Meter (101-500), \$2/Meter (> 500)
 - \$195 Perso change fee after six customizations (1.8.6)

City Responsibilities. The City will be responsible to:

1. Specify:
 - Mode of operation (pay and display or pay by space) for each Strada unit
 - Coins and tokens accepted
 - Credit cards accepted-MasterCard, Visa, Discover and/or Amex
 - Parking rate structure
 - Periods of operation
 - Language requirements and associated translation verification
 - Unit keying requirements
2. Provide graphics design and printed material for unit graphics
3. Provide receipt configuration within unit's current capabilities, including content design input and final approval
4. Provide area to stage meters for deployment
5. Approve credit card transaction process and security procedures

Equipment Performance Standards

1. All replacement components will be readily available in two (2) business days. Contractor will make best efforts to have repair and replacement parts available for next day delivery.
2. The average failure rate for units taken across a minimum installation base of 100 units shall not exceed one failure per machine per year when Contractor-recommended maintenance procedures are followed. A machine failure shall be defined as an out-of-order condition (unit displaying a red indicator light). Easily remedied, non-repeating, or maintenance negligence-caused out-of-order conditions resulting from acts of God, abuse, vandalism, minor system failures (e.g., battery failure, no receipts, coin box full and other failures that are minor in nature) will not be considered machine failures. Machines that are diagnosed as chronic (as described in Section 5.4) will be replaced at not charge to the City and will not be included in the calculation as described in this section.

3. Each newly installed pay station will be monitored for faults and/or defects during a sixty (60) day burn-in period. Following that period, failures of any hardware components resulting in that unit being out of service will count against the overall standard.
4. The City shall have the right to exercise the five-year (5-year) year warranty to remedy machine failures. In addition, the City has the right to demand that a unit be replaced within one (1) business day in the event that the unit experiences either a system failure that cannot be corrected in the field or is determined to have a pattern of chronic equipment failures. A unit that is deemed to have chronic equipment failures is a unit that has had three (3) equipment failures in any twelve-month (12-month) period.
5. The Contractor is responsible for any installation costs involved in replacing a unit that cannot be repaired in the field or has chronic equipment failures. Contractor will provide one (1) refurbished meter to the City for use as a replacement unit to address any installed meter that needs replacement. Replacement of a unit does not constitute removal from the performance requirement for overall failure.
6. In the event that the average failure rate following three hundred sixty-five (365) days of operation exceeds the parameters defined above, the City shall have grounds for Contract termination for cause.
7. In the event that a design flaw is identified during the warranty period, any required hardware or software replacements or Parkeon site labor costs will be at the Contractor's expense. The Contractor is required within thirty (30) calendar days of identification of a design flaw to communicate in writing the plan to correct the flaw and to perform such correction.
8. Each unit will meet the above performance requirements while operating in an environment with a temperature range of -13 degrees to 130 degrees F and 97% non-condensing humidity.

Parking Information Management System Performance Standards

1. City change requests to rates, rate structures, receipt information, displayed text, payment acceptance, etc., will be processed by the Contractor within three ~~five~~(5) business days of final submittal of all required data.
2. Alarm, statistical and financial transaction data will be available on the Web site to City staff within sixty (60) seconds of their occurrence, providing the wireless network is reliable.
3. The Contractor's information management system will have less than five hundred twenty-five (525) minutes (0.1%) of "off-line" time per year.

Transaction Performance and Security Standards

1. The Strada unit, regardless of mode of operation (pay-and-display or pay-by-space), will complete a credit card authorization transaction in less than eighteen (18) seconds from print receipt request. Results will be based on a statistical average of one hundred (100) transactions.
2. Cash transactions will be completed within ten (10) seconds of a receipt print request. Results will be based on a statistical average of one hundred (100) transactions.
3. The Contractor will make its best effort to have less than five hundred twenty-five (525) minutes (0.1%) of "off-line" time per year with the credit card verification system.
4. The Contractor and each of its subcontractors will exercise an appropriate standard of due care for the management and processing of all data and the related information systems involved.
5. The Contractor and each of their subcontractors will complete an annual system security audit. The security audit results will be subject to approval by the City.
6. The Contractor will notify City within one (1) business day of any system security breach (examples- hacker intrusion, system virus infection, credit card theft) involving Contractor or its subcontractor systems.
7. The Contractor and its subcontractors will provide their best efforts to format credit card data to minimize merchant institution processing costs.

Wireless Two-Way Communication Performance Standards

1. The Contractor will make its best effort to have less than five hundred twenty-five (525) minutes (0.1%) of "off-line" time per year with the wireless communications system.

Technical Support Performance Standards

1. The Contractor or an authorized subcontractor will provide technical response to problems within one (1) business day of a written City request.
2. The Contractor or an authorized subcontractor will maintain a parts and system software inventory that will be available to the City within two (2) business day of a formal request.

Parkfolio System Management

Parkeon's Parkfolio Systems Management provides software training and licensing for up to five (5) named users along with customer access to its Level II Remote Call-In Parkfolio Service Monday through Friday between 7:00 am and 8:00 pm eastern time. Level II support can be reached at 800-234-8000 or by sending an email to, Parkfolio_helpdesk@moorestown.parkeon.com. Level II Parkfolio Remote Call-In Parkfolio Service is defined as remote assistance once the City's fully trained, on-site Level I service has fully attempted to resolve the Parkfolio issue locally and is not able to resolve the issue.

Contractor's Responsibilities:

1. Maintain a staffed and capable Level II Parkfolio support operation, which is capable of assisting the City once the City has attempted the full range of Level I diagnosis and repair activities to confirm full Internet connectivity at the City site. Diagnosis procedures will be provided during training.
2. At the time of installation, conduct training of the City's staff in the various elements of supporting Parkfolio.
3. Conduct standard diagnostic tests to isolate failures to a specific device and determine if the failure is related to the Parkeon back-office system or meter equipment.
4. Log all information from City required to establish contact information, document the nature of the Parkfolio system problem and City's hardware/network environment (as applicable).
5. Attempt to resolve Parkfolio system problems over the phone on first call.
6. Email requests will be assigned to a qualified technician within thirty (30) minutes of receipt of the request.
7. Make every effort to provide a resolution within four (4) hours of request for Parkfolio system problems.
8. Escalate Parkfolio support requests to next level if, within four (4) hours, a resolution could not be implemented.
9. Host the Parkfolio application; Access to Parkfolio's Supervisor and Financial modules.
10. Credit Card server Hosting and Database Administration which will include data back-up and archiving.
11. Provide specification/interfaces for creating and maintaining data back-up.
12. Event reporting – SMS/Email notification of alarms.
13. Provide specification/interfaces for creating and maintaining data back-up. City can choose to create their own data extracts or utilize Parkeon's automated export engine tool.
14. Contractor will provide Tariff and parameter changes for the initial six (6) machine software origination (customizations).

City's Responsibilities:

City is responsible for Level I Parkfolio service and maintenance for all City PCs that are running the Parkfolio application. Level includes:

1. Maintaining local onsite computers, local network applications to ensure operation with Parkfolio.
2. City will only request Parkfolio accounts after City employees have completed software training.
3. Creating, executing and managing their various reports of using Parkfolio data outside of the Parkfolio software.
4. Maintaining regular backups of all data and analysis created by City staff that might be needed at another time.
5. Ensuring that City's staff are completing all prescribed Level I diagnosis and repair steps prior to escalating the problem to Parkeon for Level II escalation support. This information will be provided during training.
6. Implementing support process to provide Level 1 support. This information will be provided during training.
7. Providing all information required to open a support request with Parkeon Level II Parkfolio support and be available to work with the Parkeon support resource assigned to the support request. This information will be provided during training.
8. Communicating to Parkeon all the elements of the City's parking policy, including but not limited to, parking rates by daypart (if applicable), times and days for enforcement, any required zone designations for meters, rules and parameters for parking policies to enforce, and name City's credit card processor.
9. Conducting site visits which are due to an incident of Force Majeure.

Services NOT Covered Under Parkfolio System Management

Parkfolio System Management does not cover the following requests. However, Contractor would be pleased to provide a separate statement of work in proposing services to address any of the following:

1. Evaluation and/or the Procurement of new software and/or hardware. Evaluation and/or approval of new software and/or hardware for use by City in conjunction with Parkeon products and/or services. This includes systems developed outside of City, such as third-party systems, or systems developed by City.
2. On-call Contractor dedicated support - Contractor prioritizes City issues based on severity and order of receipt. Requests for dedicated on-site or on-call support will be quoted on a case by case basis.
3. Guaranteed, uninterrupted airtime service provided by third-party carriers such as AT&T, Skytel and T-Mobile. As these are outside entities, Contractor is not able to ensure their performance.
4. Level support- Local Parkfolio support shall be provided by City for their customers.
5. Maintenance data older than ninety (90) days. City must archive their data and historical analysis. City can choose to create their own data extracts or utilize Contractor's automated export engine tool.

6. Software licensing-Contractor will not provide software or licensing for software being used with Contractor products that are not part of the Parkeon Pay Station, Parkfolio, or other Parkeon products provided by Contractor to City. City will provide such software and licensing as needed.
7. Assistance with Parkfolio when unsupported or nonstandard hardware or software is involved-Use of unsupported or nonstandard hardware or software often results in unexpected behavior of otherwise reliable systems.
8. Tariff and parameter changes after the initial six (6) machine software originations (customizations).
9. Re-training of staff and any additional new-hire training after initial training session held.



Exhibit B UPDATE

PRICING

A. Purchase price per Strada PAL pay station: \$9,148.00

- 5 Year extended parts warranty
 - Remote Technical Support (RTS) services via voice and email
 - Meter parts replacement
 - Annual site visits for training, spot preventative maintenance and meter configuration
 - Uptime monitoring and reporting
 - One Preventative Maintenance Kit per meter, per year
- Austin will receive a discount of \$2378 to myParkfolio monthly fees for every pay station purchased and will be applied to successive myParkfolio monthly invoices until balance is zero.
- Strada pay station in Pay and Display configuration
- Integrated solar power, panel and trickle re-charge battery system
- Accepts coins, credit cards and smart cards
- Credit card/ ISO 7816 Smart card dual-purpose reader
- License fees
- Thermal graphic printer with self-sharpening receipt cutting blade
- Cellular modem and antenna kit
- Graphics screen LCD display; capable of 6 lines of text & character language display
- Motorized, optical and magnetic sensing, coin selector and validator
- 1 coin canister
- Specially keyed e-locks system for collection compartment
- High security mechanical lock for maintenance compartment
- Superior anti-graffiti housing

B. Extended Warranty: \$400 /meter/year (after initial 5 years)

- The Extended Support Services Program provides:
 - Remote Technical Support (RTS) services via voice and email
 - Meter parts replacement
 - Annual site visits for training, spot preventative maintenance and meter configuration
 - Uptime monitoring and reporting



- One Preventive Maintenance Kit per meter per year

C. myParkfolio Back-Office Parking Management Software: \$47.50/meter/month

- 2-way wireless connectivity between meter and hosted software mgmt. system
- Wireless airline fees
- Online access to hosted secure server
- All transactions, maintenance, alarms, statistics being processed & stored, etc.
- Database space for storing your statistics
- PCI certified real time credit card authorization and management
- Secure user rights management
- Parking in Motion integration and ongoing support
- Mobile payment integration

Citation payment option:

- One time setup fee: \$500
- Cost per meter per month: \$5
- Cost per meter per month (if >500 pay stations): \$3

D. Paper Supplies

Adhesive Pay and Display Tickets (per roll)

- Quantity 0 - 100 \$66
- Quantity 100 - 999 \$49
- Quantity 1000+ \$34.50

F. Miscellaneous Items

Extra maintenance door, lower door and electronic keys: \$29.00 each

Coin transfer canisters, with two (2) keys per canister: \$252 each

Color zone caps (7.25 inches cap): \$114.00

- No charge for installation if ordered at time of meter purchase. If ordered after meter installation pricing does not include Parkeon labor to retrofit meters.

Pay by Space: \$175 per meter + \$1,500.00 flat fee for initial software configuration

- Addition of keypad for space entry
- "Add time at a meter" capability
- Installation only included if option exercised at time of meter order
 - Rate configuration and download training: \$2,500.00
 - 1 day of training with up to 12 people
 - Training to enable City to create new rate structures
- Additional Meter training or myParkfolio training: \$1,350.00 per day
- Addition of Yellow user button



- Four additional user types available for citation or different rate payment
- Rate change download fee
 - \$165 "perso" change fee after 10 customizations

G. Rate

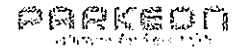
NOTE - Prices listed below do not include freight charges. Non-warranty shipments are FOB Destination with City paying the freight. Parts shipped under warranty will be FOB destination with contractor paying the freight.

Reference	Description	Price per part
120341	Ticket Bowl Flap	\$18.50
122510	Thermal Printer	\$952.70
125277	Escrow	\$197.20
120094	Programmed Coin Selector (.05, .10, .25, 1.00)	\$861.30
130599	Ticket Bowl with Antistatic Brush	\$52.50
135005	Lower Door Lock Square	\$41.00
135078	Square Key	\$25.00
135410	Coin Bowl	\$54.90
135493	Coin Bowl Flap	\$19.80
135693	Electronic Lock Kit	\$1,100.00
135694	ELock key Interface	\$23.20
ELM1000028932	Integrated Solar Module Glass: Strada	\$490.00
135705	Integrated Solar Module 1Pal	\$690.00
143430	Equipped Rack	\$677.20
147761	GPRS Modem Antenna	\$88.00
148103	Upper Front Panel (6 Holes)	\$95.50
148107	Tariff Glass and Gasket	\$28.80
148110	6 button board	\$91.10
148114	Upper Instructions Glass and Gasket	\$35.00
148117	Reinforced Display Glass and Gasket	\$37.70
148125	Yellow button	\$16.70
148126	Grey button	\$16.70
148127	Blue button	\$16.70
148128	Green button	\$16.70
148129	Red button	\$16.70
400300403	HAM 12V27AH Part #40000000 (includes 1 YEAR WARRANTY), discount will be applied based on quantity	\$174.00
400770311	4A Slow Blow Fuse (Pack of 10)	\$9.20
404001714	Relay board	\$71.70
404002394	Solar Charger Board	\$113.10



PARKEON
Solutions for Smart Cities

404304511	EPSUM M900 Magnetic Strip Kit	\$140.00
404402013	Cable for Solar Power Supply	\$39.90
6004001694	Connector board	\$117.60
6010105154	Display Module - NEOPS	\$390.00
6014002760	Main Board - NEOPS v2	\$985.00
CAR 10000028193	4G Modem	\$240.00
CAT10000026037	4G modem antenna	\$20.00
CAT1000018144	FIAM 12V/2AH Part #CAT1000018180 (includes 1 YEAR WARRANTY), discount will be applied based on quantity	\$203.20
ELM1000001431	NEOPS Data Module w/clo battery	\$111.80
ELM1000003890	Lower Front Panel w/ coin slot	\$172.60
M1000	EPSUM M100 Card Reader PCI PTS compliant	\$840.00
M1000 + new door	EPSUM M100 Card Reader PCI PTS compliant + new door	\$1,160.00
M900	EPSUM M900 Card Reader (no magnetic strip 404304570 kit)	\$410.00
MEC 1000001095	Upper Door Lock (ball type) Advise Combination	\$140.00
SVTCAS18	Upper Door Key	\$53.00
Strada Retrofit Kit	Strada T-Pal upgrade kit with 4G modem, includes shipment	\$1700.00
ELM1000019204	Color display module	\$420.00



1. COOPERATIVE AGREEMENT

Parkeon agrees that this contract may be extended to any jurisdiction within the United States to purchase in accordance with these contract terms.

Any jurisdiction using such contract may place its own order(s) directly with Parkeon. The City of Austin acts only as its own Contracting Agent and is not responsible for placement of orders, payment or discrepancies of the participating jurisdictions. It is Parkeon's responsibility to notify the jurisdictions of the availability of the contract

Parkeon kiosks

All below prices including color display, 5 years warranty and shipping. Installation services to be quoted individually. Extended warranty is priced at \$400 per year and can be removed from below pricing if wished. Color display can be replaced by a monochrome display allowing a \$400 saving.

Details:

- 5 Year extended parts warranty
 - Remote Technical Support (RTS) services via voice and email
 - Meter parts replacement
 - Annual site visits for training, spot preventative maintenance and meter configuration
 - Uptime monitoring and reporting
 - One Preventative Maintenance Kit per meter, per year
- Strada pay station



PARKED
BY THE CITY OF AUSTIN

- Integrated solar power, panel and trickle re-charge battery system
- Accepts coins, credit cards and smart cards
- Credit card/ ISO 7816 Smart card dual-purpose reader
- License fees
- Thermal graphic printer with self-sharpening receipt cutting blade
- Cellular modem and antenna kit
- 7 inches color display
- Motorized, optical and magnetic sensing, coin selector and validator
- 1 coin canister
- Specially keyed e-locks system for collection compartment
- High security mechanical lock for maintenance compartment
- Superior anti-graffiti housing

Available options (pricing on request):

- PA-DSS, PCI PTS Compliant Card reader
- 4G modem

Product	Quantity	Price
StradaPAL Cashless	300 or more	\$6199
	100 to 299	\$6499
	50 to 99	\$7099
	1 to 49	\$7499
StradaPAL Transfer	300 or more	\$6413
	100 to 299	\$6813
	50 to 99	\$7295



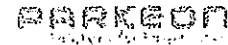
PARKED
City of New York

	1 to 49	\$7825
StradaPAL Rapide	300 or more	\$7070
	100 to 299	\$7390
	50 to 99	\$7929
	1 to 49	\$8522
StradaPAL BNA	300 or more	\$8707
	100 to 299	\$9107
	50 to 99	\$9407
	1 to 49	\$9807

Connectivity Fees & Back Office

Number of machines	Configuration & Price
250 or more	Pay and Display, Pay by Plate or Pay by Space \$47.50/meter/month
100 to 249	Pay & Display, Pay by Plate or Pay by Space \$49/meter/month
99 or less	Pay & Display Pay by Plate or Pay by Space \$52/meter/month

Includes:



- 2-way wireless connectivity between meter and hosted software mgmt. system
- Wireless airtime fees
- Online access to hosted secure server
- All transactions, maintenance, alarms, statistics being processed & stored, etc.
- Database space for storing your statistics
- PCI certified real time credit card authorization and management
- Secure user rights management
- Parking in Motion integration and ongoing support
- Mobile payment integration

Citation Payment at the meter (optional)

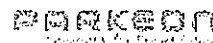
- One time setup fee: \$500
- Cost per meter per month: \$5
- Cost per meter per month (if > 500 pay stations): \$3

2. ADDITIONAL SERVICES

The City shall have the right but not the obligation to purchase certain additional services pursuant to this agreement. The City may elect to purchase one or more of the additional services specified below upon written notice to Parkeon and agreement on schedule for implementation.

1. Whoosh Mobile Payment Solution

Whoosh is a digital parking kiosk that allows customers to purchase and manage parking rights through a mobile phone on iOS and Android platforms.



Service fee payable to Parkeon:

- Less than 50 meters or 30,000 transactions: 25 cents per transaction
- Less than 299 meters or 180,000 transactions: 15 cents per transaction
- More than 300 meters or 300,000 transactions: 10 cents per transaction

2. Path to Park

Path to Park is a urban mobility guidance solution that:

- informs the driver of all available parking inventory (on-street and off-street)
- guides the driver to the selected destination taking into account real time traffic information
- allows the driver to reserve and pre-pay off-street parking

Pricing¹:

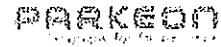
\$1,990 monthly fee for the web reservation platform

- if our yearly gross revenue exceeds \$50,000 we will reduce the monthly fee to **\$250**

- if our yearly gross revenue exceeds \$100,000 in gross we will reduce the monthly fee to **\$0**

15% fee on all off-street reservations made through the Path to Park platform
(Ex: for a \$100 parking transaction, Parkeon will hold \$15 and the off-street operator will receive a payment of \$85)

¹ Please note that Parkeon waves the \$900 monthly platform reservation fee



3. Environmental Sensors

The Parkeon Strada kiosk can be equipped with environmental sensors that monitors in real time: noise, NO₂, PM₁₀, CO₂, Temperature, Hygrometry.

Price will be determined at a later date but in any event such price will be no less favorable to the City as is then offered to any other Parkeon customer in the United States.

Anticipated cost	FY 18	FY 19	FY 20	FY 21	FY 22
40 additional machines for expansion @ \$3445 per meter	\$ 377,970.00	\$ 377,970.00	\$ 377,970.00	\$ 377,970.00	\$ 377,970.00
Warranty cost of \$400 per meter per year (Current 942 machines)	\$ 376,800.00	\$ 376,800.00	\$ 376,800.00	\$ 376,800.00	\$ 376,800.00
Upgrade to 4G modem with antenna @ \$260 each on 600 machines	\$ 156,000.00	\$ -	\$ -	\$ -	\$ -
Upgrade kit for 50 machines per year @ \$1700 per kit	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00
Back Office charges @ \$47.50 per machine per month (see notes)	\$ 558,750.00	\$ 582,540.00	\$ 605,340.00	\$ 628,140.00	\$ 650,940.00
40 additional zone caps @ \$114 per zone cap	\$ 4,560.00	\$ 4,560.00	\$ 4,560.00	\$ 4,560.00	\$ 4,560.00
2500 recent rolls per year @ \$34.50 per roll	\$ 86,250.00	\$ 86,250.00	\$ 86,250.00	\$ 86,250.00	\$ 86,250.00
Replacement parts @ \$127,284 per year (see notes below)	\$ 127,284.00	\$ 127,284.00	\$ 127,284.00	\$ 127,284.00	\$ 127,284.00
Future technological upgrades/fuel (see notes below)	\$ 112,646.00	\$ 112,646.00	\$ 112,646.00	\$ 112,646.00	\$ 112,646.00
	\$ 1,656,260.00	\$ 1,733,000.00	\$ 1,775,800.00	\$ 1,798,500.00	\$ 1,821,400.00
TOTAL CONTRACT	\$ 9,093,020.00				

Notes:
Back Office charges are calculated on the initial 942 machines plus an additional 40 per year.

Replacement parts includes cost of batteries and any parts damaged by vandalism or vehicle collisions. Batteries are as follows:

300 X \$150.40 = \$45,120

200 X \$103.20 = \$20,640

An additional \$60,000 is included in the line total for parts.

Some of the equipment is a 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570, 580, 590, 600, 610, 620, 630, 640, 650, 660, 670, 680, 690, 700, 710, 720, 730, 740, 750, 760, 770, 780, 790, 800, 810, 820, 830, 840, 850, 860, 870, 880, 890, 900, 910, 920, 930, 940, 950, 960, 970, 980, 990, 1000.

Exhibit C

City of Austin, Texas

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE

REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 08 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 5th day of September, 2017

CONTRACTOR
Authorized
Signature

Title

Parkeon Inc
[Signature]
CFO

Exhibit D

City of Austin, Texas

Section 0805

NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services and non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Pantheon Inc

Signature of Officer or
Authorized
Representative:



Date:

9/15/2017

Printed Name:

Ronald LeRoux

Title

CFO



MEMORANDUM

TO: Robert Goode, P.E., Assistant City Manager

CC: Robert Spillar, P.E., Director
Austin Transportation Department

FROM: Anthony Segura, Chief Administrative Officer
Austin Transportation Department

DATE: 04/06/2017

SUBJECT: Certificate of Exemption Request

A handwritten signature in black ink, likely belonging to Anthony Segura.

The Corporate Purchasing Department is working on creating a new sole source master agreement with Parkeon Inc. ATD currently has over nine hundred Parkeon Strada parking pay station meters throughout the City of Austin in our Parking Enterprise division. Parts for the Parkeon Strada model multi-space parking meters are manufactured and provided exclusively by Parkeon. Parkeon parts are not interchangeable with any other vendor's parts and/or any other vendor's multi-space parking meters. ATD has been using Strada parking pay station machines since 2010.

The master agreement with Parkeon Inc. will be a five year agreement totaling \$9,035,370. The totals are based on yearly anticipated costs that include:

- Additional machines for expansion and replacement
- Warranty costs of \$400 per meter per year
- Upgrade to 4G modem for each machine
- Telephone base costs at \$47.50 per machine per month
- Replacement parts

Corporate Purchasing is requesting additional approval for the Certificate of Exemption request from ATD's Assistant City Manager.

A handwritten signature in black ink, likely belonging to Robert Spillar.
Robert Spillar, P.E. Date

ATD Director

A handwritten signature in black ink, likely belonging to Robert Goode.
Robert Goode, P.E. Date
Assistant City Manager

Mr. David R. Smith
Parking Meter Technician Supervisor
Austin Transportation Department
1111 Rio Grande
Austin, TX 78701

March 23, 2017,

Parkeon Strada Multi-Space Parking Meter Parts

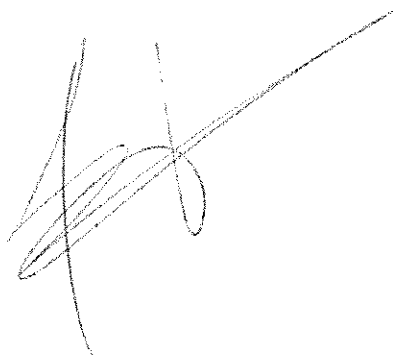
Dear David,

Parts for the Parkeon Strada model multi-space parking meters are manufactured and provided exclusively by Parkeon, Inc. Parkeon parts are not interchangeable with any other vendor's parts and/or any other vendor's multi-space parking meters. Parkeon parts are unique to the Parkeon meters.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Emmanuel Lereno
Vice President of Strategic Accounts, USA & CAN

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Directions for Completing

FSD Purchasing Office Certification of Exemption Form

(The following steps must be completed prior to forwarding form to Purchasing)

1. Enter date of request in MM/DD/YYYY format
2. Enter Purchasing Buyers name
3. Enter Department requesting exemption
4. Enter Originator of certification
5. Enter phone number of Originator
6. Select one of the exemptions that that apply to this procurement
7. Complete the Exemption Form providing any additional information required for the chosen exemption
8. Enter Vendor's Company Name
9. Enter Total Aggregate Amount
10. Obtain signature of:
 - Person requesting exemption (Originator)
 - Department Director or designee
 - AE General Manager (for Critical Business Needs)
 - Assistant City Manager, AE General Manager or designee (for all other exemptions where the purchase > \$50,000)
11. Forward completed form to Purchasing:
 - Buyer reviews and signs document
 - Purchasing Officer or designee (only required if purchase > \$50,000)



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/28/2017

DEPT: Austin Transportation

TO: Purchasing Officer or Designee

FROM: Anthony Segura

BUYER: Jane Neal

PHONE: (512) 974-7015

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The Austin Transportation Department currently has 900 + Parkeon Strada parking pay station meters throughout the City of Austin. Parts for the Parkeon Strada model multi-space parking meters are manufactured and provided exclusively by Parkeon, Inc. Parkeon parts are not interchangeable with any other vendor's parts and/or any other vendor's multi-space parking meters.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex (valuation of other firms, knowledge of market, etc)).

For the last 40 years, Parkeon Inc. has been in the business of supplying parking and transit systems around the globe. Their core expertise is in the areas of payment solutions – multi-space parking meters, mobile phone payment, ticket vending machines, fare collection devices and fare validation. Parkeon Inc. has revolutionized off-board fare collection by offering transit agencies a proven, all-weather, low cost ticket vending machine called the Strada. ATD has been using Strada parking pay station machines since 2010.

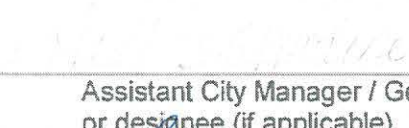
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Parkeon, Inc.
which will cost approximately \$9,035,370.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

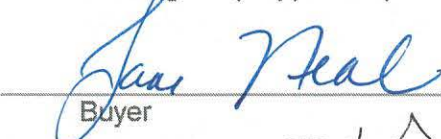


Originator Date 03/31/17

Approved
Certification


Department Director or designee Date 04/6/17


Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)


Buyer Date 6/7/17  Manager Initials

Exemption Authorized
(if applicable)


Purchasing Officer or designee Date 6/7/17

02/26/2013

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-234261

Date Filed:
07/10/2017

Date Acknowledged:

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Parkeon Inc
Moorestown, NJ United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 5600 NS170000055

Pay and Display Parking Pay Stations

4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

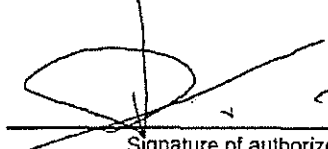
April E. Apfelbaum

Notary Public, State of New Jersey

My Commission Expires Aug 22, 2017

ID # 2424221

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Ronald Kroes CFO

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Ronald Kroes, this the 11th day of July, 2017, to certify which, witness my hand and seal of office.

April E. Apfelbaum
Signature of officer administering oath

April E. Apfelbaum
Printed name of officer administering oath

HR Manager
Title of officer administering oath