

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
T2 SYSTEMS, INC.
FOR
MULTI-SPACE SMART PARKING METERS

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

T2 Systems, Inc., an Indiana corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Parking Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties

may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2 SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit A, Scope of Services. The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This Agreement is in full force and effect upon full contract execution by the City of Delray Beach. The term of the Agreement shall be from December 14, 2016 through December 13, 2018, with five one-year options to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4 COMPENSATION

- 4.1 City will pay Second Party, in the manner specified in Section 4.3, the total not-to-exceed amount of Six Hundred Thousand Dollars (\$600,000) for work actually performed and completed pursuant to this Agreement and billed in accordance with the pricing schedule detailed in Exhibit D, Costs. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit B). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in Item 2 of the form, explaining the good cause why payment has not been made.
- 4.2.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.
- 4.2.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.
- 4.3 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself

from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.4 Payment shall be made to Second Party at:

T2 Systems, Inc.
8900 Keystone Crossing
Suite 700
Indianapolis, IN 46240

ARTICLE 5
INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

ARTICLE 6
INSURANCE

Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit C, Insurances, in accordance with the terms and conditions stated.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.

- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8 NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9
MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE SECOND PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SECOND PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK MAY BE REACH VIA TELEPHONE AT 561-243-7060 OR BY EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

9.2.2 Second Party shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Second Party does not transfer the records to the City.

- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Second Party or keep and maintain public records required by the City to perform the service. If the Second Party transfers all public records to the City upon completion of the Agreement, the Second Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Second Party keeps and maintains public records upon completion of the Agreement, the Second Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If the Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records

Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City of Delray Beach
ATTN: City Manager
City Hall, 100 N.W. 1st Avenue
Delray Beach, Florida 33444

For Second Party:

T2 Systems, Inc.
8900 Keystone Crossing
Suite 700
Indianapolis, IN 46240

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

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

9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer

to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party

or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

ARTICLE 10 PERFORMANCE BOND

Second Party will execute and deliver to the City, within thirty (30) days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of Second Party's bid amount. If the bond is on an annual coverage basis, renewal of the bond for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance Bond. If a letter of credit is chosen, it must be in a form acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City.

The amount herein above set is not intended to be or shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Second Party to the City in the event of a material breach of the Agreement by the Second Party.

The City shall monitor the performance of Second Party. If Second Party's performance fails to meet the requirements specified within this Agreement, the City may without cause and without prejudice to any other right or remedy, terminate this Agreement whenever the City determines that such termination is in the best interest of the City.

ARTICLE 11 DIGITAL IRIS SERVICES

- 11.1 Subject to the terms of this Agreement, Second Party will supply the Digital Iris Services subscribed to by City, and City is granted a limited, non-exclusive, non-transferable right to access and use Digital Iris Services software, solely as necessary for City's use of the Digital Iris Services for its internal business purposes.
- 11.2 Second Party will provide City with one (1) administration account (login and password) to access the Digital Iris Services on the Second Party's System.
- 11.3 Second Party will provide the Digital Iris Services in accordance with the following standards:

- i. Second Party is classified under the PCI Security Standards as a Level 1 Service Provider. The Digital Iris Services will remain in compliance with current PCI security standards at all times;
- ii. Second Party will be responsible for delivery of access to the Digital Iris Services on the Second Party' System only up to and including the Point of Access, and is not responsible for any failure due to City's telecommunications connections, facilities (including internal local area networks (LAN)) or local infrastructure;
- iii. Second Party will use all reasonable efforts to ensure the Digital Iris Services will be available during the System Availability Period;
- iv. Second Party will provide City with at least 48 hours prior electronic notice of any scheduled System Maintenance Period;
- v. Second Party shall have the right to implement updates and upgrades to any software used in providing the Digital Iris Services, in its sole discretion;
- vi. Second Party will respond to incidents that have been reported by City in the manner described in Exhibit E, Product Warranty; and
- vii. In the event of a Second Party System failure, Second Party will use commercially reasonable efforts to complete data recovery requests using the most recent version of the backup data, databases, applications and configuration pieces required to restore City data.

ARTICLE 12

WIRELESS DATA SERVICES

- 12.1 If purchased by City, Second Party will provide the Wireless Data Services, supplied by Second Party's underlying third party wireless data services carrier, to City. City acknowledges and agrees that (i) City has no contractual relationship with the third party wireless data services carrier, (ii) City is not a third party beneficiary of any agreement between Second Party and the carrier, and (iii) that the wireless data services carrier shall have no liability of any kind whatsoever to City, or any party deriving rights through City, whether for breach of contract, warranty, negligence, strict liability, tort, or otherwise.
- 12.2 City shall use the Wireless Data Services only in connection with the Digital Iris Services and parking pay stations identified in the Sales Quote(s).
- 12.3 City agrees that it will at all times comply with and abide by all requirements established by Second Party and updated from time to time for the use of and access to the Wireless Data Services, and acknowledges that the Wireless Data Services may be restricted or cancelled by Second Party or the underlying data

- services carrier if there is a reasonable suspicion of abuse or fraudulent use of the services.
- 12.4 City may not resell the Wireless Data Services to any other person.
- 12.5 City has no property right in any wireless number assigned to it in connection with the Wireless Data Services, and understands that such number can be changed.
- 12.5 City will provide Second Party with prompt notice of any suspected abuse or fraudulent use of the Wireless Data Services of which it becomes aware.

ARTICLE 13 SHIPMENT

Scheduled shipment date is an estimate only. On or after the scheduled shipment date, City shall accept shipment upon notification by Second Party; or, if City refuses shipment, then Second Party is authorized at its option to: (i) have the goods transported and warehoused at City's expense and risk, which shall constitute shipment to City, in which event Second Party may declare such goods delivered and all amounts owing upon shipment, including the additional cost of such transportation and warehousing, will be due on the regular due date; (ii) declare the monthly installment payments to commence thirty (30) days from the date of such transportation and warehousing if any amounts are financed by Second Party; or, (iii) defer shipment. (b) Second Party may make partial shipments hereunder and may invoice for each such partial shipment separately. Each partial Shipment will be deemed to be a separate sale but a delay in delivery of any partial shipment will not relieve City of its obligation to accept delivery of any remaining shipments. Should City dispute the content of any shipment or partial shipment, City will notify Second Party in writing, within 5 business days of receipt, of the reasons for such dispute and provide to Second Party all necessary documentation to substantiate any alleged discrepancy.

ARTICLE 14 ORDER OF PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and conditions as contained in this Agreement;
- B. RFP No. 2016-057L, Multi-Space Smart Parking Meters, dated March 17, 2016, and all its addenda;

- C. Second Party's response to RFP No. 2016-057L, Multi-Space Smart Parking Meters, and any subsequent information submitted by Second Party during the evaluation, interview and negotiation process.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement:
City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to
execute same by Board action on the 6th day of December, 2016, and
Second Party, signing by and through its Executive Vice President, duly
authorized to execute same.

ATTEST:



City Clerk

CITY OF DELRAY BEACH, FLORIDA

By 

Cary D. Glickstein, Mayor

13 day of December, 2016.

APPROVED AS TO FORM:



R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

T2 SYSTEMS, INC.

SECOND PARTY

By

(Signature)

James Zaloudek, EVP

(Printed name, Title)

11 day of October, 2016

WITNESS:

Karen Hartley

(Signature)

Karen Hartley

(Printed name)

WITNESS:

Kelley Brita

(Signature)

Kelley Brita

(Printed name)

(SEAL)

EXHIBIT A
SCOPE OF SERVICES

SECTION 1

A. GENERAL REQUIREMENTS

The multi-space smart parking meters (Meters) shall operate in an independent network environment, meaning that each Meter is wirelessly enabled to communicate with Second Party's web-based parking meter management system without the installation of any additional networking equipment. Should the network equipment temporarily fail, the Meter shall operate in a standalone mode until the network environment is restored.

The Meters must function in both a Pay-and Display and Pay-By-Space environment. The Meter must also be compatible with the pay-by-phone technology.

The Meter must accept all payment options offered by the City, including coins, U.S. currency, credit and debit cards. Failure of the Meters to accept these payment operations when installed will be considered a breach of this Agreement and will lead to cancellation of the Agreement and all cost incurred will be the sole responsibility of Second Party.

Meters will conform to ADA requirements.

The Meter collection area and maintenance area should be separate compartments within the Meter.

In addition, Second Party shall:

- Install and perform field testing on the new parking Meters
- Maintain and support a Meter Management System
- Maintain and support a network for two-way communications between Meter and web-based software
- Provide maintenance/repair
- Provide customer support
- Provide warranty service

B. SERVICE TEST PERIOD

Second Party must successfully complete the acceptance testing requirements within a ninety (90) day period following Contract award and product installation. The City will accept the fully operational product(s) only when Second Party has successfully proven the respective product to function in accordance with the RFP requirements before the end of the testing period.

Performance trial and acceptance testing shall be based on the units being fully and consistently operational for a period of not less than thirty (30) working days after

receipt and installation. The City will use this testing period to evaluate the products and verify that all requirements stated in the RFP have been met. If it is determined that all requirements have not been met, that machines have experienced excessive malfunctions, errors, etc., or that resolution of any problem cannot be attained, the City reserves the right to return the products at no cost to the City.

A performance evaluation will be conducted prior to the end of the test period and that evaluation will be the basis for the City's decision to continue with Second Party or to select another Proposer.

C. DOCUMENTATION

Second Party shall provide the City with three sets of printed hardware and software documentation and manuals with system delivery.

D. EQUIPMENT WARRANTY / EXTENDED MAINTENANCE

Second Party shall provide equipment warranty as designated in Exhibit D, Product Warranty.

The Parking Facilities Division, or designee, will be the first line of maintenance to repair, replace or investigate concerns with the Meters. If the Parking Facilities Division, or designee, is not able to correct the problem, the Second Party shall provide on-site services within twenty-four (24) hours of notice by the City.

SECTION 2

The Meters shall be configurable as a pay-by-space, pay-by-license plate, or pay-and-display. Second Party's Meters must meet accepted industry standards; and, must be fully functional in a tropical climate and durable in 140 mile per hour winds. The Meters may also function in constant exposure to the ocean's elements and must function in both high heat (up to 140° F) and extreme humidity typical of the sub-tropical climate.

At a minimum, Meters shall have the following primary features:

A. METER MECHANISM SPECIFICATIONS

- A.1. Meters shall accept payment via bills and coins, tokens, credit card (magnetic swipe and chip), debit card (with a Visa or MasterCard logo), the Delray Beach Smart Card, and payment via transponder. Credit card shall include Visa and MasterCard payment capabilities at a minimum. Meter must detect and reject foreign bills, coins and slugs. If the coin slot is jammed (inoperable), the Meter must still accept credit and debit card payments. The credit card reader must be modular and easily unplugged and removed with basic tools for easy servicing.
- A.2. The Meter must be Payment Certification Industry (PCI) compliant. Second Party and Meters must meet the credit card data security requirements outlined by the Payment Card Industry Standards Council

(<https://www.pcisecuritystandards.org/>) for Service Providers and/or Software Vendors. PCI Certification must be achieved through a third party audit process. The provision of voluntary security scan reports and questionnaires as proof of compliance will not be acceptable.

- A.3. Meters shall be wirelessly networked via the Wi-Fi network and connected to a web-based management system. A central Wi-Fi gateway attached to a utility pole with repeaters installed in the Meter mechanism creating a wireless mesh network may be acceptable. No additional customer software other than an Internet browser shall be required to access the management system. A cloud-based hosted system shall be used. Second Party shall provide a minimum choice of two wireless Wi-Fi network service providers to allow the City to choose the provider with the most reliable and widely available coverage at locations the Meters will be installed. Second Party may use a combination of Wi-Fi network service providers with City approval, which will allow for the maximum coverage in difficult areas. City may reject any Wi-Fi network service provider without cause.
- A.4. Meters shall use batteries rechargeable by AC or Solar to provide ongoing power and backup power.
- A.5. Meters shall wirelessly notify parking operations staff of any faults, such as a card reader or coin validator jam, via a text message, email, or both.
- A.6. Meters and sensors must be resistant to the corrosive coastal environment and able to effectively operate in the weather conditions experienced in the City of Delray Beach, Florida including but not limited to rain, fog, and temperatures of 0 degrees F to 140° F, and tropical cyclones. All components shall be guaranteed from rust and/or corrosion for the life of the product.
- A.7. Locks must be resistant to the corrosive coastal environment and should not require regular cleaning or maintenance. Locks cannot be duplicated or purchased from either Second Party or lock manufacturer without the City's written approval. All Meter apertures shall be designed and/or shielded to discourage vandalism and insertion of foreign material.
- A.9. Mechanism will require a minimum amount of time to be purchased prior to the Meter registering time.

B. DISPLAY AND INSTRUCTIONS

- B.1. Meters shall be configured to have customizable welcome and farewell messages with each able to accommodate four lines of text, each line containing a maximum of 25 characters. The Meter display shall be color.
- B.2. Meter displays must be remotely programmable via web-based meter management system, such that the staff is not required to be present at the Meter for changes to be made.

- B.3. For increased visibility in low-light conditions, the display shall be backlit. Backlight must be enabled automatically via light sensitivity, and require no additional settings to be adjusted. Additionally, backlight must be enabled during a transaction in order to conserve battery power.
- B.4. A UV resistant (non-yellowing) polycarbonate material must be used to protect the display and solar panel.
- B.5. Meters shall display various operating status messages to users and maintenance personnel.
- B.6. Designated staff shall have ability to pull reports from the pay station that display customer transaction details.
- B.7. On-screen displays will be in English with other language capabilities.
- B.8. Meters shall communicate status updates through detailed messages on the display or through printable reports.
- B.9. Printed user instructions shall be inserted inside maintenance door without tools or disassembly of parts.

C. COIN VALIDATION

- C.1. The Meter shall be fully electronic with solid state components and straight down, free-fall coin chute. The Meter must recognize and give time for both coins and/or custom tokens. Standard coin recognition shall include, but is not limited to, U.S. denominations of \$0.05, \$0.10, \$0.25, and \$1.00 coins. The validator must be reprogrammable remotely as new coins/tokens are implemented as part of the payment options provided by the City. Meter shall reject fraudulent coins.
- C.2. The coin validator (also referred to as coin acceptor) must detect metallic as well as nonmetallic jams. Jam clearance shall be accomplished without special tools or disassembly of the Meter. The coin validator shall be a removable component for the purposes of clearing coin or other types of coin validator jams. The coin chute must have a clear casing to allow complete visibility of the coin pathway in order to identify and easily clear jams. Coins passing through the mechanism shall be deposited into the coin box in the Meter vault when the mechanism is properly installed in the upper housing. In the event of a jam, the Meter must notify City staff of a jam via email, text message or both.

D. BILL ACCEPTOR

- D.1. The bill acceptor must be housed inside maintenance cabinet (not on maintenance door) so bill acceptor is protected from elements when door is open.
- D.2. The bill acceptor must electronically accept US denominations of \$1, \$2, \$5, \$10, \$20 dollar bills or any combination thereof.
- D.3. The bill acceptor must be 4-way and accept bills in any direction (face up or face down).

- D.4. The bill acceptor must have an acceptance rate of 98% for street quality bills. All rejected bills must be returned.
- D.5. The bill acceptor must be programmable on-site for any new bank notes issued by the U.S. Mint.
- D.6. Maintenance personnel must be able to clear bill jams without use of special tools and without accessing the bill storage compartment within 30 seconds of opening the pay station.
- D.7. If bill acceptor is inoperable, the machine must still accept card and/or coin payment. Message must be displayed on screen indicating that coin payment is not available. If bill acceptor is inoperable, pay station must send an alarm to the back-office system notifying personnel of a problem.

E. POWER SUPPLY

- E.1. Solar-powered Meters with battery backup, as well as AC Main power, may be utilized.
- E.2. Meters shall include a commercially available 12 volt recyclable gel battery.
- E.3. Battery shall be trickle-charged by a 5 or 10 watt solar panel.
- E.4. Battery must last an average of three years without recharge or replacement.
- E.5. Solar panel must be integrated into the top of the Meter, not placed on posts.
- E.6. Voltage check system must be integrated into the pay station cabinet and the voltage of the battery must be determined in less than 5 seconds.
- E.7. The battery storage area must allow the battery to be removed and replaced in less than 60 seconds for servicing.
- E.8. Shall include a separate backup battery to sustain clock, calendar, audit information, and Random Access Memory in the event of a main backup system failure or during battery replacement.

F. CREDIT CARD PAYMENT

- F.1. Meter shall accept payment by credit card utilizing a hybrid card reader. The hybrid card reader will allow for use of both magnetic stripe credit card and smart (chip) card. Users will insert (smart card) or insert/remove (credit card) the card to start the payment process. Users will then have the ability to toggle up (add time) or down (less time) to select the amount of time to be purchased, up to the maximum and down to the minimum metered time. Users can then select "OK" to purchase, or can press "CANCEL" to stop the transaction.
- F.2. Second Party shall provide secure gateway service to provide for secure (encrypted) credit card data transmission to the City's merchant account provider. Credit card reader mechanism must be able to process credit card and debit card transactions by obtaining authorization in real time. Credit card data transmission shall meet the Payment Card Industry (PCI) Data Security Standards. Second Party shall provide evidence of both Payment Application (PA-DSS) compliance and PCI-DSS Level 1 certification. Second Party must comply and be listed as a valid service provider for the Visa Cardholder

Information Security Program (CISP) and the MasterCard Site Data Protection (SDP) programs.

- F.3. For ease of installation and security, the credit card reader must be integral to the mechanism design and not require any additional modification to the Meter housing to install.
- F.4. Keypad shall be modular for in-field replacement, if necessary.
- F.5. The keypad must have full alphanumeric capability with buttons for 'okay' and 'cancel.'

G. COMMUNICATION AND PROGRAMMING

The following rate and operating characteristics should apply to all Meter mechanisms purchased:

G.1. OPERATION AND RATE PROGRAMMING

- G.1a. **FIXED RATE** – same rate all day, for select/every day(s) of the week. Meters can be remotely programmed in real time for holidays, special events or other rate changes via the web based management system and will not require Second Party or City staff to interface with the Meters to accomplish such a rate update.
- G.1b. **MULTIPLE-RATES** – varied rates throughout the day, up to a minimum of 6 times. This can include Tow-Away, No Parking, Progressive or Free Parking options, in addition to hourly parking rates for normal metering time. Meters can be remotely programmed in real time for holidays, special events or other rate changes via the web-based management system and should not require Second Party or City staff to interface with each individual Meter to accomplish such a rate update.
- G.1c. **PRE-PAY** – allow a motorist to pay for parking prior to the beginning of enforcement hours, up to the maximum stay period. However, metered time will only begin at the beginning of enforcement hours. For example, a two-hour Meter can be fully paid prior to the beginning of enforcement at 8AM. In such an example, metered time would only begin at 8AM and expire at 10AM. Meters can be remotely programmed in real time for holidays, special events or other rate changes via the web-based management system (by zone or designated group, and individually) and should not require Second Party or City staff to interface with each individual Meter to accomplish such a rate update.
- G.1d. **TOW-AWAY** – Meters can be programmed to enforce defined tow-away zones. During the tow-away period, the Meters will not accept payment and no time will be given. The Meters shall be capable of displaying "Tow-Away - Do Not Park" on the display screen. In such a configuration, motorists will only be able to pay for time up to the beginning of the tow-away period. Changes to this feature can be remotely programmed in real time via the web-based management system

and should not require Second Party or City staff to interface with each individual Meter to accomplish such a rate update.

- G.1e. Mechanism shall be capable of displaying the rates per hour, maximum stay (time period), and other customized messages or graphics on the Meter display.
- G.1f. Changes/updates to all rate structures; maximum stay (time limits), available payment methods, and hours of Meter operations shall also be managed and updated via a web-based management system, providing remote management capability. It is preferred that changes/updates have the option to program groups or zones of Meters as a unit, and the ability to program individual Meters if required.
- G.1g. Instructions shall be provided in English, and it is preferred that a Spanish and Creole options be included also. An "opt-out" option for customers throughout the transaction, until the transaction is completed is highly desirable.
- G.1h. Total transaction time should be less than 15 seconds.

G2. CELLULAR MODEM INFORMATION

- G.2a. Each Meter shall be capable of transmitting wireless data for the purposes of payment card processing, coin transactions, updates to the operating features and rate configuration of the Meter, as well as fault notification. The wireless capability must be integral to the Meter mechanism design and shall not require a secondary connection to a wireless device. Such communication will be accomplished without any additional networking equipment that would need to be installed on City street poles or any other location, such as buildings, etc. The system should include a 365 day real time calendar clock that is synchronized with a centralized server, and be programmable for automatic daylight savings time change. The cellular modem should be carrier neutral and support the following networks 4g/3g/2g. This should be accomplished by using a SIM card from chosen carrier.
- G.2b. Updates to Meter software, such as Meter firmware and operating software, should be performed wirelessly and not require Second Party or City staff to interface with each individual Meter to accomplish such an update. City will select the Wi-Fi channel.
- G.2c. The Meter management system should not be dependent on the interaction of individual handheld devices and each Meter in the field. Management system shall be completely web-based system accessible via desktop computer, laptop computer, or handheld wireless device to authorized personnel. No additional software other than an Internet browser shall be required for the management system to be accessed and fully used in conjunction with the Meter products.

This shall provide access to the meter management system from authorized user 24/7 over the web.

- G.2d. All configuration changes shall be uploaded and transmitted remotely via software. Reports and dashboards shall be available through web-based software. City shall have capability to view what maintenance is required on each machine and when such alarms are cleared.
- G.2e. The City requires the ability to integrate meter data with smart city/smart parking systems at time future time to be determined during the Agreement Period. Second Party must make accurate real-time data available to the City or its selected smart parking/smart city provider at no additional fee. The payments shall be published to a Meter status and payment API (Application Programming Interface) of the City's choice with maximum payment latency of 120 seconds or less. In the event of equipment failure, a failure status shall be posted within 60 minutes of the outage start. Excluding Meters with reported equipment failure, a minimum of 99.5% of all Meter payments must be published to this API.
- G.2f. Maintenance software should be accessible in the field via mobile device.
- G.2g. Each pay station shall be individually capable of transmitting wireless data for the purposes of payment card processing, coin transactions, updates to the operating features and rate configuration, as well as fault notification. Such communications will be accomplished without any additional networking equipment that would need to be installed on City street poles or any other location, such as buildings, etc. The system should include a 365 day real time calendar clock that is synchronized with a centralized server, and be programmable for automatic daylight savings time change.
- G.2h. Rates and other configurations shall have the ability to be changed remotely.

H. COIN CANISTER

- H.1. Collection shall be performed via a portable secure cash box system (no coin bags). A laser cut key must be required to open the cash box. Controls will be in place to document removal and replacement of the keys and limited staff access.
- H.2. Shall have a handle and be equipped with self-locking mechanism that engages automatically when the collection process begins.
- H.3. Shall have openings for self-locking mechanism and coin entry.

- H.4. Shall include a visible reset indicator to show readiness for reuse.
- H.5. The unit will provide a collection transaction report via wireless two-way communication and retain audit information.

I. BILL STACKER

- I.1. Shall be accessed only after opening the collection vault (lower door), not the maintenance door.
- I.2. The bill stacker must be a self-sustaining lockable unit. A laser cut key must be required to open the unit after it is removed from the bill acceptor. Controls will be in place to document removal and replacement of the keys and limited staff access.

J. PRINTER

- J.1. Must be housed inside maintenance cabinet (not on maintenance door) so printer is protected from elements when door is open.
- J.2. Shall be capable of printing on standard, variable length tickets.
- J.3. Shall be thermal impression injection type where receipt is printed internally and ejected to customer.
- J.4. Shall have a self-sharpening blade.
- J.5. Shall have a self-cleaning printing head.
- J.6. Shall be equipped with a mechanism to discharge static.
- J.7. Shall have ability to receive paper in roll form and print approximately 2200 standard receipts per roll.
- J.8. Once the cabinet has been opened it should take a technician less than one minute to replace a thermal paper roll.
- J.9. Shall be capable of printing the following:
 - J.9a. Unique receipt number
 - J.9b. Transaction date (MM/DD/YYYY) and time (HH:MM PM/AM)
 - J.9c. Expiration time and date
 - J.9d. Amount paid
 - J.9e. Machine number

K. ADDITIONAL DESIRED FEATURES

- K.1. Meter shall have functionality to access a service menu via password for the purpose of access Meter diagnostics.

- K.2. The Meter provides specific information relating to the current Meter operating status with the use of a diagnostics card, and without opening the Meter housing. Features should include the ability to:
- View the current assigned Meter configuration and software version
 - View the battery level (for rechargeable and non-rechargeable) and solar panel charge level
 - Test the operating condition of the card reader
 - Test the operating condition of the coin validator
 - Test the integrated wireless communications
 - Allow for the Meter to be turned off
- K.3. Audit information shall be collected when the coin box counter is cleared via web-based management system that will allow visibility of the time, cash value collected, and a detailed summary of the coin types collected.
- K.4. Web-based software shall have capability to place Meter locations on a digital map.
- K.5. The Meter system must include a pay-by-cell phone option. Any Meter system installed should have the ability to push any time purchased from a remote payment device or smart phone directly to the Meter such that the payment of the Meter is transparent for the purposes of enforcement. Additionally, if so desired, a user may register for a service that would allow for delivery of a receipt after payment with a credit card as well as a notification prior to Meter expiration for the purposes of adding additional time to the Meter remotely.
- K.6. Second Party shall be willing to integrate with various parking sensor companies.
- K.7. The City's preference is for the Meter collection area and maintenance area to be separate compartments, as a 'best practice' so there can be a separation of collection and maintenance duties and access.
- K.8. The Meter should include an option that allows businesses to offer validation or business promotion.

L. SERVICE TEST PERIOD, WARRANTY, SUPPORT AND TRAINING

- L.1. Second Party must successfully complete the acceptance testing requirements within a ninety (90) day period following product installation. The City will accept the fully operational product(s) only when Second Party has successfully proven the respective product to function in accordance with the RFP requirements before the end of the testing period. Performance trial and acceptance testing shall be based on the units being fully and consistently operational for a period of

not less than ninety (90) days after installation. The City will use this testing period to evaluate the products and verify that all requirements stated in the RFP have been met. If it is determined that all requirements have not been met, that machines have experienced excessive malfunctions, errors, etc. or that resolution of any problem cannot be attained, the City reserves the right to return the products at no cost to the City. A performance evaluation will be conducted prior to the end of the test period and that evaluation will be the basis for the City's decision to continue with Second Party or to select another Proposer under the same RFP.

- L.2. Meter shall carry a minimum two-year warranty. The warranty shall be comprehensive and cover any defects in materials or workmanship, and shall include all associated parts of the mechanism, including but not limited to, credit card reader, coin chute, batteries and solar panel.
- L.3. Technical support shall be available from the manufacturer or through an authorized representative during the warranty period at no additional cost to provide Second Party and City staff with the necessary training to utilize the Meters and associated software. Training hours shall be during normal business hours unless authorized by City. Initial training and setup will require a representative be present at the City to assist with getting the Meters on-line and training Second Party and City staff on the use of the software management system. Second Party will also provide:
- On-site training for City maintenance staff to provide for occasional routine maintenance, programming of Meters, part replacement, clearing coin and credit card jams, mechanism replacement, clearing printer paper jams, and relocation of Meters at no cost to City.
 - On-site training for City maintenance staff to provide for occasional Meter testing for the purposes of parking citation contesting or appeals at no cost to City.
 - On-site training for City staff on Meter operations and enforcement of Meter violations at no cost to the City. Additional technical support may be provided by telephone, email or other means and will not necessarily require the presence of a representative at the City.
 - Marketing materials, customer instruction materials and other information to assist in the smooth transition for public users at no cost to City.
 - Two complete sets of all operating parts and technical repair manuals plus electronic copies.

M. SYSTEM SECURITY AND BACK-UP PROVISION

- M.1. Second Party shall maintain parking meter management system database and physical system security in such a way as to provide complete confidentiality and protection from unwanted access. Data recovery should include off site data storage.

N. OPTIONAL FEATURES

- N.1. VALIDATION PROGRAM - The City may implement a validation program utilizing tokens, "smart cards" or electronic validation application, for both the City and businesses to provide validated parking to customers.
- N.2. TRADE IN AND/OR DISPOSAL OF OLD EQUIPMENT - Second Party will be responsible for the disposal of all Meters to be replaced.

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EXHIBIT B
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP No. _____

Project Title: Multi-Space Smart Parking
Meters

The undersigned Second Party hereby swears under penalty of perjury that:

1. Second Party has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or
Supplier's name
and address

Date of disputed
invoice

Amount in
dispute

3. The undersigned is authorized to execute this Certification on behalf of Second Party.

Dated _____, 20____

Second Party

By _____
Signature

(Printed Name and Title)

Exhibit B (cont'd)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did / did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature)

(Printed name)

My commission expires:

EXHIBIT C
INSURANCE REQUIREMENTS

Second Party shall carry the following minimum types of insurance:

- A. **Workers' Compensation.** Proposer shall carry Worker's Compensation insurance with the statutory limits; Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- B. **Comprehensive General Liability Insurance.** Proposer shall carry Comprehensive General Liability Insurance with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage. The insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a Best's rating of B+ VIII or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Proposer agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City of Delray Beach Purchasing Department.

EXHIBIT D
COSTS

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>
1.	Purchase and Installation of Pay-and-Display Multi-space Receipt Dispensing Parking Meters	\$7,452/EA
2.	Year 3 – Optional Extended On-site Maintenance/Software Support (per meter)	\$425/YR
3.	Year 4 – Optional Extended On-site Maintenance/Software Support (per meter)	\$425/YR
4.	Year 5 – Optional Extended On-site Maintenance/Software Support (per meter)	\$425/YR
5.	Year 6 – Optional Extended On-site Maintenance/Software Support (per meter)	\$475/YR
6.	Year 7 – Optional Extended On-site Maintenance/Software Support (per meter)	\$475/YR
7.	Monthly Communication Fees (per month)	\$60/EA

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EXHIBIT D (cont'd)
OPTIONAL ITEMS

ITEM	DESCRIPTION	UNIT PRICE
8.	Bill and coin collection spares	\$248/EA
9.	Single-space meter removal	\$20/EA
10.	Years 3-5 Full Extended Warranty* (per meter)	\$425/YR
11.	Years 6-7 Full Extended Warranty* (per meter)	\$475/YR
12.	Years 1-7 Level 2 Support Only** (per meter)	\$125/YR
13.	Full-time Parker Systems employee for maintenance, repairs, filling receipt rolls	\$70,000/YR
14.	Years 3-7 Software update warranty only (per meter)	\$200/YR
15.	Solar or AC 'buy-back' meters	\$7,079/EA
16.	55 amp battery	\$100/EA
17.	Custom color for façade	\$150/EA
18.	Custom Color for entire machine	\$600/EA

*Full warranty on parts and software upgrades (excludes batteries after year 2). See Exhibit E for a detailed product warranty.

**City is first line of support, with Second Party or designee available for troubleshooting via telephone. If City cannot resolve the issue, Second Party or designee will provide on-site support. Second Party or designee will perform maintenance on each meter per fiscal quarter.

EXHIBIT E

PRODUCT WARRANTY

This exhibit describes the warranty services purchased by City from Second Party for hardware, software and firmware services for pay station products.

- Second Party products are covered under an initial two-year limited warranty from defects in materials or workmanship.
- Continued warranty coverage may be purchased at the end of the second year through the extended warranty program.

If a product proves defective under normal use during the warranty period, Second Party at its option will either repair or replace the product as described below. Spare, repaired or replacement parts will be covered under warranty for 90 days or to the end of the warranty period of the unit to which they are attached, whichever comes last.

EXCEPT AS OTHERWISE CONFIRMED IN WRITING BY SECOND PARTY, THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Second Party reserves the right to change the terms and conditions of warranty coverage upon notice from time to time. Warranty coverage will be suspended if City fails to pay for equipment and/or services under the terms listed on the quotation or City contract. SECOND PARTY WILL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, LABOR COSTS, LOSS OF DATA OR LOSS OF REVENUE ARISING OUT OF OR IN CONNECTION WITH PRODUCT USE OR PERFORMANCE. SECOND PARTY'S RESPONSIBILITY TO REPAIR OR REPLACE THE DEFECTIVE PRODUCT IS THE SOLE AND EXCLUSIVE REMEDY PROVIDED TO CITY FOR BREACH OF THESE WARRANTIES.

Some provinces, states or countries do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to City.

A. OVERVIEW OF WARRANTY SERVICES

Second Party's two-year limited warranty and extended warranty services include support and maintenance for hardware, software and firmware products as follows:

- access to 24 x 7 telephone and email support including free telephone support during business hours for setup, installation and support matters and discounted telephone support outside business hours.
- repair or replacement of defective parts, including free one way shipping.
- free software maintenance releases and upgrades (for the first year).

The two-year limited warranty commences seven days from the date the products are shipped to City. The warranty services also include the following specific hardware, software and firmware services listed below.

B. HARDWARE WARRANTY SERVICES

1. Second Party may repair or replace defective parts with new parts or with reworked parts equivalent to new parts in performance.
2. If certain parts that Second Party designates as "City replaceable" fail, Second Party will provide the City with a replacement part. It will be the City's obligation to install the replacement part(s) and return the replaced part(s) in unaltered form to Second Party as instructed.
3. Changing or tampering with electrical equipment bearing the Canadian Standards Association ("CSA") mark may result in loss of certification. City may re-certify at its own expense by contacting CSA International directly. This does not apply to out of box failures immediately following installation.

C. FIRMWARE WARRANTY SERVICES

1. **Firmware Updates.** Firmware support is available for device level software including printers, bill acceptors and coin acceptors. Firmware updates will be available via a download utility for installation by City. Second Party will provide remote installation assistance where required.

Spare parts replacements can include installed firmware and where possible, the firmware version in the installed parts will be set at the same version level as the parts replaced. Otherwise, the firmware will be set to the most current version.

2. **Chargeable Firmware Upgrades.** Chargeable firmware upgrades, together with installation support, include:
 - firmware upgrades for new currency releases issued by governments.
 - firmware releases which add optional improvements to the product.
 - on-site assistance required by the City to install downloadable firmware upgrades.

D. SOFTWARE WARRANTY SERVICES

Second Party's software maintenance and support services include:

1. Replacement of defective media upon e-mail notification to Second Party. Emergency software may be provided in the course of troubleshooting and problem resolution.
2. Free software upgrades.
3. The services below are not covered under software warranty and will be charged separately:
 - Installation / update services.
 - Backup and recovery of software, other computer programs, or data.
 - On-site services.

- System restoration (i.e. reloading of software, and data).
- Additional copies of software media.
- Training queries and consulting services.

E. CITY RESPONSIBILITIES

1. **Proper Maintenance.** Before contacting Second Party for warranty services, City should ensure it is following proper operation and maintenance of the hardware, firmware and software in accordance with Second Party's recommendations and requirements in the product documentation and user manuals. Products must also be in compliance with IEEE standards for electrical power and grounding quality. City should inform Second Party of changes in product locations.
2. **City Efforts.** Use reasonable efforts to assist Second Party in diagnosing and performing repairs, including but not limited to: making City personnel available on site to perform reasonable troubleshooting and remedial corrective maintenance activity; providing direct phone or electronic contact between Second Party's phone agent and City personnel; providing remote access to the defective equipment.
3. **Computer Requirements.** Ensure that the software is installed on a computer that meets or exceeds the minimum requirements as outlined in the BOSS and EMS User Guides. The City acknowledges that upgrades to the software and increases in the size of databases may require upgrades to the computer hardware. City is responsible for any computer upgrades that may be required.
4. **Software Responsibilities.** For software issues, City is responsible for installation, testing and operation of software and all upgrades. For all Second Party's software, the City is responsible for operating its equipment, providing back-up equipment and services upon product failure, isolating and documenting software problems, safeguarding all programs' data and removable storage media and reloading programs and data.
5. **Replication of Problems.** City may be asked to (i) replicate software problems at the City's site utilizing the unaltered version of the software experiencing the problem, and (ii) provide a copy of an unaltered version of the defective software to Second Party.
6. **Isolating Problems.** Remove all features, parts, options, alterations and attachments not supplied by Second Party as part of the products to help diagnose where the problem is occurring.
7. **On Site Assistance.** If on site assistance is required, City should not permit anyone other than Second Party or a Second Party certified reseller to perform service on products under warranty, unless directed by Second Party.

F. EXCLUSIONS

Items not covered under warranty. Certain service activities and materials are not covered by Second Party's warranty and will be charged to the City at the prevailing hourly rate for the service requested. These include, but are not limited to, warranty claims in connection with:

- Alterations or attachments not provided by Second Party, approved by Second Party in writing, or compatible with Second Party's standard interfaces.
- Third party delivered services or attachments (other than Digital Connect) that could include electrical and networking interfaces (GSM, CDMA, Wi-Fi and Ethernet).
- Any negligence, misuse, or abuse by City or a third party including theft or vandalism.
- Failure to perform regular cleaning, inspection, adjustment or preventive maintenance activities or to follow proper procedures for operation in accordance with Second Party recommendations as set out in the user manuals and documentation
- Movement of products by anyone other than Second Party or a certified Second Party reseller.
- Failure to adhere to Second Party installation or site preparation standards.
- Damage resulting from extreme weather conditions, such as flooding, lightning, fires or any act of force majeure.
- Hardware upgrades as a result of changes in rules or regulations outside of Second Party's control (for example, changes to PCI Data Security Council requirements).
- Training issues not covered in the user manuals which are charged on an hourly basis. Arrangements for training can be made through your Regional Sales Manager or local authorised Reseller.
- Unless otherwise agreed in writing, Second Party shall not assume the warranty obligations of any other party.
- Batteries, locks and keys have a two-year replacement warranty for Delray Beach. USB keys may be replaced within 90 days of purchase. Any services requested in connection with locks or lock components are charged on an hourly basis. All other consumable items are excluded from warranty coverage.

G. OBTAINING WARRANTY SERVICES

1. **Obtaining warranty service.** To obtain warranty service for Second Party products located in North America, please contact Second Party Customer Service using one of the following options:

Phone: 888.687.6822

E-mail: support@digitalpaytech.com

Web: support.digitalpaytech.com

A Second Party support specialist will determine if the product is experiencing a problem covered under warranty. Second Party will repair or, at its discretion, exchange defective products or parts.

2. **Software warranty service.** City must provide the hardware configuration and serial number of the system running the software with the problem, its physical location, the name, release and version number of the operating system software and a description of the problem.
3. **Returning parts or products.** Parts or products under warranty which Second Party deems to be defective should immediately be returned for replacement, together with the Return Merchandise Authorization ("RMA") number issued to you. Parts or products must be packaged in accordance with Second Party instructions with the RMA number

clearly visible. All return shipping costs are the responsibility of the City. Second Party will notify you when we ship the replacement part or product and all defective parts or products must be returned to us within 30 days of such notice to avoid any charges. Late return of defective parts will result in you being invoiced for the full amount of the replacement part issued to you. Second Party will repair all defective parts received outside of the 30 day time period and will return them to you. Returned defective parts or products which do not require immediate replacement will be repaired and returned to you at no charge. If returned parts are defective due to any of the exclusions outlined above, you will be charged for the full value of the replacement part issued.

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