

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
LANIER PARKING METER SERVICES, LLC D/B/A LANIER PARKING SOLUTIONS
FOR
COMPREHENSIVE PARKING MANAGEMENT SERVICES

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

And

Lanier Parking Meter Services, LLC d/b/a Lanier Parking Solutions, a Georgia Limited Liability Company, hereinafter referred to as "Contractor" (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 11, the Exhibits, and documents that are expressly incorporated herein by reference.
- 1.2 **Commission** - The City Commission of the City of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or designee. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor 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 Commission.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Commission.
- 1.6 **Project** - The Project consists of the services described in Exhibit A, Scope of Services.

ARTICLE 2 SCOPE OF SERVICES

- 2.1 Contractor shall perform all work identified in this Agreement, Exhibit A, Scope of Services. The Scope of Services is a description of Contractor'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 Contractor impractical.
- 2.2 Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify Exhibit A, 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 May 17, 2017 to September 30, 2020 with two, 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 Contractor agrees that it shall continue service upon written request by the City. The Contractor 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 Contractor 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 Contractor, the following, and as further set forth in Exhibit D and Exhibit E:

- a) A total fixed amount not to exceed Thirty Thousand Dollars (\$30,000) per year as an Annual Management Fee for work actually performed and completed pursuant to this Agreement;
- b) An amount not to exceed Five Hundred and Eighty Thousand Dollars (\$580,000) per year for all reimbursable Operating costs;
- c) An amount not to exceed One Hundred and Twenty Five Thousand (\$125,000) amortized over a 36-month period at an interest rate of 6.99 percent, with such payment not to exceed Three Thousand Eight Hundred and Fifty Nine dollars and Seventeen cents (\$3,859.17) per month.

Said amounts shall be accepted by Contractor as full compensation for all such work and expenses. Contractor acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Contractor's obligation to perform all items of work required by the Scope of Services.

4.2 REIMBURSABLES

4.2.1 In accordance with and pursuant to the City's procurement code and subject to the limitations set forth below, reasonable expenses, which are directly attributable to the services identified in Article 2 may be charged at no more than actual cost, with the exception of Equipment costs as set forth in Exhibit D. The maximum sum which may be charged for Operating costs, excluding Equipment costs, shall not exceed Five Hundred and Eighty Thousand Dollars (\$580,000) per year.

4.2.2 The City will pay Contractor for a one-time purchase of City-authorized equipment an amount not to exceed One Hundred and Twenty Five Thousand (\$125,000) amortized over a thirty-six month period in an amount not to exceed Three Thousand, Eight Hundred and Fifty Nine dollars and Seventeen cents (\$3,859.17) per month. In the event this Agreement is terminated for any reason prior to the full payment of such authorized equipment, the City shall, within thirty (30) days of termination, pay Contractor the total of the remaining *unamortized* balance for any equipment purchased for City by Contractor, provided such equipment was previously authorized by the City.

- 4.2.3 A detailed statement of expenses must accompany any request for reimbursement. Expenses must be documented by copies of paid receipts, checks, or other evidence of payment.
- 4.2.4 Contractor acknowledges that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, City's obligation to reimburse Contractor for expenses, but does not constitute a limitation, of any sort, upon Contractor's obligation to incur such expenses or perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

- 4.3.1 Contractor shall submit an "Operating Advance Invoice" for pre-approved, Reimbursable Operating Costs and Expenses, an "Equipment Invoice" for amortized Equipment Costs, and a "Services Invoice" for the Annual Management Fee, as further set forth in Exhibit "D".

Contractor shall submit the Operating Advance Invoice to the City on a monthly basis. From May 17, 2017 through September 30, 2017, the monthly amount shall be one-fifth (1/5) of the pre-approved, allowable Operating Costs and Expenses for the first partial fiscal year of the Term. Thereafter, the monthly amount shall be one-twelfth (1/12) of the pre-approved, allowable annual Operating Costs and Expenses. The Operating Advance Invoice shall be submitted to the City on the first day of the month for which such amounts apply and shall be payable within 15 days of receipt of a correct invoice.

The Services Invoice and the Equipment Invoice shall be sent within fifteen (15) days of the end of each 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) (if applicable). 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 any such payment has not been made.

- 4.3.2 City shall pay Contractor within thirty (30) calendar days of receipt of Contractor'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 Contractor to comply with a term, condition, or requirement of this Agreement.

4.3.3 Contractor shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Contractor 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.

4.3.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment of the Annual Management Fee 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.

4.3.5 Payment shall be made to Contractor at:

Lanier Parking Solutions
233 Peachtree St.
Harris Tower, Ste. 2600
Atlanta, GA 30303
Attn: Accounting Department

4.3.6 Contractor shall send all invoices to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444
Attn: Accounts Payable

ARTICLE 5 INDEMNIFICATION

Contractor shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney in accordance with prevailing market rates, 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, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the Operator's performance of the Scope of Services in 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, Contractor 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 Contractor under this Agreement may be retained by City until Contractor or Contractor's insurance provider agrees in writing to defend and indemnify City's claims for indemnification pursuant to this Agreement.. Any amount withheld shall not be subject to payment of interest by City. This Article 5 shall survive the term of this Agreement.

ARTICLE 6 INSURANCE

- 6.1 Contractor 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 in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Contractor shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Contractor shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, and Declaration pages evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of Declaration pages of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Contractor is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit C. City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.

- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, limits, coverage, and endorsements.
- 6.5 If Contractor uses a subconsultant or subcontractor, Contractor shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

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 City Commission. Termination for convenience by the City Commissions hall be effective on the termination date stated in written notice provided by City Commission, 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, Contractor'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 Contractor 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 Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board for reasons stated above.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement (Section 9.9) 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, Contractor shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Contractor, 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 to Contractor 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 Contractor 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.

Contractor shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. 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.

Contractor 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. Contractor 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, Contractor shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Contractor 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 Contractor 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, Contractor 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 Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Notwithstanding the requirements Chapter 119, *Florida Statutes*, City understands that certain documents pertaining to expenses which are allocated or prorated based on revenue and exposure amongst Contractor and its affiliate brands, shall not be property of the City and is not required to be delivered to City pursuant to this section. Such documentation shall include but not be limited to documents of expenses related to all insurance policies. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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 Contractor 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 Contractor 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 Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor 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 Contractor 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.

Contractor 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 Contractor and its sub licensees and lower tier sub licensees. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor 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 Contractor and its subcontractors that are related to this Project. Contractor 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 Contractor 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.

Contractor 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.

Contractor 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

Contractor's compensation under this Agreement is based upon representations supplied to City by Contractor, and Contractor 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

Contractor 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, Contractor 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 Contractor has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor 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 Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Contractor 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
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
200 NW 1st Avenue
Delray Beach, FL 33444
Attn: City Attorney

For Contractor:

Lanier Parking Solutions
233 Peachtree St.
Harris Tower, Ste. 2600
Atlanta, GA 30303
Attn: Risk Management and Legal Department

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, Contractor 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 Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor 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.

Contractor shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor'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 Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Contractor'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 Contractor 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 Contractor 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 Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

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

Contractor 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 Contractor 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, CONTRACTOR 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 Contractor 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 Contractor 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

Contractor will execute and deliver to the City, within ten (10) days full execution of this agreement, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the total amount of Contractor's bid amount of Six Hundred Sixty One Thousand Three Hundred and Ten dollars (\$661,310.00). If the bond is on an annual coverage basis, renewal of 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 Contractor to the City in the event of a material breach of the Agreement by the Contractor.

The City shall monitor the performance of Contractor. If Contractor'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
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. 2016-107, Comprehensive Parking Management Services, dated August 19, 2016, and all its addenda;
- C. Contractor's response to RFP No. 2016-107, Comprehensive Parking Management Services, and any subsequent information submitted by Contractor during the evaluation and negotiation process.

(The remainder of this page is 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 _____ day of _____, 2017, and Contractor, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Kimberly Wynn, Interim City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 2017.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

LANIER PARKING METER SERVICES, LLC D/B/A LANIER PARKING SOLUTIONS

CONTRACTOR

By _____
(Signature)

Bijan Eghtedari
(Printed name, Title)

2nd day of May, 2017



STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2nd day of May, 2017, by Bijan Eghtedari, as President (name of officer or agent, title of officer or agent), of Lanier Parking Meters Service (name of corporation acknowledging), a Georgia (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification

Meschele Clark
Notary Public – State of Florida Georgia

EXHIBIT A
SCOPE OF SERVICES

A. Scope

Contractor shall provide all personnel, materials and services necessary to manage and operate the City's parking system. Services will include, but not be limited to, integrated parking management software solution that is accessible via smart-phone technology, parking revenue collection, parking enforcement, parking citation management, complaint resolution, coordination on parking matters with downtown businesses, parking meter maintenance, management of two parking garage facilities, and providing data, analysis and recommendations to the City regarding enhancements related to parking and mobility in the downtown area such as managing parking for events and residential parking. Contractor shall complete all advance preparation necessary to begin the provision of required services on the first day of the Agreement Commencement Date.

Contractor will be responsible for the management of all City Downtown parking which includes a variety of parking options including off-street parking facilities, on-street parking, and parking garages currently totaling approximately 2,400 parking spaces, 1,254 of which are paid spaces and the primary focus of the data analytics platform.

The City Chief Parking Officer will oversee and direct Contractor's parking management activities. Additionally, the City has a Parking Advisory Board that will advise with respect to parking management policy and related issues.

B. Goal

The over-arching goal for strategies of Contractor will be to balance the parking needs of the community with the competing interests of businesses, restaurants, visitors and residents in the downtown area and the safety and economic vitality of the City.

C. Services

Subject to the approved budget, Contractor shall handle all parking functions including hiring and managing the parking enforcement staff in order to provide overall management of all City parking assets, including but not limited to the following areas of responsibility:

- i. Subject to the City's approval and purchase of the appropriate technology applications, implement parking management software that has capabilities such as providing automated citation management tools and the flexibility to change parking rates based upon capacity levels.
- ii. Managing parking rates throughout the day and adjusting based upon demand with the technology approved by the city in each annually approved budget.

- iii. Developing cooperative marketing opportunities between downtown businesses and parking.
- iv. Parking enforcement.
- v. Marketing and public relations.
- vi. Citation management.
- vii. Resolution of customer-service issues and/or complaints.
- viii. Coordination on parking matters with local businesses.
- ix. Event parking planning.
- x. Provide parking data, analysis, and recommendations regarding rates, parking design, expansion of parking system, traffic flow and control, wayfinding, marketing, and otherwise assist the City in realizing the potential for the parking system.

D. Parking Enforcement

- i. Manage enforcement of parking regulations in City-owned metered parking spaces in a fair, professional and friendly manner. Enforcement activities will include electronic ticketing and may in the future include arranging for towing or immobilization of vehicles.
- ii. Maintain records of citations, including photographic evidence of infractions that involve parking outside of the marked space, parking illegally, or other violations, and provide that documentation quickly to the City for use in dealing with complaints.
- iii. Issue citations for vehicles improperly parked in the public right of way and in private handicapped spaces.
- iv. Provide friendly guidance to parkers on how to operate the pay stations and on parking regulations.
- v. Provide documentation for, attend, testify, and present evidence at hearings on appeals of parking tickets.
- vi. At a minimum of one time per month, analyze data from pay stations, citation management systems, and pay by phone, and make recommendations to the City, based on that analysis, of changes to parking policies and practices, of enforcement hours, and changes that would improve the parking system.
- vii. Establish designated patrol routes for enforcement officers.
- viii. Respond to requests from the City to suspend or emphasize enforcement along certain streets or in certain areas. Ensure adequate staffing to meet the management and enforcement needs of the City's parking system.
- ix. While on patrol, Contractor's employees shall remove visible litter in the parking areas, or inform the Chief Parking Officer if the volume or problem exceeds their ability to collect it.

NOTE: The City Finance Department accepts funds for the payment of tickets and sale of parking permits. Contractor is not required to provide cashier services. The City reserves the right to temporarily suspend enforcement along any street, or in any zone according to the needs of the City. The City will make

every effort to provide Contractor adequate notice concerning the location and duration of any such suspension or higher level of enforcement.

E. General Services required

- i. Assist and consult with the City as necessary in the design of parking facilities or modification to parking rates and policies.
- ii. At least annually as part of the City budget process, evaluate the parking rates and provide recommendations for rate changes to the City.
- iii. Work with City businesses as needed to assess how well public parking is accommodating their needs, and provide the Town with suggestions for improvement.
- iv. Be available to respond to City when needed and attend group and or Commission meetings when asked by the City.
- v. Install and maintain parking equipment or arrange for City staff to install signage and parking meters.
- vi. Provide sufficient personnel to issue parking citations at a level of enforcement appropriate for the City.
- vii. Provide operational and customer training for all enforcement personnel to include a training manual and employee course completion certification as verification.
- viii. Provide customer services associated with the City's parking system, including instruction to users on the operation of pay stations, direction to available parking, and explanation of parking regulations.
- ix. Provide weekly, monthly and annual reports as directed by the City.

F. Parking – Special Requirements and Additional Services

- i. Enforce parking regulations during special events, and weather-related or other emergencies, and install and remove informational parking signage for such events.
- ii. Provide temporary signage to alert the public to special event and other temporary or permanent changes in the availability of parking spaces.
- iii. Arrange for towing or booting of illegally parked vehicles when specifically requested by City.
- iv. Change Contractor procedures as necessary to conform to revisions in the City Ordinances, parking regulations, policies and initiatives.
- v. Review City ordinances and develop an analysis if they are appropriately reinforcing and/or producing the desired outcome.
- vi. Provide the City with recommendations of Ordinances that may be negatively impacting the parking program.
- vii. Evaluate the areas of paid parking and provide recommendations for new paid parking areas to the City.
- viii. City shall approve the purchase of all vehicles with the goal to provide low-emission or no-emission, low-speed electric vehicles for enforcement.

G. Parking Meters – Operations

- i. Program changes in rates into the pay stations as directed by the City to include managing parking rates throughout the day and adjusting based upon demand.
- ii. Immediately report any full, damaged, missing or malfunctioning meters or facilities to the appropriate supervisor or meter technician.
- iii. Keep a meter log of all complaints regarding meters. The log will note date, meter number, location, problem and name of the person calling in the problem, and the tag number of the car (if any). (The City's meter technician shall add the date the meter was checked, the nature of the problem and the date it was corrected.)
- iv. Upon request by the City, keep the pay stations supplied with paper for receipts to ensure there is no down time.
- v. Subject to the negligence or willful conduct of the Contractor, the Contractor will be liable for the replacement cost of any lost, stolen, unaccounted for or damaged parking system equipment that is the property of the City

H. Parking Meter and Equipment Replacement

- i. The City reserves the right to replace any City meter with different equipment. Contractor agrees to work with the City to find the best prices for the equipment and lowest financing rate available and extend those prices without mark-up to the City.
- ii. Contractor will assist the City in installing new or replacement parking meters after new equipment has been installed by the manufacturer.
- iii. At such time the City chooses to procure its desired choice of meters and/or equipment, Contractor shall make a one-time contribution of \$18,000 (the Equipment Credit) towards the purchase of such equipment. The Equipment Credit can be applied in whole or in part towards any invoice for said purchase of equipment. In the event of any termination prior to the end of the initial three year term, the City shall refund Contractor the one-time contribution for any unamortized portion of the equipment provided during the term.

I. Garage Maintenance

- i. Provide scheduled cleaning for the two parking garages as well as the Courthouse Garage. The cleaning will include a daily report of cleaning activities performed which shall include but not be limited to the following:
 - (1) Empty of trash
 - (2) Wipe down of all equipment
 - (3) Cleaning of signage
 - (4) Cleaning of staircase
 - (5) Removal of spider webs
 - (6) Removal of oil spills
 - (7) Painting
 - (8) Pressure washing

- (9) Replacement of broken tire stops
- (10) Reporting of elevator issues
- (11) Reporting Lighting outage
- (12) Equipment failure
- (13) Assist the City with preparing a procedure manual for such processes to include, but not limited to, managing oil spills and emergency response
- (14) Cleaning of Old School Square Parking Garage bathrooms.

J. Collections of Parking Meter Monies and Accounting

Upon request by the City, Contractor will be required to collect and account for parking meter monies and the following applies:

- i. Collect and account for all revenues from the parking meters. The collection of single space meters and pay stations are required to be at least weekly, and before a meter is 95% full to ensure no downtime.
- ii. Deposit such funds into an account designated specifically for parking operations in the name of the City which provides access to the Contractor to view and verify deposits.
- iii. Ensure proper accountability and internal control of all monies collected.
- iv. Provide all financial and operational reports as requested by the City.
- v. Should any monies collected by Contractor be lost, stolen, unaccounted for or otherwise removed from the custody and control of Contractor prior to City receiving such monies, Contractor shall deposit said amount of money within ninety-six hours of such loss, theft or removal. Should said loss, theft or removal be insured or otherwise secured by Contractor, any payments made to the City on account thereof shall, if applicable, be reimbursed to Contractor. Contractor will be liable for all mismanagement of funds by Contractor, its employees or agents.
- vi. City shall provide Contractor with its Merchant ID to process all debit and credit card transactions.

K. Citation Management (Collections of Monies and Accounting)

Contractor shall manage all aspects of the City's citation management system or Contractor may propose to provide citation management services. If Contractor provides citation management services the following shall apply:

- i. Contractor's citation management system shall meet all requirements of the Code of Ordinances.
- ii. Contractor shall be responsible for collecting payments on citations from the public outside of collection citation and permit payments per Section D. Such payments shall be deposited into an account designated specifically for parking operations in the name of the City which provides access to the Contractor to view and verify deposits. Contractor should make available to the customers a variety of payment options approved by the City, including but not limited to cash, check or credit card. Contractor shall also be responsible for processing payments it has received for City parking

- citations. City shall provide Contractor with its Merchant ID to process all credit card and debit card transactions.
- iii. Contractor shall provide detail accounting of monies collected for parking from City meters, website payments and lockbox (mail-in) payments.
 - iv. Issue late notices for overdue payment of citations and provide follow-up collection in accordance with Florida Statute to include:
 - (1) Out of State Collections
 - (2) DMV Hold Requirement
 - (3) Scofflaw requirements and procedures (should the City choose to tow or boot).
 - v. Utilize automated technology such as license plate recognition (LPR) to issue citations and manage records of citations.

L. Office Administration

- i. In accordance with City Purchasing Ordinances, Contractor shall be responsible for purchasing all materials necessary to carry out all operational functions. These include but are not limited to paper tickets, ticket books, envelopes, uniforms, office equipment and supplies, and all other necessary equipment.
- ii. All purchases shall be accompanied by receipts. Contractor shall maintain records of equipment and supplies and provide accounting to City. All purchases submitted for reimbursable must have been acquired in accordance with City Purchasing Ordinances.

M. Personnel Administration

- i. While on duty, parking enforcement personnel shall demonstrate high ethical standards of conduct and observe all written rules and regulations of Contractor concerning their work assignments. Contractor's written rules and regulations must be in accordance with City ethical and personnel conduct policies.
- ii. Administer a Florida Department of Law Enforcement criminal background check, 10-panel drug screening, and alcohol testing on all new employees and whenever there is reasonable suspicion or an incident in which an employee appears to be impaired, as allowable by Law. At Contractor's expense, Contractor shall conduct such background checks, drug screening, and alcohol testing and provide proof results to the City. Individuals with felony criminal charges, who are on the FBI Terrorist watch list, or who fail the drug or alcohol testing will not be approved to provide on-site services for the City.
- iii. Supervisors will maintain communications with on-duty field personnel to ensure oversight of parking enforcement activities.
- iv. At Contractor's expense, Contractor shall bond all personnel who handle City monies.
- v. Contractor shall ensure that all enforcement, cashier, and parking collection personnel wear uniforms and are neatly groomed while on duty. The uniform

- must be pre-approved by the City and shall display approved insignia or logo that clearly identifies the wearer as an employee of Contractor and being responsible for enforcing parking violations, managing parking facilities or servicing parking meters. The uniform shall include a nametag bearing the name of the personnel which shall be clearly visible and readable at all times.
- vi. All other employees of Contractor providing services to the City shall at all times be clearly identifiable by uniform, name badges, name tags, or identification cards.
 - vii. Contractor shall employ persons who are fully certified, trained, and qualified with the skills and experience necessary to provide the services during the term of this Agreement.
 - viii. Contractor's personnel assigned to provide services are employees of Contractor. Contractor is responsible for hiring, training, supervising of its personnel.
 - ix. Contractor shall at all times ensure that its personnel serve the public in a courteous, helpful, and impartial manner. Correction of any inappropriate behavior or language shall be the responsibility of Contractor.
 - x. The City, at its sole discretion, reserves the right to require Contractor to make staffing adjustments to meet demand, including the number of service hours per day.
 - xi. Upon request by the City, Contractor shall remove any personnel from the provision of services to the City.
 - xii. Contractor shall acknowledge the receipt of any public complaint or request for service to the individual making the complaint or request within one City business day outside the normal appeal process.
 - xiii. Contractor shall provide an appropriate response to the individual making the complaint or request with three City business days from the date the communication was received.
 - xiv. In the event a complaint or communication is received alleging an employee of Contractor was discourteous, belligerent, profane, or in any way intimidating, either physically or verbally, Contractor shall submit a written report to the Chief Parking Manager within seven calendar days of the date of the report, outlining the complete details of the incident. The report will include the nature of the incident, time, date, location, name, address, and telephone number of the Individual making the allegation. The report will also include the name and title of the employee and the nature of the corrective action was taken. All such records shall be retained during the term of this Agreement and made available to the City upon request.

N. Training and Customer Service

- i. Contractor shall employ personnel that exhibit a friendly, helpful, customer-oriented image at all times while on duty.
- ii. Provide customer service training to all personnel that is in accordance with industry best practices. The training must be pre-approved by the City.

- iii. Provide training to all personnel so they are equipped with general information about the City and can assist visitors.
- iv. In accordance with the City's customer service principles, respond to public inquiries about the parking enforcement services, ticketing and enforcement, or any other related concerns.
- v. Assist the City with public outreach and marketing regarding the parking program, rules and regulations.

O. Safety

- i. Contractor shall execute practices and strategies to promote the safety and security of personnel and property.
- ii. Contractor shall provide training to all personnel in applicable safety precautions and safety devices required for the provision of services.

P. City's Rights and Responsibilities

- i. The City may adjust the geographic locations and any other criteria for enforcement activities at its sole discretion.
- ii. The City, at its sole discretion, shall define the hours of enforcement.
- iii. Equipment and supplies paid for by City, or for which the City reimburses Contractor, shall become property of City.
- iv. The City, at its sole discretion, reserves the right to adjust the number of parking meters and spaces at any time during the Agreement.
- v. The City will provide an office for Contractor to be utilized for the provision of services including the services of subcontractors, if applicable. The office will be located in the Old School garage. Contractor must provide the City with an accessible means to communicate and coordinate with its on-site management and supervisory staff.

Q. Reimbursable Operating Expenses

The City will reimburse Contractor for all approved expenses as determined by the City and outlined in the approved annual budget as set forth in Exhibit D. Contractor shall submit a monthly expense report and include supporting documentation for expenses. The City will reimburse actual expenses with no surcharges. Requests for reimbursement of approved expenses must accompany each monthly invoice for services.

R. Annual Budget Process

By March 31st of each year, Contractor shall submit a detailed budget in the format requested by the City outlining all anticipated expenses and revenue for the following fiscal year. For budget preparation and reporting purposes, the Proposer shall follow the City's fiscal year, which starts October 1 and ends September 30.

S. Parking System

The parking management system should include the following:

- i. Provides data for decision-making including real-time status and historical data.
- ii. Real-time parking enforcement App that reports violations.

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EXHIBIT B
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP No. 2016-107

Project Title: Comprehensive Parking
Management Services

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR 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 CONTRACTOR.

Dated _____, 20____

Contractor

By _____
(Signature)

By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

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 of person taking acknowledgment)

(Name of officer taking acknowledgment)
Typed, printed, or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

EXHIBIT C
INSURANCE REQUIREMENTS

Contractor shall submit to the Purchasing Department and receive approval of insurance certificates within 10 days of final execution of the Agreement.

Contractor shall carry the following minimum types of insurance:

- A. Workers' Compensation Insurance: with the statutory limits.
- B. 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.
- C. 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 Comprehensive General Liability 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.

- D. Automobile Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence.
- E. Commercial Crime Liability: with limits of not less than one million (\$1,000,000) dollars per occurrence.

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 A- or better. All insurance policies shall name the City of Delray Beach as an additional insured. Contractor 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 Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

EXHIBIT D

FEE SCHEDULE INCLUDING ANNUAL MANAGEMENT FEE AND REIMBURSABLE EXPENSES

The following fees and expenses shall be all inclusive to provide comprehensive parking management services in accordance with the requirements set forth in this Agreement.

I. ANNUAL MANAGEMENT FEE

a. The City shall pay Contractor an Annual Management Fee of \$30,000. This fee shall remain firm for the initial three-year term of the Agreement.

b. This flat fee represents the costs associated with the following services including but not limited to:

- Administration and management services such as payroll, accounting, and developing annual budget
- Parking consulting services, which includes providing parking data, analysis and recommendations to the City in the following areas:
 - Parking designs
 - Expansion of parking system
 - Traffic flow and control
 - Bikeway planning and design
 - Wayfinding signage
 - Assist the City in realizing the potential for the parking system
 - Marketing and public relations services including developing cooperative marketing opportunities between downtown business and parking.

c. On the first day following the end of the initial term of the Agreement and on the first day of each renewal term thereafter, the City may, in its sole discretion, increase the Annual Management Fee for the forthcoming year. The percentage increase in the annual Management Fee if any, shall be based on performance and shall not exceed the lesser of (i) three percent (3%) per annum, or (ii) the percentage increase in the Bureau of Labor Statistics ECI, Management, professional and related occupations Series ID CIU201S000100000A in most recent 12 month period. Written notice of any such increase shall be given to the City not less than sixty (60) calendar days prior to the renewal term for which an increase is sought.

II. REIMBURSABLE COSTS AND EXPENSES

The Reimbursable Costs and Expenses shall mean all preapproved budgeted operating expenses incurred by the Contractor in the performance of the Scope of Services. Reimbursable expense are separate from, and in addition, to the Annual Management Fee.

A. Equipment Costs

1. Equipment Costs shall mean all equipment used by Contractor that is reasonably necessary to perform the Scope of Services described in Exhibit A. Such items shall include, but not be limited to:

- License plate recognition equipment including software and related licenses
- Parking collections equipment, including bill counter and coin sorter
- Parking enforcement vehicles, handheld enforcement devices, and parking boots
- Garage maintenance equipment
- Any additional equipment approved

2. Contractor shall be responsible for purchasing, installing, and upgrading equipment as required.

3. For equipment purchased in the first year of the Agreement, the City shall pay the total cost of the purchase, including taxes and shipping, in an amount not to exceed One Hundred and Twenty Five Thousand (\$125,000) amortized over a 36-month period at an interest rate of 6.99 percent, with such payment not to exceed Three Thousand Eight Hundred and Fifty Nine dollars and Seventeen cents (\$3,859.17) per month. For equipment purchased in the second and third year of the term payment schedule, the City, at its sole discretion, shall pay Contractor the total cost in a one-time payment or in an amount amortized to the end of the initial term of the contract.

4. All Equipment purchased by Contractor to perform the Scope of Services shall become property of the City upon termination of this Agreement or any extensions thereto. Upon termination of this Agreement and upon City's full payment of the equipment, Contractor shall deliver a bill of sale conveying absolute ownership of the equipment to the City, free and clear of all liens and encumbrances.

B. Operating Costs and Expenses

1. Operating Costs and Expenses shall mean the ordinary direct operating expenses to perform the Scope of Services, with the exception of Equipment Costs, and shall not exceed Five Hundred and Eighty Thousand Dollars (\$580,000) per year.

2. Within thirty (30) Calendar days after the Commencement date, the Contractor shall prepare and submit to the City an operating budget for the first partial

year of the contract using a form approved by the City. Thereafter, and in accordance with the City budget schedule and Section R of the Scope of Services, the Contractor shall prepare and submit to the City an annual operating budget for the each of the following fiscal years (October 1 to September 30) using a form approved by the City. This budget shall be approved by the City Commission as a line item in the City's annual budget.

3. The City may, in its sole discretion, deny reimbursement of any purchases that are not included in the annual operating budget approved by the City or that have not been otherwise approved by the City prior to purchase as provided in this Agreement.

4. Annual operating budget may be increased or decreased by the City but only if and to the extent that the City, in its sole discretion, deems such revisions necessary and appropriate under this Agreement.

(The remainder of this page is intentionally left blank.)

EXHIBIT E

After completion of the first full fiscal year of the Agreement, the Contractor may earn additional financial compensation on its performance of the Agreement ("Performance Bonus"). The Performance Bonus shall be based on the Contractor's performance in the preceding full fiscal year and shall not exceed Five Thousand Dollars (\$5000) per year.

1. Performance Measures

The Performance Bonus amount shall be based on the results of an annual evaluation performed by the City Manager or his or her designee, and shall be based on the following performance measures:

a) **Collection Rate:** This performance measure calculates the percentage of monies collected from parking citations within 90 days of citation issuance.

b) **Gross Revenue:** This performance measure is based on the percentage of the actual gross revenue collected compared to the gross revenue projected in the annual budget for the prior fiscal year.

c) **Annual Survey:** This performance measure is based on the percentage of maximum points Contractor scores on the comprehensive audit from the preceding fiscal year. This audit is conducted by the Lanier Parking independent audit group ("the Annual operational audit") and reviews the following factors:

- I. Revenue Reporting
- II. Cash Security and Equipment
- III. Record and Administration

2. Scoring

The Performance Bonus for each performance measure will be determined by applying a percentage to the available award for the respective measure. The Chart below sets out the performance target ("Range") compared to the percentage of bonus ("%") and correlating monetary amount ("value").

Bonus Value		\$ 5,000
Collection Rate		
Range	%	Value
up to 49%	18.333%	\$ 916.65
50-54.9%	23.333%	\$ 1,166.65
55-59.9%	28.333%	\$ 1,416.65
>60%	33.333%	\$ 1,666.65
Gross Revenue		
Range	%	Value
10-14.9% of Forecast	18.333%	\$ 916.65
15-19.9%	23.333%	\$ 1,166.65
20-24.9%	28.333%	\$ 1,416.65
>25%	33.333%	\$ 1,666.65
Annual Survey		
Range	%	Value
>15%	18.333%	\$ 916.65
10-14.9%	23.333%	\$ 1,166.65
5.01-9.99%	28.333%	\$ 1,416.65
5% or less	33.333%	\$ 1,666.65
Maximum Bonus		
Level 1	55%	\$ 2,750
Level 2	70%	\$ 3,500
Level 3	85%	\$ 4,250
Level 4	100%	\$ 5,000

3. Performance Report

The Contractor shall submit a Performance Report and supporting documentation to the City Manager, or his or her designee, forty-five (45) calendar days after the end of the fiscal year. The City Manager, or his or her designee, shall review the Performance Report and provide its scoring and comments within thirty (30) days of receiving the report.