

## **STANDARD CITY CONTRACT**

### **MASTER CONTRACT FOR PRODUCTS AND SERVICES – THE CITY OF KANSAS CITY, MISSOURI**

**CONTRACT NO.: EVP3574**

**TITLE/DESCRIPTION: INTEGRATED PARKING MANAGEMENT SYSTEM**

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THIS Contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("CITY"), and **PayByPhone US Inc.**, ("CONTRACTOR" or "PAYBYPHONE").

**Sec. 1. The Contract and Order of Precedence.** The Contract between the CITY and CONTRACTOR consists of the following Contract Documents in the following order of precedence:

- (a) Any Contract Amendment executed by the CITY and CONTRACTOR by mutual agreement;
- (b) Any Contract Modification executed by the CITY to renew the Contract only;
- (c) This Master Contract for Products and Services;
- (d) Attachment A – Scope of Work.

All documents listed in this Section 1 shall be collectively referred to as the "Contract Documents" and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms "Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Contract and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents."

Attachment A: Scope of Work  
Attachment B: Pricing

### **Sec. 2. Initial Term of Contract and Additional Periods.**

- (a) **Initial Term.** The initial term of this Contract shall begin on **February 1, 2025** and shall end on **January 31, 2028**. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.
- (b) **Renewal Terms.** At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to three (3) additional one (1) year terms.
- (c) **Transition Term.** Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract

for a reasonable period of time until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract.

**Sec. 3. Compensation.** CITY agrees that, at any time during the Term, CONTRACTOR may charge any user a non-embedded, on-top of price of parking service fee ("PBP User Service Fee") per Transaction (defined in Attachment B) and may set the amount of the PBP User Service Fee at its discretion. At the time of entering into this Agreement, the PBP User Service Fee, per Transaction, is equal to (a) for on street parking, \$0.65, (b) for ungated off-street parking, \$1.00, for (c) for gated off-street parking, \$1.35. The parties acknowledge that the amount of the PBP User Service Fee for gated parking is higher, in part to account for the fees charged by the gated parking integration service provider to CONTRACTOR and related integration costs. CONTRACTOR will provide CITY with 30 day written notice of an increase in the amount of the PBP User Service Fee at any time during the Term. CONTRACTOR shall be responsible for any taxes applicable to the PBP User Service Fees. CONTRACTOR reserves the right to, in addition, charge the users any amounts to cover taxes payable by CONTRACTOR with respect to the PBP User Service Fee or CONTRACTOR's obligations under this Agreement. CITY will be responsible for custom dynamic label fees if the CITY selects the custom dynamic label option listed in Attachment B – Pricing. t

#### **Sec. 4. Invoices.**

- (a) CONTRACTOR shall submit to CITY a request for payment (hereinafter "Invoice") for services performed in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable.
- (b) CITY shall not pay any Invoice from CONTRACTOR unless CONTRACTOR is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to CITY from CONTRACTOR may be determined.
- (c) CITY shall not process CONTRACTOR's Invoice unless CONTRACTOR's Invoice is in proper form, correctly computed, and is approved by CITY as payable under the terms of this Contract.
- (d) CITY is not liable for any obligation incurred by CONTRACTOR except as approved under the provisions of this Contract.
- (e) If CONTRACTOR is required to meet MBE/WBE goals for this Contract, CONTRACTOR shall not submit an Invoice to the City unless CONTRACTOR's Invoice is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted by CONTRACTOR to the City's Civil Rights and Equal Opportunity Department. CONTRACTOR shall remain current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports. CITY shall not pay CONTRACTOR's Invoice unless CONTRACTOR is current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports.

**Sec. 5. Representations and Warranties of CONTRACTOR.** CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.
- (c) CONTRACTOR shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

**Sec. 6. Survival of the Representations, Warranties and Covenants.** All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

**Sec. 7. Governing Law.** This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

**Sec. 8. Termination for Convenience.**

- (a) CITY may, at any time upon fifteen (15) days written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part. If CITY shall terminate this Contract for convenience during the Initial Term, the CITY shall reimburse the CONTRACTOR for its signage costs. The reimbursement will be prorated based on the proportion of the Initial Term remaining at the time of termination relative to the full Initial Term.
- (b) CONTRACTOR may, at any time upon thirty (30) days written notice to CITY specifying the effective date of termination, terminate this Contract, in whole or in part, in the event of a materially

adverse regulatory change that impacts the Contract or PayPal terminates its contract with CONTRACTOR through no fault of the CONTRACTOR.

#### **Sec. 9. Default and Remedies.**

- (a) If CONTRACTOR shall be in default or breach of any provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR thirty (30) days written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in default or breach of any provision of this Contract, CONTRACTOR may terminate this contract or suspend CONTRACTOR's performance after giving CITY thirty (30) days written notice and opportunity to cure such default or breach.

**Sec. 10. Waiver.** Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

**Sec. 11. Acceptance.** No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

#### **Sec. 12. Records.**

- (a) For purposes of this Section:
  - 1. "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department, the City Manager, the City department administering this Contract and their delegates and agents.
  - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.
- (c) The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil

Rights and Equal Opportunity Department and the City department administering this Contract within ten (10) days after the written request is made.

**Sec. 13. Reserved.**

**Sec. 14. Tax Compliance.** If the CITY's payments to CONTRACTOR exceed \$160,000.00 for the period of May 1st through April 30th, CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

**Sec. 15. Buy American Preference.** It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

**Sec. 16. Notices.** All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY:           Attention Procurement Services  
                                  General Services Department  
                                  414 East 12th Street, 1st Floor, Room 102 W  
                                  Kansas City, Missouri 64106  
                                  [ps-purchasing@kcmo.org](mailto:ps-purchasing@kcmo.org)

With copies to:           Matthew J. Gigliotti, Esq.  
                                  City Attorney  
                                  Law Department of Kansas City, Missouri  
                                  414 East 12th Street, 23rd Floor  
                                  Kansas City, Missouri 64106  
                                  Telephone: (816) 513-3153

If to the CONTRACTOR: (INSERT Name and Complete Address)



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complete

## **Sec. 17. General Indemnification.**

- (a) For purposes of this Section only, the following terms shall have the meanings listed:
  - 1. Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the CITY in the enforcement of this indemnity obligation.
  - 2. CONTRACTOR's Agents means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
  - 3. CITY means CITY, its Agencies, its agents, officials, officers and employees.
- (b) CONTRACTOR's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- (c) CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of CITY. CONTRACTOR is not obligated under this Section to indemnify CITY for the sole negligence of CITY.
- (a) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

**Sec. 18. Indemnification for Professional Negligence.** If this contract is for professional services, CONTRACTOR shall indemnify, and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by CONTRACTOR, its employees, agents, subcontractors, or caused by others for whom CONTRACTOR is liable, in the performance of professional services under this Contract. CONTRACTOR is not obligated under this Section to indemnify CITY for the negligent acts of CITY or any of its agencies, officials, officers, or employees.

## **Sec. 19. Insurance.**

- (a) CONTRACTOR shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. CONTRACTOR must have:
  - 1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
    - a. Severability of Interests Coverage applying to Additional Insureds

- b. Contractual Liability
  - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000
  - d. No Contractual Liability Limitation Endorsement
  - e. Additional Insured Endorsement, ISO for CG20 10, current edition, or its equivalent
- 2. Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
- 3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by CONTRACTOR.
- 4. If this Contract is for professional services, CONTRACTOR shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- 5. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
- 6. Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
  - a. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the CONTRACTOR. If not covered under the CONTRACTOR's liability policy, such "property" coverage of the Agency may be endorsed onto the CONTRACTOR's Cyber Liability Policy as covered property.:
  - b. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

7. Commercial crime insurance policy with a limit of \$3,000,000.00 per occurrence that includes coverage for employee dishonesty.

- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
- (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
- (d) All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of A-, V or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- (e) Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.
- (f) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

## **Sec. 20. Interpretation of the Contract.**

- (a) CITY selected CONTRACTOR through a negotiated procurement process rather than an Invitation for Bids (IFB) solicitation. Unlike the IFB, this process allows the CITY and CONTRACTOR to discuss and negotiate a contract at arms length prior to entering a final contract that is acceptable to both the CITY and the CONTRACTOR. After negotiation and discussion, CONTRACTOR and CITY have incorporated multiple documents into this Agreement and the meaning of some of the words used in the Agreement may be uncertain, incomplete or duplicative and the Agreement may promise something at one place and take that promise away at another. In sum, the Agreement may contain words and provisions that are susceptible of more than one meaning so that reasonable persons of average intelligence may fairly and honestly differ in their construction of the words and provisions. It is the intent of the CITY and the CONTRACTOR that the CITY's taxpayers receive the benefit or advantage in the construction and interpretation of this Agreement, regardless of the normal judicial rules of contract construction even if the construction and interpretation of the Agreement will cost the CONTRACTOR more money and time. CITY and CONTRACTOR agree that CITY's Manager of Procurement Services shall resolve all disagreements as to the meaning of this Agreement or any ambiguity in this Agreement, in favor of the CITY and its taxpayers even if it will cost the CONTRACTOR more money and time. The decision of CITY's Manager of Procurement shall be final and conclusive if the Manager of Procurement Services acted in good faith.



- (b) CONTRACTOR acknowledges and agrees that the CITY has provided CONTRACTOR with an opportunity to have CONTRACTOR's attorney review and advise CONTRACTOR on the Agreement and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of CONTRACTOR agreeing to this Section as well as the entire Agreement. CONTRACTOR certifies that CONTRACTOR has provided the CITY written notice of all ambiguities, conflicts, errors or discrepancies that it has discovered in the Agreement and the written resolution thereof by the CITY as embodied in this final Agreement is acceptable to CONTRACTOR.
- (c) CONTRACTOR certifies that CONTRACTOR has either (1) waived its right to have CONTRACTOR's attorney review this Section and Agreement; or (2) CONTRACTOR has consulted with an attorney on this Section and Agreement.
- (d) CONTRACTOR knowingly and voluntarily agrees to this Section and the entire Agreement. CONTRACTOR certifies that this contract was not procured by fraud, duress or undue influence.

**Sec. 21. Contract Execution.** This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

**Sec. 22. Reserved.**

**Sec. 23. Assignability and Subcontracting.**

- (a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.
- (b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

**Sec. 24. Professional Services – Conflict of Interest Certification.** If this Contract is for professional services other than for medical doctors or appraisers, CONTRACTOR certifies that CONTRACTOR is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

**Sec. 25. Intellectual Property Rights.**

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

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

25.1.3 Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance.

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

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

25.1.5 CONTRACTOR shall indemnify the CITY against all actions, claims, proceedings, costs and expenses (including reasonable legal fees) arising from any actual infringement of Intellectual Property rights of whatever nature insofar as these relate to the Intellectual Property rights developed and owned by the CONTRACTOR or licensed to the CITY which claims, actions or proceedings arise as a result of the City’s use of any of the services

25.1.6 At the CONTRACTOR’s request and expense, the CITY shall permit the CONTRACTOR to conduct all negotiations and litigation. The CITY shall give all assistance as the CONTRACTOR may reasonably request and the CONTRACTOR shall pay the CITY’s costs and expenses so incurred.

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

## **26.1 CITY Information**

26.1.1 “CITY Data” means all data provided directly by the CITY to PayByPhone in relation to this Agreement, including CITY’s parking rates, CITY’s identifiers for Parking Locations and parking stalls, merchant account information, enforcement equipment and practices, and parking policies.

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

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

## **26.2 Customer Information**

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

26.2.2 In using, sharing, or otherwise processing Transaction Data, PayByPhone and CITY must comply with applicable data protection laws, privacy laws including Federal Law, Missouri State Law (including Missouri Department of Revenue Laws and the Missouri Sunshine Laws), contractual obligations and any other applicable Federal, State and Local requirements. Each party is responsible to the PayByPhone service users and other third parties for its respective use, sharing and processing of Transaction Data, whether it performs such use, sharing and processing directly or through third parties. Each party acts as a “data controller” with respect to Transaction Data for the purposes any privacy legislation that uses that concept and is applicable to the party’s activities. Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with the applicable data protection laws.

26.2.3 Any information about or with respect to PayByPhone service users that is not related to parking sessions at the Parking Locations, including without limitation, information provided by users upon registration for a PayByPhone account and data about the user’s activity in the PayByPhone account or

the PayByPhone applications ("User Profile Data") shall be exclusively owned by PayByPhone. PayByPhone shall retain exclusive ownership of all rights in any derivative data it develops based on Transaction Data and User Profile Data.

## **26.3 PayByPhone's Services to Customers**

26.3.1 The parties acknowledge that PayByPhone service users hold the PayByPhone account and/or use PayByPhone services under terms of service established by PayByPhone. Under these PayByPhone terms of service and any additional terms of use, PayByPhone, its affiliates, or its partners may offer users various services and products, including, but not limited to, insurance products, services related to electric vehicle charging, and any other product or service that may be developed in the future. With exception of notice to CITY being required prior to implementation of any new services that result in charges being added with respect to a Transaction, CITY acknowledges and agrees that nothing in this Agreement shall limit or restrict PayByPhone's ability to offer users any add-on services and products at PayByPhone's sole discretion. Except as otherwise expressly set forth in this Agreement, CITY shall not receive any fees in relation to PayByPhone's provision of any add-on services and products to the PayByPhone users.

26.3.2 PayByPhone may offer users an option to receive service communications by SMS text ("SMS Communications"), including reminders to extend a parking session and confirmations of successful registration for a parking session. CITY agrees that, at any time during the Term, PayByPhone may charge any users who opt into these services a fee ("PBP SMS Fee") for each SMS Communication sent by PayByPhone with respect to an initial parking session or extension of a parking session and may set the amount of the PBP SMS Fee with reference to the cost PayByPhone incurs in delivering this optional service. At the time of entering into this Agreement, the PBP SMS Fee is equal to \$0.20, inclusive of taxes payable by the user. PayByPhone will provide CITY with 30 day written notice of an increase in the amount of the PBP SMS Fee. PayByPhone shall be responsible for any taxes applicable to the PBP SMS Fees.

26.3.3 PayByPhone records will be conclusive evidence with respect to the amount of PBP SMS Fees collected during a billing period. The PBP SMS Fees will be added to the total charged to the user in respect of a parking session or extension of a parking session.

## **26.4 Confidentiality**

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

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

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

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

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it.

**Sec. 27. Minority and Women's Business Enterprises.** CITY is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent possible in the performance of CITY contracts. If M/WBE participation goals have been set for this Contract, CONTRACTOR agrees to comply with all requirements of City's Minority and Women's Business Enterprise Program as enacted in CITY'S Code Chapter 3 Sections 3-421 through 3-469 and as hereinafter amended. CONTRACTOR shall make its good faith efforts in carrying out this policy by implementing its Contractor Utilization Plan. If CONTRACTOR fails to achieve the M/WBE goals stated in its Contractor Utilization Plan, as amended, the CITY will sustain damages, the exact extent of which would be difficult or impossible to ascertain or estimate at the time of execution of this contract. Therefore, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals set forth in this Contractor Utilization Plan, as amended, and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the CONTRACTOR'S payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director of City's Human Relations Division, unless the Director determines that the CONTRACTOR acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the CONTRACTOR, the M/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director, is not met.

**Sec. 28. Employee Eligibility Verification.** CONTRACTOR shall execute and submit an affidavit, in a form prescribed by the CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to verify

information of newly hired employees, under the Immigration and Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. For those CONTRACTORs enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. CONTRACTOR shall submit the affidavit and attachments to the CITY prior to execution of the contract, or at any point during the term of the contract if requested by the CITY.

## **Sec. 29. Emergencies.**

- (a) Disaster means any large scale event such as an act of terrorism, fire, wind, flood, earthquake or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.
- (b) During and after a disaster, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR's facilities even on nights and weekends as necessary to meet the needs of the City during a disaster.
- (c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR's hours of operation during a disaster. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases made by CITY during the disaster and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during a disaster.
- (d) CONTRACTOR shall quickly mobilize CONTRACTOR's internal and external resources to assist CITY when a disaster unfolds.
- (e) Extended hours and personnel. During disasters, CONTRACTOR's facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR's Call Center shall accept phone orders 24 hours a day.
- (f) CONTRACTOR shall have contingency plans with CONTRACTOR's suppliers to provide additional supplies and equipment quickly to CITY as needed.
- (g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).

## **Sec. 30 Reserved**

**Sec. 31. Time of Delivery.** Delivery is required to be made in accordance with the schedule shown in the solicitation and purchase order.

## **Sec. 32. Reserved**

### 33. Merchant Account

33.1.1 CITY agrees to designate PayByPhone as the merchant of record with respect to any fees paid by customers to CITY through the PayByPhone mobile payment service, including without limitation parking fees. CITY acknowledges that all funds collected from customers through the PayByPhone mobile payment service under this Agreement will be sent by CONTRACTOR's acquirer to CONTRACTOR's licensed service provider, PayPal, Inc. ("PayPal") and that CITY will be receiving any fees paid by customers to the CITY from PayPal. CITY acknowledges that it has reviewed the terms and conditions and privacy policy published by PayPal in connection with disbursement of funds related to this Agreement at <https://docs.hyperwallet.com/content/onboarding/v1/requirements/integration-requirements#display-hyperwallet-terms-of-service-and-privacy-policy> and <https://docs.hyperwallet.com/content/onboarding/v1/requirements/legal-disclosures-requirement> respectively, agrees to their terms and further agrees to provide all required information and otherwise cooperate with PayPal to enable PayPal to disburse funds to CITY as described in this section.

33.1.2 CITY hereby acknowledges and agrees that payment of parking fees by customers to PayByPhone or its service providers pursuant to this Agreement shall be considered payment to CITY, satisfying and extinguishing any payment obligation of the customer to CITY as if the customer had paid to CITY directly. In the event that PayPal does not deliver payments of parking fees and any convenience fees to CITY, CITY's only recourse for payment shall be against PayByPhone and PayPal and not against a customer.

33.1.3 PayByPhone will, and will instruct its service providers accordingly retain the PBP User Service Fee, any other agreed upon costs payable to PayByPhone as described in Attachment AA, any applicable PBP SMS Fee and applicable taxes, all as described in Attachment A, and will remit parking revenue to CITY. Payment will be made in accordance with the instructions CITY provides to PayByPhone or PayPal (if provided by CITY directly) from time to time). PayByPhone will remit any amounts due to the CITY in arrears on a monthly basis, contingent upon passage of an ordinance by the City Council waiving Code of Ordinances Section 2-1615(c) requirement for daily deposits. PayByPhone shall provide the CITY with PayByPhone's standard monthly statements showing PayByPhone parking sessions, associated PBP User Service Fee and any applicable PBP SMS Fee.

33.1.4 PayByPhone retains the right, in the event of a materially adverse regulatory change, to discontinue as the merchant of record at any time, with thirty (30) days written notice to CITY. In such circumstance, PayByPhone shall use reasonable commercial efforts to secure another merchant of record solution for CITY.

33.1.5 **Security Deposit.** PayByPhone will provide a security deposit to the CITY in the amount of \$30,000 (the "Deposit") upon execution of the Agreement. The CITY acknowledges that PayByPhone retains a beneficial ownership interest in the Deposit and that the Deposit may not be used, assigned or encumbered by the CITY except as provided in the Agreement. The Parties agree that: (a) the CITY shall only have access to the Deposit funds if PayByPhone fails to remit any amounts due to the CITY in accordance with the Agreement and such remittance is still outstanding more than five (5) business days after the scheduled remittance date; (b) the CITY may use all or part of the Deposit equal to the outstanding remittance; and (c) use of the Deposit will satisfy PayByPhone's obligations with respect to the outstanding remittance. The CITY will give PayByPhone three (3) business days' notice of its intention to use the Deposit funds, giving PayByPhone the right to rectify any outstanding remittance prior to the CITY's use of Deposit funds. The Deposit shall be released to PayByPhone within a reasonable time upon

the earlier of: (a) the termination date of this Agreement; or (b) the date on which PayByPhone discontinues as the merchant of record. PayByPhone may, in its discretion, direct the CITY to satisfy all or part of any outstanding remittances from Deposit funds. In the event of a dispute regarding the Deposit, CITY will hold the Deposit in trust until the dispute is resolved under the terms of the Agreement. CITY shall maintain a record of the Deposit and will provide information related to the Deposit to PayByPhone from time to time, at PayByPhone's request.

**Sec. 34. Commercial Warranty.** The CONTRACTOR agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the CONTRACTOR gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the CITY by any other clause of this contract.

**Sec. 35. Reserved**

**Sec. 36. Tax Exemption - Federal and State.**

- A. The CITY is exempt from Federal Excise and Transportation taxes on purchases under Chapter 32, Internal Revenue Code. The federal tax registration number issued by the St. Louis District Director on November 11, 1974 is No. 43740340K.
- B. The CITY is exempt from payment of Missouri Sales and Use Tax in Accordance with Section 39(10) Article 3, of the Missouri Constitution and Sections 144.040 and 144.615 RSMo 1969 and supplement thereto. A copy of the exemption from Missouri Sales and Use Tax is available upon request.

**Sec. 37. Annual Appropriation of Funds.**

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.
- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the nonappropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.



**Sec. 38. Non-discrimination in Employment.** Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

**Sec. 39. Ban the Box in Hiring and Promotion.**

- (a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.
- (b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.
- (c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

**Sec. 40. Title VI of the Civil Rights Act of 1964.** Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source. Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

**Sec. 41. Quality Services Assurance Act.** If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

**Sec. 42. Anti-Discrimination Against Israel.** If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

**Sec. 43. Affirmative Action.** If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.
- (b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

**Sec. 44. Compliance with Laws.** Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Contractor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

**Sec. 45. Prevailing Wage.** If the Agreement exceeds \$75,000.00 and any of the Services performed by Contractor includes construction, reconstruction, improvement, enlargement, alteration, painting and

decorating, or major repair, that is subject to the Missouri Prevailing Wage Law (Section 290.210, RSMo – 290.340, RSMo), Contractor shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates the appropriate Wage Order. Contractor shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Contractor fails to notify the City.

## **Sec. 46 Reserved**

## **Sec. 47. Miscellaneous**

### **Sec. 47.1 Amendment**

All amendments to this Agreement shall be in writing. In the event CITY wishes to add new Parking Locations in addition to the Initial Parking Locations (the “Additional Parking Locations”) or to add parking spaces to an existing Parking Location, the amendment will be effective against both parties if it is in the form of email between implementation personnel of the parties and, effective the date of such email, the Attachment B will be read to include these Additional Parking Locations or parking spaces.

### **Sec. 47.2 No Agency**

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

### **Sec. 47.3 Severability**

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

### **Sec. 47.4 Force Majeure**

If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

### **Sec. 47.5 Captions**

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

### **Sec. 47.6 Agreement Approval**

Each party hereby represents and warrants that all necessary corporate and/or governmental approvals for this Agreement have been obtained, and the person whose signature appears below has the authority necessary to execute this Agreement on behalf of the party indicated.

**Sec. 47.7 CITY's Conduct of Business Through Affiliates**

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

**Se. 47.8 PCI-DSS: Payment Card Industry Data Security Standard**

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

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

**CONTRACTOR**

I hereby certify that I have the authority to execute  
this document on behalf of CONTRACTOR.

Contractor: \_\_\_\_\_

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

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

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

**APPROVED AS TO FORM**

\_\_\_\_\_  
Assistant City Attorney (Date)

**KANSAS CITY, MISSOURI**

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

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

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

## **Attachment A: Scope of Work**

### **Section 1 The PayByPhone Mobile Payment Platform And Applications**

#### **1.1 PayByPhone Mobile Payment Application**

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

#### **1.2 PayByPhone Management Information System**

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

#### **1.3 Computer, Networking and Telecommunication Systems**

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

#### **1.4 Mobile Payment Service Enforcement**

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

#### **1.5 Reports**

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

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

#### **1.6 PayByPhone Interactive Voice Response**

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

## Attachment B: Pricing

### PARKING FACILITIES AND METERED PARKING STALLS:

Parking facility located throughout Kansas City including 3,000 on street parking spaces.

Parking lots (4 ungated) located throughout Kansas City including 750 off street parking spaces.

Parking garages (5 gated) located throughout Kansas City including 5,000 off street parking spaces.

(together, “Initial Parking Locations”).

### PRICING:

All amounts are exclusive of any and all taxes, including taxes applicable on fees paid by driver.

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

| ITEM  | PRICE  |
|---|--|
| <b>ONE-TIME SETUP FEES</b>  |  |
| Signage – first round of signage production at service launch<br><b>(installation not included)</b> | Included (on the basis of 50% cost sharing with another mobile parking payment provider) |
| Training, consulting, marketing, and customer support as described in the Agreement                 | Included   |
| Mobile payment services setup fee for all Initial Parking Locations                                 | <del>\$1,500</del> Included  |
| Integration with enforcement solution software  | Included   |
| Standard PayByPhone city dynamic label  | Included   |
|   |  |
| <b>OPTIONAL FEES</b>  |  |
| Custom dynamic label  | \$1,000  |
|   |  |
|   |  |

|   |   |
|---|---|
|  | <del>Included</del> \$1,500<br>Included |
|   |   |

