



## PROFESSIONAL SERVICES AGREEMENT

### PARKER TECHNOLOGY SUBSCRIPTION SERVICE TERMS & CONDITIONS

THIS AGREEMENT (hereinafter "Agreement") is by and between the City of Columbia, Missouri (hereinafter "Client"), a municipal corporation whose address is 701 E. Broadway, Columbia, MO 65201 and Parker Technology, LLC (hereinafter "Parker"), a limited liability company with the authority to transact business within the State of Missouri and whose address is 212 West 10<sup>th</sup> Street, Suite B-120, Indianapolis, IN 46202, and is entered into on the date of the last signatory below (hereinafter "Effective Date").

**1. PURCHASE AND INSTALLATION OBLIGATIONS.** Client shall be responsible for the purchase and installation of the two-way audio/video and/or audio intercom communication equipment in connection with the parking access revenue control system (the "Parker System"). Parker does not guarantee the Parker System shall be "Live" until a successful two-way audio/video and/or audio intercom signal is established, as determined by Parker, between the Parker System and the centralized monitoring center established by Parker for the non-exclusive monitoring of Parker System (the "Monitoring Center") or the Parker System and Client's monitoring center. Parker therefore assumes no liability for any delay in the installation of the Parker System. If Client wishes Parker to receive calls in its Monitoring Center (the "Monitoring Services") and is so specified in the Agreement, the Client agrees that Parker's Monitoring Services are limited to responding to service inquiries initiated by patrons of the vehicle parking facilities owned and/or managed by Client (each a "Parking Facility") via the Parker System.

#### 2. TERM.

**2.1 Initial Term.** Parker shall provide the software and/or the Monitoring Services as described in the Agreement for a term of one (1) month beginning when the Parker System is "Live" (the "Initial Term"). The Parker System is considered "Live" when there is a successful two-way audio/video and/or audio intercom test connection, post installation, as determined by Parker.

**2.2 Renewal.** Thereafter the Initial Term, the Agreement shall automatically renew for successive one (1) month periods (each a "Renewal Term") (the Initial Term and each subsequent Renewal Term, collectively, the "Term") unless either party shall notify the other in writing of its intent not to renew the Agreement at least twenty (20) days prior to the expiration of the then-current Initial Term or Renewal Term, whichever applies. In no event shall the length of this Agreement exceed fifteen (15) years from Effective Date, except as authorized by formal amendment as provided for in this Agreement.

**2.3 Termination and Reconnection.** In the event Client does not pay all sums due under the Agreement when due or Client materially breaches the Agreement, Parker may terminate the Agreement upon five (5) days written notice if such non-payment or material breach remains uncured at the expiration of such five (5) day period. Such termination shall cause all amounts due or to become due under the Agreement to be immediately payable without further demand or notice, and Parker may reduce such debt to judgment and additionally shall have the right to collect costs, expenses, fees, penalties, reasonable attorneys' fees, plus interest on overdue amounts at the highest rate allowed by law. In the event the Monitoring Services are deactivated due to Client's delinquency in making payments, reactivation shall only occur after payment of all amounts due and a reconnection fee at the rate then in effect.

#### 3. MONTHLY SUBSCRIPTION FEE.

**3.1 Monthly Fee, Payments and Billing.** The monthly subscription fee for each Parking Facility is set forth in the Pricing Guide, attached hereto as **Exhibit 1** and made a part of this Agreement. Parker shall invoice the Client in writing on a monthly basis for the services that have been rendered and at prices consistent with the Pricing Guide in effect at the time of the services. Client agrees to pay all uncontested amounts of an invoice within thirty (30) days of its receipt. Client expressly reserves the right to disapprove in whole or in part a request for payment where the service rendered are not performed in a timely or satisfactory manner. If an amount of invoice is contested, then Client shall notify Parker in writing within twenty (20) days of receipt of the invoice. Within this written notice, Client shall provide the reasoning for Client's Disapproval. Client shall either (a) cure the error in the invoice and resubmit it, or (b) respond in writing justifying its position. If a cure cannot be reached, then the Parties may mutually reach an agreement as to an acceptable alternative. Both Parties agree that the Pricing Guide shall change from time to time so long as Parker provides ninety (90) days' notice in writing to Client.

**3.2 NOT TO EXCEED AMOUNT.** It is expressly understood by both Parties that in no event shall the total amount to be paid by Client under this Agreement exceed THIRTY-SEVEN THOUSAND EIGHT HUNDRED FORTY EIGHT THOUSAND DOLLARS (**\$37,848**) PER FISCAL YEAR OF CLIENT, unless otherwise agreed to by both Parties in writing and executed as an amendment to this Agreement.

#### 4. PROPRIETARY RIGHTS.

**4.1 Reservation of Rights/Improvements.** Subject to the limited rights expressly granted in the Agreement, Parker reserves all rights, title and interest in and to the Parker System, including all related intellectual property rights. No rights are granted to Client other than as expressly set forth in the Agreement. Parker shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the software and programs used to provide the Monitoring Services including any new programs, upgrades, modifications or enhancements developed by Parker or Client in connection with rendering the Parker System to Client, even when refinements and improvements result from Client's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in Parker by virtue of the Agreement or otherwise, Client hereby transfers and assigns to Parker all rights, title, and interest which Client may have in such refinements and improvements.



4.2 Restrictions. Client shall not (a) modify, copy or create derivative works based on the Parker System; (b) reverse engineer or decompile the Parker System; or (c) access the Parker System in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Parker System.

#### 5. CONFIDENTIALITY.

Client is subject to the open records provisions of Missouri Revised Statutes Chapter 610, Governmental Bodies and Records (hereinafter "Missouri Sunshine Law"). Both Parties agree and understand that this Agreement shall be interpreted in accordance with provisions of the Missouri Sunshine Law, as amended. If Parker provides any documents to Client that Parker reasonably believes to be a closed record under the Sunshine Law, specifically RSMo § 610.021 (including but not necessarily limited to records relating to scientific technological innovations in which Parker has a proprietary interest), then Parker shall conspicuously mark such records to be "confidential" or "proprietary". If Client receives an open records request for any such records marked by Parker as "confidential" or "proprietary", then Client will notify Parker as soon as practical after the request to provide Parker with an opportunity to protect such documents from public disclosure. Both Parties agree and understand that this Agreement, including all of its terms and conditions as well as the pricing are open records under the Missouri Sunshine Law.

6. INTERNET. The signals from the Client's Parker System are transmitted to Parker's Monitoring Center or to Client's own monitoring center over the Internet via the Parker System. In the event that the Internet connection is disconnected, or otherwise interrupted, signals from the Client's Parker System will not be received at Parker's Monitoring Center or Client's monitoring center. Under such circumstances, Parker shall have no obligation to provide Monitoring Services under the Agreement. Client's Internet connections are wholly beyond the control of Parker and are maintained and serviced solely by the Client's Internet provider.

7. CLIENT OBLIGATIONS. The Client agrees to use Parker System only during the specified hours as directed by Client. Client shall notify Parker as soon as commercially reasonable if the Parker System is not working properly. The Client shall not license, sublicense, sell, resell, distribute, or otherwise commercially exploit or make the software used in connection with the Parker System or the Monitoring Services or otherwise provided by Parker to the Client related to the Agreement available to any third party for use in connection with such third party's respective vehicle parking facility, unless and only so long as the Client is a party to a written management agreement with such third party to manage such third party's respective vehicle parking facility.

8. DAMAGE TO SYSTEM. If the Client's Parker System ceases to function properly (as determined in the sole discretion of Parker), Parker may choose to suspend its Monitoring Services under the Agreement until the Client's Parker System is fixed or the condition is corrected (a "Suspension Period"). If Parker elects to suspend its Monitoring Services, it will first notify the Client of the suspension with a five (5) days written notice. Parker shall have no liability to Client for any loss or damage whatsoever incurred in connection with a suspension or Suspension Period. Parker will refund or credit the Client the portion of fees covering such Suspension Period on a prorated basis.

9. DISCLAIMER OF SECURITY SERVICES. Parker's obligations in connection with the management, operation, and promotion of the Parker System and employment of persons in connection therewith do not include the rendition of service, supervision, or furnishing of personnel in connection with the safety and/or security of property, employees, tenants, Client, or other persons within and about the Parking Facility. Parker is not and does not have knowledge or expertise as a guard, security service, or an emergency service, medical, security, or otherwise, and does not employ personnel for that purpose, nor do Parker's employees undertake the obligation to guard or protect Client against the acts of third parties. Client shall determine, at Client's discretion, whether and to what extent any precautionary warnings, security devices, or security services may be required to protect patrons and/or property in and about the Parking Facility.

#### 10. LIMITATION OF LIABILITY.

10.1 Limitation of Liability and Disclaimer of Warranties. Client agrees that: (a) Parker does not represent or warrant that monitoring the Parker System will prevent any loss, damage or injury to person or property from any cause whatsoever; (b) Parker's only obligation in connection with the Monitoring Services is to monitor a system designed to enhance Client service at the Parking Facility; and (c) Parker's obligations under the Agreement are unrelated to the value of any property located on Client's premises or any personal injury that might occur. PARKER HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS OTHERWISE SET FORTH IN THE AGREEMENT.

TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR DAMAGES DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PARKER'S LIABILITY FOR DAMAGES OF ANY TYPE RELATED TO OR ARISING OUT OF THE WORK SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS (\$15,000), WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR ANOTHER THEORY OF LIABILITY. THIS LIMIT DOES NOT APPLY, AND IS INDEPENDENT TO, PARKER'S HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT.

10.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. INDEMNIFICATION. To the fullest extent not prohibited by law, Parker shall indemnify and hold harmless Client, its directors, officers, agents and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise of Parker, of any subcontractor (meaning anyone including but not limited to consultants having a contract with Parker or a subcontractor for part of the services) of anyone directly or indirectly employed by Parker or by any subcontractor, or anyone whose acts



Parker or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Parker to indemnify, hold harmless, or defend Client from its own negligence.

## 12. GENERAL TERMS.

12.1 Neither Party may assign its interest under the Agreement without the written consent of the other Party.

12.2 If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under the Agreement, that party shall give to the other party prompt notice of the force majeure with reasonably full particulars concerning it. Thereupon the obligations of the party giving notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The affected party shall use all reasonable diligence to remove the force majeure as quickly as possible. The term “force majeure” shall mean any cause, which is not reasonably within the control of the party claiming suspension, but specifically excludes any payment obligation.

12.3 This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

12.4 All notices under the Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by email. Notices to Parker shall be addressed to the attention of Brian Wolff, Parker Technology LLC, 212 W. 10th St., Suite B-120, Indianapolis, IN 46202. Notices to Client shall be to the attention of City Purchasing Agent, City of Columbia, MO, 701 E. Broadway, Columbia, MO 65201. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least ten (10) days prior written notice thereof, any party hereto may from time to time and at any time, change its notice address hereunder.

12.5 No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representatives of the applicable Party or Parties.

12.6 In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.

12.7 The Agreement constitutes the entire agreement between the parties with respect to the subject matter therein, supersedes all prior agreements, whether written or oral, and supersedes and merges all prior discussions between the parties.

12.8 Parker shall comply with Missouri Revised Statute Section 285.530 in that Contractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Parker shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Contractor shall sign an affidavit confirming it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Contractor shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor performing any of the contracted services.

12.9 Parker shall comply with all federal, state and local laws, rules, regulations and ordinances.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

Client: CITY OF COLUMBIA, MISSOURI

By: \_\_\_\_\_  
John Glascock, Interim City Manager

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

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

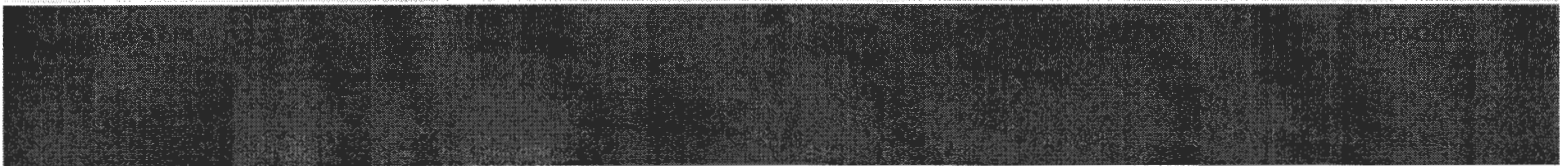
By: \_\_\_\_\_  
Nancy Thompson, City Counselor *AK*

CERTIFICATION: I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account No. \_\_\_\_\_, and there is an unencumbered balance to the credit of such appropriation, sufficient to pay therefor.

By: \_\_\_\_\_  
Matthew Lue, Director of Finance

Parker: PARKER TECHNOLOGY, LLC

By: \_\_\_\_\_  
Printed \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**Exhibit 1, Pricing Guide, Parker Technology Call Service for City of Columbia**  
**Municipal Parking Facilities**

<b>Minimum base rate for monthly Parker Technology fee if call volumes in all 6 parking garages combined remain at or below 600 per month.</b>						
Garage	Entry Station	Exit Station	Pay On Foot Station	Total intercoms	# of calls	base rate for a maximum of 100 calls per garage*
Short Street	1	1	2	4	100	\$309
5th & Walnut	2	1	2	5	100	\$324
6th & Cherry	2	1	2	5	100	\$324
8th & Cherry	1	1	2	4	100	\$309
8th & Walnut	2	2	2	6	100	\$324
10th & Cherry	2	2	2	6	100	\$324
<b>Total Monthly Base rate</b>					<b>600</b>	<b>\$1,914</b>

\* Built into the pricing is \$15 per month per device/lane (entry/exit or pay on foot station) with a max charge of 5 per location.

\*This minimum rate includes a total of 600 monthly calls. All calls beyond the 600 threshold amount will be charged \$3.00 per call.

Maximum Rate for monthly Parker Technology fee if call volumes in all 6 parking garages combined reach a total of 1100 calls.						
Maximum monthly rate if call volumes reach a total 1100 in one month.						
Garage	Entry Station	Exit Station	Pay On Foot Station	Total intercoms	# of calls	Cost estimates for maximum call volumes in each garage
Short Street	1	1	2	4	150	\$459
5th & Walnut	2	1	2	5	150	\$474
6th & Cherry	2	1	2	5	150	\$474
8th & Cherry	1	1	2	4	250	\$599
8th & Walnut	2	2	2	6	150	\$474
10th & Cherry	2	2	2	6	250	\$674
<b>Total Monthly Maximum rate</b>					<b>1100</b>	<b>\$3,154</b>
<b>Not to exceed annual rate</b>						<b>\$37,848</b>

\*Garages charged a base rate of \$309 for 100 calls will be charged a base rate of \$599 if their monthly call volume reaches 250 or more calls. Garages charged a base rate of \$324 for 100 calls will be charged a base rate of \$674 if their monthly call volume reaches 250 or more calls.

\*Based on the current hourly transaction volume in each of the garages, the Parking Utility estimates that the number of monthly calls in the 6<sup>th</sup> & Cherry; Short Street; 5<sup>th</sup> & Walnut and 8<sup>th</sup> & Walnut garages will, at most, reach 150 monthly calls. The 8<sup>th</sup> & Cherry and 10<sup>th</sup> & Cherry garages are the only two garages that demonstrate an hourly transactional volume that could potentially translate into a maximum 250 or more intercom calls per month. These rates can be inter-changed between garages. **The monthly rate of \$3,154 includes a total of 1100 monthly calls. If the call volumes exceed 1100 in one month, each additional call will be charged at a rate of \$2.85 per call.**

**If total call volumes do exceed 1100 in any month, the City of Columbia and Parker Technology may need to renegotiate the terms of the agreement to account for the higher than expected call volume.**