

**The Philadelphia Parking Authority  
Mellon Independence Center  
701 Market Street, Suite 5400  
Philadelphia, PA 19106**

**RFP No. 17-10  
Mobile Parking Payments  
Addendum One**

To: See Email Distribution List

From: Mary Wheeler  
Manager of Contract Administration

Date: April 28, 2017

No Pages: 3 plus sample contract

This addendum is issued on April 28, 2017 prior to the due date to add, delete, modify, clarify and/or to respond to questions submitted by prospective offerors regarding the work included in the above referenced solicitation.

**CLARIFICATIONS, CHANGES AND ADDITIONS TO THE RFP DOCUMENTS**

1. Attached as "Exhibit A" is the sample contract for this solicitation.

**QUESTIONS**

1. **Question:** Will the Authority send out the sample contract following the pre-proposal call?

**Response:** See Exhibit A.

2. **Question:** Is the Proposal Security requested in Section 5, Tab K different from the Performance Bond or are they intended to be the same instrument?

**Response:** The Proposal Security and Performance Bond are not intended to be the same instrument. Proposal Security is to guarantee that the winning offeror will undertake the contract under the terms at which they proposed. Proposal Security is returned upon completion of a fully executed contract. A Performance Bond guarantees the fulfillment of the terms of the contract and is returned upon contract termination.

3. **Question:** In the Acceptance and Exceptions Sections, will the Authority allow the vendor to take exception to any and all documents contained in this procurement, including the Insurance and Indemnification requirements.

**Response:** Yes.

4. **Question:** In answering the requirements, may the vendor copy and paste all forms into a single document if the exact information is retained?

**Response:** Yes, however, responses must be presented in the tabbed format outlined in the submission checklist.

5. **Question:** In the Vendor Profile, the Authority requests references twice. Is the second request intended to be the same three references or a different set of references?

**Response:** They may be the same references if all criteria is met in each section.

6. **Question:** Is the Vendor expected to answer the Project Specifications in section 3 of the RFP, or only those forms and sections that are included in Section 5: Proposal Format and Organization?

**Response:** Please clarify what questions in the Project Specification you are referring to.

7. **Question:** What is the average transaction amount?

**Response:** \$3.37

8. **Question:** How many transactions occur per year?

**Response:** 731,519 transactions from April of 2016 to March of 2017.

9. **Question:** The Authority states, "Select a vendor who will be responsible for payment of wireless costs/data plans for 350 handheld ticketing devices" - is this a new cost for the City? If not what is the current cost?

**Response:** This was a new cost to the PPA when mobile parking payments launched in November 2015. Our previous vendor did not disclose what those costs were.

10. **Question:** If awarded the contract, is an annually renewable performance bond form acceptable to the Authority?

**Response:** The Authority cannot respond at this time. This question will be addressed Addendum #2.

11. **Question:** The initial term of the contract appears to be three years with two one year renewal options. The Authority also has the sole right to terminate the contract. Will there be any recourse for the vendor to terminate the contract upon renewal? If yes, would that cancelation constitute a default under the terms of the contract triggering the performance bond?

**Response:** No.

12. **Question:** What is the estimated annual contract amount for this contract?

**Response:** This will be a zero cost contract for the Authority. The vendor will generate revenue based upon the amount they charge per transaction - also known as the convenience fee.

13. **Question:** How did the Authority determine that the performance bond ought to be \$1,000,000? Is that a true estimate of the contract value on an annual basis?

**Response:** This amount is based on historic revenue numbers generated from utilizing a mobile parking application for approximately a four month period. This bond amount is required to protect the Authority in the event that the contract is terminated or canceled for whatever reason and the Authority has to contract with a new vendor to provide the mobile parking application service.

14. **Question:** Is there a specific proposal bond form that is required?

**Response:** Proposal Security can be submitted in the form of a cashier's check, certified check or bid bond (AIA 310 – 2010).

15. **Question:** Under whose developer account(s) was the original MeterUP application published to the Google Play and Apple App Stores through: PPA's developer account(s) or Pango's developer account(s)?

**Response:** MeterUp was published through Pango's developer account.

16. **Question:** The Authority has requested that the Vendor cover data costs related to enforcement. What activities, specifically, will be covered by this data and how much data is currently used monthly?

**Response:** Data will only be used when PPA officers use their handheld device to verify payments made to the vendor's mobile parking payment system. No other functions of the handheld device require wireless access to a server. Our previous vendor did not disclose monthly data usage.

**END OF ADDENDUM ONE**

# **EXHIBIT A**

**AGREEMENT TO PROVIDE MOBILE PARKING PAYMENT  
SERVICES BY AND BETWEEN  
THE PHILADELPHIA PARKING AUTHORITY  
AND \_\_\_\_\_**

Contract No. K-\_\_\_\_\_

**THIS AGREEMENT** effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and between **The Philadelphia Parking Authority**, an agency of the Commonwealth of Pennsylvania and a body corporate and politic, with its principal address at 701 Market Street, Suite 5400, Philadelphia, PA 19106 (the "**Authority**") and \_\_\_\_\_, with a registered address at \_\_\_\_\_ ("**Consultant**").

**WITNESSETH:**

**WHEREAS**, the Authority, a public body corporate and politic organized and existing under the Act of 2001, June 19, P.L. 287, No. 22, as amended;

**WHEREAS**, the Authority, in the public interest, desires to provide a complete mobile parking payment system for all current and future on-street and certain, designated off-street paid parking areas in the City of Philadelphia ("Mobile Parking");

**WHEREAS**, the Authority determined that it is was not advantageous for it to use a bidding process in order to secure the professional Mobile Parking Services subject to this Agreement because it wished to consider criteria other than price in the award process, in particular, the offeror's qualification, and experience and local workforce;

**WHEREAS**, in order to procure such professional Mobile Parking Services, the Authority issued a Request for Proposals "Mobile Parking Payments" RFP No. 17-10 on \_\_\_\_\_ ("RFP");

**WHEREAS**, Consultant submitted a conforming proposal to the RFP on \_\_\_\_\_, ("Proposal") and is in the business of providing high quality professional services of the type that the Authority desires to procure;

**WHEREAS**, after due consideration and deliberation within the Authority, Consultant was selected to provide the Mobile Parking Services hereinafter described upon the successful negotiation of this Agreement and assent of the Authority's Board; and

**NOW, THEREFORE**, in consideration of the covenants and conditions contained herein, intending to be legally bound, the parties hereto hereby agree as follows:

## DEFINITIONS

"Agreement" shall mean this Agreement, including all Exhibits attached to this Agreement.

"Authority Data" includes, but is not limited to, all Customer Data and financial transaction data, not to include Sensitive Credit Card Holder Authentication Data.

"Authority Provided Resources" includes, but is not limited to, any information, documents, or data provided by the Authority, including but not limited to the RFP, as well as use of Authority Staff, equipment (including signage, whether purchased by Consultant or the Authority), tariff structures and zone numbers.

"Authority Specifications" includes, but is not limited to, the description of the Authority required features, functions and performance characteristics for the System (including certain components of the System) set forth in the RFP or any other form used by mutual agreement of the Parties, as well as any changes or modifications the Authority requests Consultant to perform.

"Consultant Work product" shall mean all Developed Software, Source Code for Developed Software and any other materials or works or authorship, in whatever form, developed or created by Consultant (or Consultant's Sub-Contractor(s)) for the Authority hereunder and any inventions, improvements, or discoveries therein, whether or not patentable, and shall not include Customer Data.

"Customer" shall mean any user of the System. All customers are deemed Authority customers, not customers of Consultant.

"Customer Data" shall mean any data collected from the Authority or at its expense related to any Customer, including, but not limited to, customer demographics, support, or parking transactions. Further, any data generated for the Authority or used by the Authority to carry out day-to-day operations shall constitute Customer Data.

"Effective Date" shall mean the date of this Agreement first set forth above.

"Integration Costs" shall mean all costs associated with the implementation and operation of this System, as detailed in Section 3 herein.

"Parking Fees" shall mean the amounts charged to park in the selected space, as mandated by the Philadelphia Traffic Code, or as directed by the Authority.

"Payment File" shall be defined upon the completion of Section 4 below.

"Per Transaction Fee" shall mean the amount Consultant is permitted to charge users for each transaction utilizing the System. This shall be Consultant's sole consideration under this Agreement.

"Pre-Existing Intellectual Property" means any intellectual property developed prior to

this Agreement, or if developed after execution of this Agreement, then developed independently of this Agreement in the normal course of Consultant's operations for general use by clients.

"Schedule" shall mean the implementation of the System as set forth in Section 2B.

"System" shall mean the Mobile Parking application and program developed by Consultant for use by the Authority's parking Customers in Philadelphia.

"System Customizations" shall include, but are not limited to, design changes, software updates and/or functionality adjustments.

"Total Payment" shall mean the total amount of money collected by the vendor, including the Parking Fees and Per Transactions fees.

**\*\*\*NOTE: IT IS AGREED AND UNDERSTOOD THAT THE DEFINITIONS SECTION IS SUBJECT TO MODIFICATION UPON REVIEW OF THE RESPONSES.**

**1. SCOPE OF SERVICES.**

The Authority hereby engages and Consultant hereby agrees to perform the following Mobile Parking Services ("Services"):

A. To provide Services of a specific type or, upon the approval of the Authority a type equivalent thereto in accordance with the Specifications detailed in the RFP, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated throughout this Agreement, and Consultant's Proposal, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated throughout this Agreement;

B. To perform high quality professional services in the most cost effective manner utilizing personnel at the level of competence required relative to the nature of the work, and to follow all applicable federal, state, or local laws; and

C. To coordinate the fulfillment of this Agreement with the Authority's Project Manager for the implementation of the Services. The Authority's Project Manager shall be Brendon Crowther, Deputy Manager, Ticketing Department, who may be reached at [BCrowther@philapark.org](mailto:BCrowther@philapark.org). However, the parties agree that only the Authority's Board or Executive Director may consent to any alteration or amendment to this Agreement, and in each such case in writing and in advance.

**2. TERM.**

A. The Term of this Agreement shall commence on the date first written above and shall remain in full force and effect for three (3) years from the date first written above. The Authority retains, in its sole discretion, the option to extend the Agreement for two (2) additional one (1)

year extensions. The Authority's Executive Director shall notify Consultant in writing sixty (60) days prior to the conclusion of the Term if the Authority intendeds to extend the Agreement.

B. This Agreement will be implemented in Phases as detailed in the RFP and herein. The Parties agree, Phases I-III, as detailed in section 3.2.1 of the RFP, shall be completed within sixty (60) days of the effective date of the contract. The Parties agree that time is of the essence as to the completion of Phases I-III. Failure to timely complete Phases I-III shall constitute a breach of the contract and the Authority, in its sole discretion, shall have the right to immediately terminate the agreement and award the contract to another offeror. Once the Authority agrees that Phases I-III are successfully completed and fully functional, the Authority's Project Manager shall notify Vendor to fully implement their mobile parking payments system for Phases IV-V, as detailed in 3.2.1 in the RFP. Phases IV-V shall be completed within ninety (90) days of the Project Manager's notice to the Vendor to proceed with Phases IV-V.

### **3. CONSIDERATION AND PAYMENT.**

A. Consultant agrees to accept and the Authority agrees to permit the collection of the Per Transaction Fee as the sole consideration for all services and costs associated with Consultant's fulfillment of its obligations under this Agreement. The Consultant shall be paid the agreed upon Per Transaction Fee of \$\_\_\_\_\_. No other compensation, reimbursements or payment by the Authority or through this Agreement shall be available to the Consultant.

B. The Consultant shall not be permitted to charge any Customer utilizing Consultant's Services more than the agreed upon Per Transaction Fee of \$\_\_\_\_\_.

C. Consultant shall invoice the Authority monthly, commencing with the execution of this Agreement, on the basis of the total number of Per Transaction Fees charged by Consultant during the preceding month. Upon submission of the invoices, the Authority staff will review and approve the amount charged. All invoices shall be in form and substance acceptable to the Authority and shall include costs for the total agreed upon Per Transactions Fees. No late fees, penalties, or interest may be assessed against the Authority for late payments. All invoices shall be submitted to:

**Accounts Payable  
The Philadelphia Parking Authority  
Attn: Robin Schaffer  
701 Market Street, Suite 5400  
Philadelphia, Pa 19106**

D. At no time will Consultant be reimbursed for any administrative or overhead costs incurred by Consultant in fulfilling the terms of this Agreement, including, but not limited to, any time, fees or expenses associated with Consultant's travel, fuel, lodging, food, or photocopying in connection with Consultant's Services.

E. It is the intent of the Authority that the Consultant assumes all responsibility for the total cost of integration; on-going service costs, cost of any equipment and software, (including

parking enforcement software) required at Authority facilities to enable the operation of the System; cost of single on-street space meter stickers, multi-space meter stickers, signage, cost of maintenance, updates and technical support; any advertising of the service; and any other costs whatsoever associated with the System.

F. Included in the Integration Costs is the monthly data plan for the handheld ticketing devices. It is agreed that the Authority shall select the vendor that will provide the data plan. The Consultant will be required to timely make the payments imposed upon the Consultant by the selected vendor. The Consultant hereby assumes all responsibility for the cost of the monthly data plan.

G. It is agreed and understood that any and all System Customizations that the Authority requests or Consultant recommends shall be part of the Integration Costs. The Authority shall be permitted to modify the system as it sees fit without incurring any additional charges to the consumer or the Authority.

#### **4. PAYMENT PROCESSING.**

A. The parties agree that all forms of payment received by Consultant through this Agreement, including parking fees paid by Customers and the Per Transaction Fee (“Total Payment”) shall be delivered to the Authority within two (2) business days of receipt by Consultant and that time is of the essence as to the delivery of those funds to the Authority. A “business day” is a day other than a Saturday, Sunday, or a Federal or Pennsylvania bank holiday.

B. Consultant will deliver each Total Payment to the Authority electronically. Payment will be deemed to be delivered under this section only upon deposit of such Total Payment to an Authority Account provided by the Authority in writing upon execution of this Agreement (the “Authority Account”).

C. Consultant will transmit the Payment File electronically to the payment processor’s system within 24 hours of the close of each business day.

D. The Authority will send a written notice of non-payment to the Consultant if the Total Payment for a specific day is not received in the Authority Account within three (3) business days. Consultant will contact the payment processor immediately upon receipt of the Authority’s notice, and will cure the failure to make payment within two (2) business days or, if a cure is not possible in such 2-business day period, take all steps within the Consultant’s control to commence cure of the failure to make payment. With respect to non-payments which cannot be cured within two (2) days, and for which the Authority determines at its sole discretion that an extended cure period does not materially adversely impact the Authority, the Consultant shall, within five (5) days from written notice of non-payment, substantiate why a cure is not possible within the aforesaid two (2) day period, give written assurance of how and when it will remedy the breach or default (not to exceed ten (10) days from such notice, or such longer period as the parties may mutually agree), and shall diligently pursue the cure of such breach or default. If the Consultant has not completed the cure within the specified period or is

not in the sole discretion of the Authority diligently pursuing such cure, the Authority may exercise its rights hereunder without providing the Consultant any further opportunity to cure.

E. The parties agree that should the delayed Total Payment not arrive, due to the Consultant's failure to properly transmit the payment file to the payment processor, within three (3) business days following Consultant's receipt of the Authority's notice, then the damages to the Authority would be difficult to calculate. The parties agree to a liquidated damages amount of \$5,000 per business day for each business day that Consultant's Total Payment has not been deposited into the Authority Account, up to a maximum of ten thousand dollars (\$10,000) per each delayed Total Payment.

**\*\*\*NOTE: IT IS AGREED AND UNDERSTOOD THAT THE PAYMENT PROCESSING SECTION IS SUBJECT TO MODIFICATION UPON REVIEW OF THE RESPONSES.**

**5. NO SOLICITATION/CONFLICTS OF INTEREST.**

A. Consultant does hereby warrant and represent that the laws of the Commonwealth of Pennsylvania have not been violated as they relate to the procurement or performance of this Agreement by any conduct, including payment or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly to any Authority employee, officer or Consultant.

B. To the best of Consultant's knowledge, no Authority member or officer, and no employee of the Authority has any interest (whether contractual, non-contractual, financial or otherwise) in this transaction or in the business of Consultant. If such transaction comes to the knowledge of the Consultant at any time, a full and complete disclosure of such information shall be made to the Authority.

C. Consultant hereby acknowledges receipt and acceptance of the Authority's Conflict of Interest Policy. The Authority's Contractor Integrity Provisions are attached hereto as Exhibit "C". Consultant agrees to adhere to those provisions as if set forth fully herein.

**6. CHANGE ORDERS.**

A. Except as otherwise provided in this section, the Authority's Project Manager may at any time, by written order and without notice to the sureties, if any, direct any change to the Services within the general scope of the Agreement ("Change Order"). But for the Authority's Executive Director or Board of Directors, no other employee, agent, or representative is authorized to direct any change to the Services under the Agreement.

B. If any change directed in writing by the Authority's Project Manager causes an increase in the cost of, or time required for, performance of any part of this Agreement, otherwise affects any provision of the Agreement, Consultant shall notify the Authority's Project Manager in writing within five (5) business days of receipt of the written Change Order, and shall

negotiate in good faith with the Authority, as appropriate, an equitable adjustment to the price and/or schedule (or change to any other terms or conditions). The Authority's Project Manager shall issue a modification to the Agreement reflecting the terms of the equitable adjustment, which, if agreed to, shall be signed by the Consultant. Consultant shall not unreasonably delay or withhold its consent to any Change Orders.

C. If the Authority desires to have Consultant enter into a separate services agreement covering subject matter related to this Agreement or any Support and Maintenance Agreement, Consultant shall review any such agreement presented by the Authority, or suggest its own form of agreement, and shall negotiate such proposed terms in good faith with the Authority.

D. Change orders that would result in a cost to the Authority or revenue to Consultant in excess of Ten Thousand and No/100 Dollars (\$10,000.00) must be approved by the Authority's Executive Director.

E. Change Orders which reach or exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00) must be approved by the Authority's Board in addition to approvals required in this Agreement. The Board's approval of such Change Orders will be in a written format, signed by the Board of Directors or its designee, and attached to the Change Order when submitted to Consultant. The Authority reserves the right to submit any Change Order to its Board for advance approval regardless of cost.

**7. INJUNCTIVE RELIEF.**

Due to the nature of the Services and increasing public reliance upon it, as well as the importance of regular and continuous parking enforcement and collection of revenues, Consultant agrees that any interruption or suspension of service would cause irreparable harm to the Authority and the public interest which could not be adequately remedied by damages, and thus the Authority is entitled to seek an injunction to prohibit any interruption or suspension in violation of the Agreement.

**8. TERMINATION FOR CONVENIENCE OF AUTHORITY.**

The Authority and Consultant agree that this Agreement may be terminated by the Authority with or without cause upon 48 hours' notice in writing by the Authority to Consultant. If the Agreement is terminated by the Authority, as provided herein, Consultant will be paid any compensation outstanding for the Services satisfactorily performed pursuant to Section 1 herein for the period prior to the date of termination. In such event, all memoranda, records, data, information and other documents prepared by Consultant shall become the property of the Authority and shall be forthwith delivered to the Authority. The payments to be made to Consultant hereunder are the Consultants sole remedy and right with respect to termination under this paragraph.

**9. OWNERSHIP OF WORK PRODUCT; LICENSES**

**A. Ownership of Work Product.**

Consultant shall own all right, title and interest to all Consultant Work Product, but excluding any Authority Data, Authority Provided Resources and Authority Specifications.

**B. License to Work Product and Prior Existing Software.**

a. Consultant (or its vendors) shall retain all right, title and interest in and to all of its Pre-Existing Intellectual Property used, provided or delivered by Consultant to the Authority in connection with the performance of this Agreement, including but not limited to know-how, software, associated documentation, software upgrades, modifications and customizations.

b. To the extent that any Deliverables within Authority Data may incorporate or have embedded any pre-existing or independently developed Consultant content that is not defined as Consultant Pre-Existing Intellectual Property in this paragraph (a) above, Consultant grants Authority a non-exclusive, perpetual, irrevocable, transferable, fully paid-up, worldwide right to use, distribute, transmit, display, and make and prepare derivative works from, and reproduce and publish the Deliverables that are not property of the Authority and to allow its Consultants and sub-Consultants of any tier to use, reproduce, distribute, display, and make derivative works of such Deliverables.

**C. Ownership of Authority Materials.**

As between the parties, the Authority shall own and retain all right, title and interest in and to the Authority Data, Authority Provided Resources and Authority Specifications (collectively referred to as “Authority Materials”). The Authority grants Consultant a limited, fully paid-up, non-exclusive right and license to use, access, copy, reproduce, display, and create derivative works of the Authority Materials for the sole purpose of performing its obligations under this Agreement and any Support and Maintenance Agreement and only for so long as it is performing such obligations pursuant to this Agreement.

**10. GENERAL TERMS AND CONDITIONS.**

**A. Confidential Matters.**

Consultant agrees that it will treat as confidential any information or document from the files of the Authority, including without limitation any information relating to the Authority’s software or hardware products, business or financial affairs and information disclosed orally and identified as confidential, which may come into their possession in pursuit of its duties under this Agreement.

## **B. Force Majeure.**

Neither contracting party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition and governmental action) that was beyond the party's reasonable control.

## **C. No Third-Party Beneficiaries.**

There are no third-party beneficiaries to this Agreement.

## **D. Right to Know Law.**

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement.

a. If the Authority requires the assistance of the Consultant as to any request or other issue related to the RTKL in regard to this Agreement ("Requested Information"), it will notify the Consultant using the contact information provided in this Agreement. Upon written notification from the Authority that it requires the Consultant's assistance in responding to such a request under the RTKL the Consultant must:

(i) Provide the Authority, within 5 days after receipt of written notification, with copies of any document or information in the Consultant's possession arising out of this Agreement that the Authority reasonably believes is Requested Information and may be a public record under the RTKL; and

(ii) Provide such other assistance as the Authority may reasonably request, in order to comply with the RTKL with respect to this Agreement.

b. If the Consultant considers the Requested Information to be exempt from production under the RTKL, the Consultant must notify the Authority and provide, within 5 days of receiving the written notification, a written statement signed by a representative of the Consultant explaining why the requested material is exempt from public disclosure under the RTKL and identifying the specific provision of the RTKL that renders some or all of the Requested Information exempt from disclosure.

c. The Authority will rely upon the written statement from the Consultant in denying a RTKL request for the Requested Information unless the Authority determines that the Requested Information is clearly not protected from disclosures under the RTKL. In the event the Authority determine that the Requested Information is clearly not exempt from disclosure, the Consultant must provide the Requested Information to the Authority within 5 days of receipt of written notification of the Authority's determination.

d. The Authority will reimburse the Consultant for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by

the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

e. If the Consultant fails to provide the Requested Information as provided in paragraph No. 4. (“Consultant’s Refusal”) the party requesting the information may have the right to challenge that failure to disclose before the Pennsylvania Office of Open Records (“OOR”) and potentially the courts. Consultant hereby understands and agrees that the Authority will not argue in favor of the Consultant’s non-disclosure of the Requested Information and will inform the tribunal that it directed Consultant to produce such information.

f. In the event of administrative or legal proceedings, or both, related to Consultant’s Refusal, the following will apply:

(i) Consultant will defend the Authority, at its sole cost, before an agency or court as to any matter or claim related to Consultant’s Refusal. Consultant will provide that defense through independent legal counsel agreed to in advance by the Authority, in its sole discretion.

(ii) Consultant further agrees that it will indemnify and hold the Authority harmless for any damages, penalties, costs, detriment or harm that the Authority may incur as a result of the Consultant’s failure to release Requested Information, including any statutory damages or order to pay any party’s attorney’s fees.

g. As between the parties, the Consultant agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth’s disclosure of Requested Information pursuant to the RTKL.

h. The Consultant’s duties relating to the RTKL are continuing duties that survive the expiration or termination of this Agreement and shall continue as long as the Consultant has Requested Information in its possession.

**E. Assignment.**

This Agreement may not be transferred or assigned by Consultant without the prior written consent of the Authority which consent may be withheld in the sole discretion of the Authority, any transfer or assignment made without the prior written consent of the Authority shall be void.

**F. Non-Discrimination.**

Consultant agrees to abide by all legal provisions regarding non-discrimination in hiring and contracting made applicable by federal, state and local laws.

## **G. Notices.**

Any notice or demand given by one party to the other under this Agreement shall be in writing and served by overnight express delivery service or by courier service, against written receipt or signed proof of delivery addressed to the other party at the address set forth below, unless a party shall have provided written notice to the other identifying a new address for notice:

### **The Authority:**

The Philadelphia Parking Authority  
701 Market Street, Suite 5400  
Philadelphia, PA 19106  
Attn: Dennis G Weldon, Jr.  
General Counsel

### **Consultant:**

All notices shall be deemed given on the day after the notice was given to the courier or Postal service. If Consultant changes the above address without providing a forwarding address to the Authority, attempted notice to the address of record shall be deemed full notice under this Agreement.

## **H. Press Releases**

It is agreed and understood that all press releases in connection with Consultant's Services pursuant to this Agreement shall be approved, in writing, by the Authority prior to release.

## **I. Captions.**

The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way define, limit, describe or amplify the terms and provisions of this Agreement or the scope or intent thereof.

## **J. General Indemnity.**

Consultant, for itself, its successors, assigns, agents, and sub-Consultants hereby agrees to indemnify, hold harmless and defend the Authority and its agents, employees, representatives, officers and directors (the Indemnified Parties) from and against any and all liability for losses, (including those related to business interruption), damage (including special, consequential and incidental) liabilities, claims, demands, causes of action or expense (including attorney's fees and expenses) for which the Indemnified Parties may be held liable by reason of injury (including death or workers compensation) to any person (including Consultant's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the work to be performed for the Indemnified Parties (including, but not limited to, work performed under this contract, work performed under Change Order, or any such other work performed for or on behalf of the Indemnified Parties), whether or not due in whole or in part to any act, omission, or negligence of the Indemnified Parties or any of their agents, employees, representatives, officers, directors, stockholders, sub-Consultants, third parties or parent,

subsidiary and affiliated companies, whether known or unknown to the Indemnified Parties or Consultant. It is expressly understood and agreed that the indemnity contained in this paragraph covers claims by Consultant's employees. It is further expressly agreed that Consultant assumes the fullest extent of all obligations to indemnify and defend all parties whom the Indemnified Parties are obligated to indemnify and defend in the Indemnified Parties contract with others (whether or not such obligations may extend to items beyond those addressed in this Agreement). This obligation to indemnify, defend and hold harmless shall survive termination of this Agreement.

#### **K. Entire Agreement.**

This Agreement contains the entire agreement of the parties with respect to the matter covered by this Agreement. No other agreement, statement, representation, understanding or promise made by any party or by any employee, officer, or agent or any party, that is contained in this Agreement, shall be binding or valid. Any revisions, additions, and/or modifications of this Agreement must be set forth in writing and signed by all parties.

#### **L. Exhibits.**

All Exhibits to this agreement are hereby incorporated by reference into, and made a party of, this Agreement.

#### **M. Interpretation.**

The contracting parties acknowledge and agree that (i) each party reviewed and negotiated the terms and provisions of this Agreement and has contributed to it; and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of the Agreement, regardless of which party was generally responsible for the preparation of this Agreement.

#### **N. Order of Precedence.**

In the event of an inconsistency between provisions of this Agreement, it shall be resolved by giving precedence in the following order: (1) the main body of this Agreement (not including Exhibits); (2) the RFP (Exhibit "A"), (3) Consultant's Proposal (Exhibit "B") and (4) all other exhibits. It is Consultant's responsibility to study this Agreement and to report at once in writing to the Authority any errors, inconsistencies, discrepancies, omissions or conflicts discovered between any provisions of the Agreement. Any work performed by the Consultant prior to receiving a written response from the Authority with respect to any alleged error, inconsistency, discrepancy, omission or conflict shall be at the Consultant's own risk and expense.

#### **O. Risk of Loss.**

In the event any portion of this Agreement requires the delivery of goods to the Authority, the risk of loss for such goods shall not pass to the Authority until received and accepted by the

designated Authority representative.

**P. Specific Proposals.**

It is understood that the Authority shall have the absolute discretion to accept, reject or modify any proposal or offer which Consultant may bring to the Authority's attention during the term of this Agreement. The Authority may direct that Consultant suspend or modify any of its Services related to this Agreement at any time.

**Q. Independent Consultant.**

Consultant agrees that it, as well its employees, are independent Consultants as to any Services provided and this Agreement is not intended to create any form of employment relationship.

**R. Applicable Law and Venue.**

All disputes arising in connection with this Agreement shall be interpreted and governed by the laws of the Commonwealth of Pennsylvania. The parties hereto irrevocably consent to the exclusive jurisdiction of the First Judicial District of Pennsylvania, being the Philadelphia Court of Common Pleas. Unless otherwise ordered by the court or requested by the Authority, at all times during the course of a claim (including litigation), the Consultant shall proceed diligently with performance of the Agreement and shall continue to work as directed by the Authority Project Manager, in a diligent manner and without delay, and shall be governed by all applicable provisions of the Agreement. During the pendency of the claim or dispute (including litigation), the Authority shall make payments of undisputed amounts in accordance with the Agreement.

**S. Taxes.**

1. Consultant hereby certifies that neither it, nor any of its parent or subsidiary entities, is delinquent or overdue in the payment of any tax or fee to the City or County of Philadelphia or the Commonwealth of Pennsylvania. Consultant also certifies that its Philadelphia Business Activity License ID. No. is: \_\_\_\_\_. Consultant further certifies that its Federal Tax ID. No. is: \_\_\_\_\_.

2. As an agency of the Commonwealth of Pennsylvania, and a local government agency, the Authority is exempt from the payment of state and local sales and use and other taxes on material, equipment or other personal property. Consultant agrees that the fees, prices or rates stated in this Agreement (1) do not include any state or local taxes, surcharges or fees on the Authority in connection with this transaction, and (2) do include all other applicable taxes for which Consultant is liable. In the event Consultant's performance under this Agreement creates a tax liability, such taxes, including but not limited to, real estate taxes, school taxes, use & occupancy taxes, and sales taxes shall be the sole obligation of Consultant, and Consultant shall maintain current accounts as to the payment of such taxes and be liable over to the Authority for any taxes assessed against the Authority as a result of Consultant's performance under this Agreement.

**T. Insurance.**

Consultant agrees to provide the Authority the appropriate certificates of insurance in accordance with the Insurance Requirements detailed in the RFP.

**U. Waiver.**

No term or provision hereof shall be deemed waived by the parties unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused unless it is in writing signed by the non-breaching party.

**V. Separation Clause.**

If any provision of this Agreement, or the application of any provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement and the application of such provision(s) to other persons or circumstances shall remain valid and enforceable.

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, and intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 P.S. 6, the parties have set their hands and seals on the date first above written.

**The Philadelphia Parking Authority**

Attest: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Clarena Tolson  
Executive Director

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
**General Counsel's Office**

\_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

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