

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JUNE 9, 2014**

ITEM 8

REQUEST FOR APPROVAL OF AMENDMENT RENEWAL #4 WITH PARKEON FOR TERMINAL SUPPORT AGREEMENT IN THE AMOUNT OF \$17,625 (PJ GRIEGO)

PUBLIC WORKS COMMITTEE ACTION: Approved on Consent

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

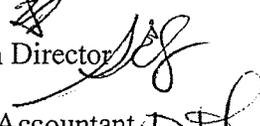
VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

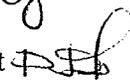
City of Santa Fe, New Mexico

memo

DATE: May 22, 2014

TO: Public Works Committee

VIA: Jon Bulthuis, Transportation Director 
Sebastian E. Gurulé, Parking Division Director 

FROM: P.J. Griego, Parking Enterprise Fund Accountant 

RE: Parkeon Terminal Support Agreement – Amendment #4

ITEM AND ISSUE:

Request for Approval of Amendment Renewal #4 to Terminal Support Agreement (Item #11-1173) with Parkeon.

BACKGROUND AND SUMMARY:

The Parking Division has several pay and display multi-space parking meters at the Railyard and the Archdiocese/Cathedral surface lots. This support agreement will allow the use of the web-based software needed for reconciliation of monies for said meters as well as identifying maintenance issues that need to be fixed. The agreement also includes an extended warranty for parts and labor. Amendment #4 total amount is \$17,625. Funds are budgeted in business unit and line item 52156.520300 Repair/Maintenance Furniture/Fixtures/Equipment. The total amount to date including original and amendments is \$65,135.

RECOMMENDED ACTION:

1. Approval of Amendment Renewal #4 to Terminal Support Agreement in the amount of seventeen thousand six hundred twenty five dollars (\$17,625).

Attachments: (1) Copy of Draft Amendment Renewal #4

**CITY OF SANTA FE
AMENDMENT No. 4 TO
PARKEON TERMINAL SUPPORT
SERVICES AGREEMENT**

AMENDMENT No. 4 (the "Amendment") to the Appendix "A" Terminal Support Services Agreement, dated November 2, 2011 (the "Agreement"), between the City of Santa Fe (the "Customer") and Parkeon (the "Parkeon"). The date of this Amendment shall be the date when it is executed by the Customer and Parkeon whichever occurs last.

RECITALS

A. Under the terms of the Agreement, Parkeon has agreed to provide standard support services, Parkfolio System Management and an Extended Warranty to the Customer regarding the matter of pay and display machines.

B. Pursuant to Article 14.1 of the General Terms and Condition, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Customer and Parkeon agree as follows:

1. FEES.

Article 6, paragraph 1 of the Agreement is amended to increase the amount of compensation by a total of seventeen thousand six hundred twenty five dollars (\$17,625), to pay for the additional twelve (12) month term, so that Article 6, paragraph 1 reads in its entirety as follows: The total payment for the years July 1, 2011 to June 30, 2015 shall not exceed sixty five thousand one hundred thirty five dollars (\$65,135).

2. TERM.

Article 3 of the Agreement is deleted. A new Article 3 of the Agreement is inserted to extend the term of the Agreement, so that Article 3 reads in its entirety as follows: This Agreement shall be effective when signed by the Customer and Parkeon, whichever occurs last, and shall terminate on June 30, 2015, unless terminated sooner pursuant to Article 3, below.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 4 to Appendix "A" Terminal Support Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

PARKEON:

JAVIER M. GONZALES, MAYOR

NAME & TITLE

Date: _____

Date: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



KELLEY A. BRENNAN,
INTERIM CITY ATTORNEY

3/21/14

APPROVED:

MARCOS A. TAPIA,
FINANCE DIRECTOR

52156.520300
Business Unit/Line Item

" APPENDIX A "

9100 ITEM # 11-1173



myParkfolio General Terms and Conditions

GENERAL TERMS AND CONDITIONS

ITEM # 11-1173

1. SCOPE

These terms and conditions apply to the provision of the Services by PARKEON to the Customer.

The services to be supplied by PARKEON to the Customer in reference to this Agreement are listed in the Service Application Form. PARKEON shall propose to the Customer several services in a Package.

2. CONTRACTUAL DOCUMENTS

The contractual documents which govern the dealings between the Customer and PARKEON are as follows :

- The General terms and conditions
- The Service Application Form

3. TERM OF THE AGREEMENT

- 3.1 This Agreement takes effect on its signature date.
- 3.2 The Services will be provided from the Services starting Date and shall be valid during the Services Agreement Period. Both are defined in the Service application Form.
- 3.3 At the end of the Services Agreement Period,.

4. CUSTOMER'S OBLIGATIONS

The Customer shall :

- 4.1 only use the Services in accordance with directions given by PARKEON from time to time for better management of the Services.
- 4.2 provide PARKEON with all the information necessary to provision the Services and update PARKEON in writing with any changes in such information (especially any change of address or otherwise). The Customer shall be solely responsible for any consequences caused by failure to provide or update such information;
- 4.3 restrict knowledge and maintain the confidentiality of all, logins, passwords and personal identification used in connection with the Services and generally safeguard such information to ensure that there is no unauthorized use of the Services.
- 4.4 provide PARKEON with a list of users and any of its own administrators in the Service Application Form, and shall inform PARKEON immediately of any changes.
- 4.5 verify the conformity to the PARKEON preconditionisation or specifications for any third party system connected the service.

5. PARKEON'S UNDERTAKINGS

PARKEON shall provide the Services with reasonable care and skill in accordance with industry standard.

6. FEES - INVOICING AND PAYMENT OBLIGATIONS

- 6.1 In consideration for receiving the Services the Customer shall pay to PARKEON the fees set out in the Service Application Form. All fees due under this Agreement shall be non cancellable and the sum paid non refundable.
- 6.2 PARKEON will send invoices to the Customer as per the Invoicing Frequency period and the currency set out in the Service Application Form.
- 6.3 If Services remain unpaid past the due date without written notice from the Customer, PARKEON will be entitled at its sole discretion (i) to suspend providing the Services or (ii) to enforce the provision of Article 13 a) below at any time.

7. PRICE REVISION

- 7.1 In consideration of the Services to be provided by Parkeon under this Agreement, Customer agrees to pay Parkeon in accordance with the payment terms set forth in the summary/signature page, without limitation.
- 7.2 In consideration of the Services to be provided by Parkeon under this Agreement, Customer agrees to pay Parkeon in accordance with the payment terms set forth in this Article 4 including, without limitation.
- 7.3 The prices shall be invoiced as specified in the summary/signature page. If Customer disagrees with the content of an invoice, it shall notify Parkeon in writing within ten (10) days of receipt of the invoice; otherwise the invoice shall be considered accepted.
- 7.4 The invoices shall be paid in advance by check or wire transfer (to a bank account to be designated by Parkeon), within thirty (30) Business days from the date of the invoices. Such payment shall be made in U.S. Dollars without any deduction, set-off or counterclaim.
- 7.5 For any amounts due to Parkeon that are not paid within the time limit provided herein, Parkeon may, without prejudice to any other rights or remedies, take one or several of the following measures: suspend provision of all or a portion of the Services to Customer.
- 7.6 Parkeon may also terminate the Agreement with immediate effect by serving written notice if due and payable amounts are not paid within sixty (60) Business days of the due date..

8. CONFIDENTIALITY

- 8.1 All information disclosed under this Agreement by the Customer remains the property of the Customer and shall be treated as confidential.

- 8.2 PARKEON undertakes to take all necessary security measures to prevent and avoid such information being published or disclosed. All such information shall not be disclosed to any third party without the written consent of the Customer and shall be disclosed by PARKEON within its own organisation on a need to know basis.
- 8.3 PARKEON undertakes to restrict its use of such information to the purpose of this Agreement and shall ensure that all persons to whom such information is made available are aware of its confidential nature and comply with the terms and conditions of this article.
- 8.4 Upon termination of this Agreement, PARKEON shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release PARKEON from its obligations regarding confidentiality that shall remain in force for a period of five (5) years after the date of termination.

9. INTELLECTUAL PROPERTY

- 9.1 The Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by PARKEON in performing its obligations under this Contract ("Intellectual Property Rights") are, and will remain, the property of PARKEON (or the third party who has granted PARKEON the right to use them) and nothing in this Contract or PARKEON's performance of it will be deemed to transfer to the Customer any such Intellectual Property Rights of PARKEON or any third party.
- 9.2 PARKEON shall defend or, at its option, settle any claim or action brought against the Customer alleging that the use of the Services as provided under the Contract and as used within the scope of the Services granted to the Customer, infringes the Intellectual Property Rights of a third party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with the Contract of whether the use is in combination with any service(s) not furnished by PARKEON, or (b) to the use of a non-current release of the Software and that (ii) the Customer gives reasonable notice and cooperation to PARKEON in connection with the defence of such claim, makes no admission or settlement in respect of such claim and that PARKEON directs and controls such defence.

10. LIABILITY AND WARRANTY

- 10.1 This clause sets out the entire legal and financial liability of PARKEON (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of any claims relating to (i) any breach of this Agreement (ii) any use made by the Customer of the Services or (ii) any representation, statement or tortuous act or omission (including negligence) of PARKEON arising under or in connection with this Contract.
- 10.2 Notwithstanding any other provision of this Agreement or rule of law or statutory provision, in no event PARKEON shall be liable to the Customer whether in tort, contract, innocent misrepresentation or in any other legal theory, for (i) any special, indirect, incidental or consequential loss, costs, damages, charges or expenses; or (ii) loss of profits, or (iii) loss of business, contracts, business opportunities; or (iv) loss of income or (v) damage to reputation.
- 10.3 PARKEON shall not be liable for any failure arising from the Telecommunication Network or any product or service supplied by a third party. PARKEON does not warrant that the Telecommunication Network will be fault free or free of interruptions.
- 10.4 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, PARKEON shall not be held liable unless this was the result of gross negligence.
- 10.5 As far as allowed by law, PARKEON will not be held liable for any direct, indirect and/or consequential damages, consecutive or not, resulting to the Customer from attempted fraud, trespass, misappropriation, malfunction of a third party system, acts or omissions of a third party, infiltration or disruption of PARKEON services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the Parkeon's services or other catastrophes or any other occurrences which are beyond such Parties' reasonable control.
- 10.6 PARKEON makes no warranty express or implied that all security threats and breaches and vulnerabilities will be detected. PARKEON may be required to reduce or suspend Services for a limited period to enable technical or maintenance operations to be improved, upgraded or conducted or to avoid an imminent threat of material harm to PARKEON or to anyone else and it will use best effort to minimize any inconvenience to the Customer caused by such reduction or suspension of Services.
- 10.6.1 Subject to the immunities and limitations of the New Mexico Tort Claims Act, nothing in this Contract excludes the liability of a party (i) for death or personal injury caused by negligence; or (ii) for fraud or fraudulent misrepresentation, caused by the acts or omissions of that party, its officers, agents, and employees.

11. PERFORMANCE

- 11.1 PARKEON may provide specific remedies regarding specific performance and availability in the Service Application Form which states the customer's sole and exclusive remedies for any Services problems.
- 11.2 PARKEON's Availability Commitments is calculated on a daily and a monthly basis. The rate of the Availability Commitments is defined in the Service application form on a monthly basis (hereafter monthly guaranteed Availability Rate).
If the monthly Availability Commitments rate is lower than the monthly guaranteed Availability Rate, the Service will not be charged to the Customer for each day while the Daily Service Availability Rate is lower than the Guaranteed Availability Rate. If the service is provided through a Package, the Package will not be charged to the Customer in the same conditions.
- 11.3 For the avoidance of doubt, any specific remedies shall be paid to the Customer in case of force majeure as defined in article 12, or when Third Parties fail to provide services or products necessary for the production of services, or when no alternative can be provided using reasonable efforts.

12. FORCE MAJEURE

- 12.1 Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labour disputes, fires, transportation contingencies, interruptions telecommunications, utility, internet services or network provider services, acts or omissions of a third party, infiltration or disruption of PARKEON services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the PARKEON's services or other catastrophes or any other occurrences which are beyond such Parties' reasonable control.
- 12.2 In an event of Force Majeure the affected party shall notify in writing the other party within 3 business days following its occurrence.

13. TERMINATION

- 13.1 Without prejudice to any other rights or remedies to which the parties may be entitled, each party may:
- a) terminate the Agreement in the event of a material breach of this Agreement which, if capable of remedy, is not remedied within 30 days of its notification to the other party in writing to remedy such breach;
 - b) immediately terminate the Agreement if: (i) a receiver or administrator is appointed over the other party or its assets or if the other party is subject to court-ordered bankruptcy, liquidation or any analogous proceedings under laws of any jurisdiction or (ii) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its activity;
 - c) terminate the Contract in the event of a Force Majeure affecting the Contract for an uninterrupted period of over 3 months as of the date of the notice of Force Majeure.
- 13.2 On termination of the Contract for any reason, the Customer shall pay PARKEON any amounts owed under the Contract, including but not limited to all of PARKEON's outstanding unpaid invoices and interest as well as any invoices which will fall due.

14. GENERAL

- 14.1 **Entire agreement:**
This Agreement including the standard terms and conditions, the Service Application Form, the schedules represents the entire agreement of the Parties and supersedes all other agreement, written or oral between the parties relating to the services.
Any modification to this agreement shall be in writing and signed by authorized representative of both Parties.
The standard terms and conditions and the Services may evolve or be replaced by others from time to time during the Term of Agreement. In such case, PARKEON shall inform the Customer in writing.
- 14.2 **Severability:**
In the event that the highest court of a competent jurisdiction to which the matter is appealed determines that any part or provision of this Master Agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement. In such event, the Parties shall replace any such part or provision affected thereby by a part or provision that is valid and enforceable.
- 14.3 **Non-waiver:**
The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.
- 14.4 **Governing law and Jurisdiction:**
This Agreement shall be governed by and construed in accordance with New Mexico Law and is subject to the exclusive jurisdiction of the 1st Judicial District Court, County of Santa Fe, Santa Fe New Mexico.
- 14.5 **Assignment:**
The Customer is not authorised to assign this Agreement or a portion of it without the prior consent of PARKEON
- 14.6 **Advertising and References:**
Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.

CITY OF SANTA FE/PARKEON (CONTRACTOR) ADDENDUM

INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-I, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

SERVICE	List Price/ unit/ year	Total Price and Invoicing
Extended Maintenance Agreement Model <input checked="" type="checkbox"/> Strada BNA Qty: 17 Standard Coverage <input checked="" type="checkbox"/> Extended Parts Warranty <input checked="" type="checkbox"/> Remote Telephone Support <input checked="" type="checkbox"/> Preventive Maintenance Kits <input checked="" type="checkbox"/> 20% Discount on Parts and Labor Additional Services <input type="checkbox"/> Preventive Maintenance Visit <input type="checkbox"/> Pre-Paid On-Site Support _____Hrs <input type="checkbox"/> Remote Auditing Services <input type="checkbox"/> On-Site Auditing Services <input type="checkbox"/> Graffiti Removal Training <input type="checkbox"/> Technical Training (Moorestown) <input type="checkbox"/> Technical Training On-Site <input type="checkbox"/> WEB Training MyParkfolio	\$635.00	See attached appendix A for Scope of Services \$10,795 per year To Be paid In Full At Start of Services

<input checked="" type="checkbox"/> Billing (select one) Yearly <input checked="" type="checkbox"/> 30 Day Payment Terms from receipt of invoice <input checked="" type="checkbox"/> 12 month terms (60 Day notice to Cancellation)	<input type="checkbox"/> Additions to existing contract <input type="checkbox"/> Additional Fees: \$ _____ <input checked="" type="checkbox"/> Start Date 7/1/2011
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This Application Form, the General Terms and Conditions and the Schedules constitute the Agreement to which this application applies.

For "Customer's Name" Date: ____/____/____ Name: _____ Title: _____ Signature: _____ <small>By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement. - All information provided in the Service Application Form is true and complete and properly reflects the business</small>	For PARKEON Date: ____/____/____ Name: _____ Title: _____ Signature: _____
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GENERAL TERMS AND CONDITIONS

1. SCOPE

These terms and conditions apply to the provision of the Services by PARKEON to the Customer.

The services to be supplied by PARKEON to the Customer in reference to this Agreement are listed in the Service Application Form. PARKEON shall propose to the Customer several services in a Package.

2. CONTRACTUAL DOCUMENTS

The contractual documents which govern the dealings between the Customer and PARKEON are as follows :

- The General terms and conditions
- The Service Application Form

3. TERM OF THE AGREEMENT

- 3.1 This Agreement takes effect on its signature date.
- 3.2 The Services will be provided from the Services starting Date and shall be valid during the Services Agreement Period. Both are defined in the Service application Form.
- 3.3 At the end of the 12 month Services Agreement Period,.

4. CUSTOMER'S OBLIGATIONS

The Customer shall :

- 4.1 only use the Services in accordance with directions given by PARKEON from time to time for better management of the Services.
- 4.2 provide PARKEON with all the information necessary to provision the Services and update PARKEON in writing with any changes in such information (especially any change of address or otherwise). The Customer shall be solely responsible for any consequences caused by failure to provide or update such information;
- 4.3 restrict knowledge and maintain the confidentiality of all, logins, passwords and personal identification used in connection with the Services and generally safeguard such information to ensure that there is no unauthorized use of the Services.
- 4.4 provide PARKEON with a list of users and any of its own administrators in the Service Application Form, and shall inform PARKEON immediately of any changes.
- 4.5 verify the conformity to the PARKEON preconsation or specifications for any third party system connected the service.

5. PARKEON'S UNDERTAKINGS

PARKEON shall provide the Services with reasonable care and skill in accordance with industry standard.

6. FEES – INVOICING AND PAYMENT OBLIGATIONS

- 6.1 In consideration for receiving the Services the Customer shall pay to PARKEON the fees set out in the Service Application Form. All fees due under this Agreement shall be non cancellable and the sum paid non refundable.
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7. PRICE REVISION

- 7.1 In consideration of the Services to be provided by Parkeon under this Agreement, Customer agrees to pay Parkeon in accordance with the payment terms set forth in the summary/signature page, without limitation
- 7.2 In consideration of the Services to be provided by Parkeon under this Agreement, Customer agrees to pay Parkeon in accordance with the payment terms set forth in this Article 4 including, without limitation.
- 7.3 The prices shall be invoiced as specified in the summary/signature page. If Customer disagrees with the content of an invoice, it shall notify Parkeon in writing within ten (10) days of receipt of the invoice; otherwise the invoice shall be considered accepted.
- 7.4 The invoices shall be paid in advance by check or wire transfer (to a bank account to be designated by Parkeon), within thirty (30) Business days from the date of the invoices. Such payment shall be made in U.S. Dollars without any deduction, set-off or counterclaim.
- 7.5 For any amounts due to Parkeon that are not paid within the time limit provided herein, Parkeon may, without prejudice to any other rights or remedies, take one or several of the following measures: suspend provision of all or a portion of the Services to Customer;
- 7.6 Parkeon may also terminate the Agreement with immediate effect by serving written notice if due and payable amounts are not paid within sixty (60) Business days of the due date.

8. CONFIDENTIALITY

- 8.1 All information disclosed under this Agreement by the Customer remains the property of the Customer and shall be treated as confidential.
- 8.2 PARKEON undertakes to take all necessary security measures to prevent and avoid such information being published or disclosed. All such information shall not be disclosed to any third party without the written consent of the Customer and shall be disclosed by PARKEON within its own organisation on a need to know basis.
- 8.3 PARKEON undertakes to restrict its use of such information to the purpose of this Agreement and shall ensure that all persons to whom such information is made available are aware of its confidential nature and comply with the terms and conditions of this article.

8.4 Upon termination of this Agreement, PARKEON shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release PARKEON from its obligations regarding confidentiality that shall remain in force for a period of five (5) years after the date of termination.

9. INTELLECTUAL PROPERTY

9.1 The Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by PARKEON in performing its obligations under this Contract ("Intellectual Property Rights") are, and will remain, the property of PARKEON (or the third party who has granted PARKEON the right to use them) and nothing in this Contract or PARKEON's performance of it will be deemed to transfer to the Customer any such Intellectual Property Rights of PARKEON or any third party.

9.2 PARKEON shall defend or, at its option, settle any claim or action brought against the Customer alleging that the use of the Services as provided under the Contract and as used within the scope of the Services granted to the Customer, infringes the Intellectual Property Rights of a third party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with the Contract of whether the use is in combination with any service(s) not furnished by PARKEON, or (b) to the use of a non-current release of the Software and that (ii) the Customer gives reasonable notice and cooperation to PARKEON in connection with the defence of such claim, makes no admission or settlement in respect of such claim and that PARKEON directs and controls such defence.

10. LIABILITY AND WARRANTY

10.1 This clause sets out the entire legal and financial liability of PARKEON (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of any claims relating to (i) any breach of this Agreement (ii) any use made by the Customer of the Services or (ii) any representation, statement or tortious act or omission (including negligence) of PARKEON arising under or in connection with this Contract.

10.2 Notwithstanding any other provision of this Agreement or rule of law or statutory provision, in no event PARKEON shall be liable to the Customer whether in tort, contract, innocent misrepresentation or in any other legal theory, for (i) any special, indirect, incidental or consequential loss, costs, damages, charges or expenses; or (ii) loss of profits, or (iii) loss of business, contracts, business opportunities; or (iv) loss of income or (v) damage to reputation.

10.3 PARKEON shall not be liable for any failure arising from the Telecommunication Network or any product or service supplied by a third party. PARKEON does not warrant that the Telecommunication Network will be fault free or free of interruptions.

10.4 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, PARKEON shall not be held liable unless this was the result of gross negligence.

10.5 As far as allowed by law, PARKEON will not be held liable for any direct, indirect and/or consequential damages, consecutive or not, resulting to the Customer from attempted fraud, trespass, misappropriation, malfunction of a third party system, acts or omissions of a third party, infiltration or disruption of PARKEON services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the Parkeon's services or other catastrophes or any other occurrences which are beyond such Parties' reasonable control.

10.6 PARKEON makes no warranty express or implied that all security threats and breaches and vulnerabilities will be detected. PARKEON may be required to reduce or suspend Services for a limited period to enable technical or maintenance operations to be improved, upgraded or conducted or to avoid an imminent threat of material harm to PARKEON or to anyone else and it will use best effort to minimize any inconvenience to the Customer caused by such reduction or suspension of Services.

10.7 Subject to the immunities and limitations of the New Mexico Tort Claims Act, nothing in this Contract excludes the liability of a party (i) for death or personal injury caused by negligence; or (ii) for fraud or fraudulent misrepresentation, caused by the acts or omissions of that party, its officers, agents, and employees.

11. PERFORMANCE

11.1 PARKEON may provide specific remedies regarding specific performance and availability in the Service Application Form which states the customer's sole and exclusive remedies for any Services problems.

11.2 PARKEON's Availability Commitments is calculated on a daily and a monthly basis. The rate of the Availability Commitments is defined in the Service application form on a monthly basis (hereafter monthly guaranteed Availability Rate).

If the monthly Availability Commitments rate is lower than the monthly guaranteed Availability Rate, the Service will not be charged to the Customer for each day while the Daily Service Availability Rate is lower than the Guaranteed Availability Rate. If the service is provided through a Package, the Package will not be charged to the Customer in the same conditions.

11.3 For the avoidance of doubt, any specific remedies shall be paid to the Customer in case of force majeure as defined in article 12, or when Third Parties fail to provide services or products necessary for the production of services, or when no alternative can be provided using reasonable efforts.

12. FORCE MAJEURE

12.1 Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labour disputes, fires, transportation contingencies, interruptions telecommunications, utility, internet services or network provider services, acts or omissions of a third party, infiltration or disruption of PARKEON services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the PARKEON's services or other catastrophes or any other occurrences which are beyond such Parties' reasonable control.

12.2 In an event of Force Majeure the affected party shall notify in writing the other party within 3 business days following its occurrence.

13. TERMINATION

13.1 Without prejudice to any other rights or remedies to which the parties may be entitled, each party may:

- a) terminate the Agreement in the event of a material breach of this Agreement which, if capable of remedy, is not remedied within 30 days of its notification to the other party in writing to remedy such breach;

- b) immediately terminate the Agreement if: (i) a receiver or administrator is appointed over the other party or its assets or if the other party is subject to court-ordered bankruptcy, liquidation or any analogous proceedings under laws of any jurisdiction or (ii) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its activity;
 - c) terminate the Contract in the event of a Force Majeure affecting the Contract for an uninterrupted period of over 3 months as of the date of the notice of Force Majeure.
- 13.2 On termination of the Contract for any reason, the Customer shall pay PARKEON any amounts owed under the Contract, including but not limited to all of PARKEON's outstanding unpaid invoices and interest as well as any invoices which will fall due.

14. GENERAL

- 14.1 **Entire agreement:**
 This Agreement including the standard terms and conditions, the Service Application Form, the schedules represents the entire agreement of the Parties and supersedes all other agreement, written or oral between the parties relating to the services.
 Any modification to this agreement shall be in writing and signed by authorized representative of both Parties.
 The standard terms and conditions and the Services may evolve or be replaced by others from time to time during the Term of Agreement. In such case, PARKEON shall inform the Customer in writing.
- 14.2 **Severability:**
 In the event that the highest court of a competent jurisdiction to which the matter is appealed determines that any part or provision of this Master Agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement. In such event, the Parties shall replace any such part or provision affected thereby by a part or provision that is valid and enforceable.
- 14.3 **Non-waiver:**
 The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.
- 14.4 **Governing law and Jurisdiction:**
 This Agreement shall be governed by and construed in accordance with New Mexico Law and is subject to the exclusive jurisdiction of the 1st Judicial District Court, County of Santa Fe, Santa Fe New Mexico.
- 14.5 **Assignment:**
 The Customer is not authorized to assign this Agreement or a portion of it without the prior consent of PARKEON
- 14.6 **Advertising and References:**
 Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.
- 14.7 **CITY OF SANTA FE/PARKEON (CONTRACTOR) ADDENDUM**
- 14.8
- 14.9 **INDEMNIFICATION**
- 14.10 The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.
- 14.11 **NEW MEXICO TORT CLAIMS ACT**
- 14.12 Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.
- 14.13 **APPROPRIATIONS**
- 14.14 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
- 14.15 **THIRD PARTY BENEFICIARIES**
- 14.16 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

14.17 Appendix A

Terminal Support Services

This Terminal Support Services agreement outlines all the services to be provided by Parkeon in support of the customer's terminals. Each service offering is detailed below.

- **Technical Phone Support**
- **Extended Parts Warranty**
- **Discounted labor and spare parts pricing**
- **Preventive Maintenance Services**

Pricing Table

Pay station Model	Unit Price/Year	Serial Number
Strada BNA	\$635/Year	To Be Supplied At Enrollment

Scope of Services Parkeon will provide:

1. Technical Phone Support during normal business hours

The Customer is responsible for First call/Level I technical service and maintenance for all machines. Phone Support begins once the Customer's on-site Level I support has fully attempted to service the terminals, consistent with Level 1 training and diagnosis/service materials and is unable to resolve the issue. Technical Phone Support is available Monday-Friday 8AM – 8PM EST excluding Parkeon published company holidays. Service hours utilized beyond this agreement or onsite will be billed at then current labor rates. Any travel is billed at actual expenses plus 10%.

2. Extended Parts Warranty

Enrollment in this program provides replacements for terminal parts at no additional cost consistent with the Standard Product Warranty for the duration of the agreement. Parkeon will provide a replacement part at no cost for any faulty part received from The Customer. The Customer will perform the actual problem diagnosis and part replacement at the terminals. Parkeon at its discretion may charge the Customer the actual cost to process any parts that are returned and are found not to be faulty and performing per specifications. Customer is responsible for testing all units before sending them in for repair.

During the agreement period, Parkeon will, at its option, repair or replace, without charge, any product or part which is found to be defective under normal use and service. Replacement part(s) will be shipped within 24 Business Hours following the receipt of the defective part. All shipments will be sent ground for two (2) business day delivery unless other arrangements are made at the time of the order. Customer is responsible for all expedited shipping charges. The Customer will pay shipping to Parkeon and Parkeon will pay for shipping of replacement part back to The Customer.

THE PARTS REPLACEMENT DOES NOT EXTEND TO "CONSUMABLE ITEMS" SUCH AS PAPER, BATTERIES, MOBILE COIN BOX, BILL STACKERS AND SOME EXTERNAL ENCLOSURE ITEMS. This service does not cover (a) normal maintenance and service or (b) any products or parts which have been subject to misuse, negligence, accident, improper maintenance or repair (other than by Parkeon), faulty installation or installation contrary to recommended installation instructions. Parkeon reserves the right to invoice customer for time spent on the above returned items.

To obtain replacement parts, you must (a) notify Parkeon at the address telephone number below, (b) give the model number and part identification and (c) describe the nature of any defect in the product or part.

To maximize meter uptime The Customer can purchase a compliment of replacement parts which would consist of the frequently used items and is based on the number of meters purchased by the Customer. Parkeon can provide guidance to The Customer regarding a suggested number of parts to be included in this inventory along with the applicable pricing.

3. Discounted Labor and Spare Parts Pricing

As part of this agreement any spare parts purchased for local stock and any labor provided will be billed at a 20% discount off the then current list price. This does not apply in cases where this discount is already provided as part of another contract or agreement. In no case will the maximum discount exceed %20 for both labor and parts. Current list price for parts and labor can be obtained by contacting Parkeon support.

4. Semi-Annual Preventative Maintenance

Enrollment in this program provides for Preventive Maintenance supplies or onsite PM visits depending on the number of installed meters. PM intervals are every 6 months unless noted otherwise.
1-24 Units=Two (2) PM supply kits will be provided each year per meter enrolled.

Support and Parts Contact Information

Parts Replacement Contact Information: Toll Free – 800-732-6868 x334
Email: Salesadmin@moorestown.parkeon.com
Parkeon Inc, 40 Twosome Drive, Unit#7,
Moorestown, NJ 08057
Attn: Warranty Parts dept. RMA #

Product Support Center Contact : 800-732-6868 x 244
Email: Supportcenter@parkeon.com

Parkeon Responsibilities:

1. Provide training at the commencement of this agreement in the process of obtaining a RMA and shipping parts to Parkeon.
2. Provide an initial suggested spare parts inventory proposal for the terminals purchased as part of a new Terminal Sales agreement.
3. Maintain sufficient inventory so that parts can be provided in a timely manner to support the necessary field replacements.
4. Return a repaired or refurbished part that is equal or better in quality to the part received.
5. Pay for the normal shipment of replacement parts to the Customer.
6. Maintain a staffed and capable Technical Support operation, which is capable of assisting the Customer with the full range of diagnostics and repair activities.
7. Conduct Level I Service training of the Customer's technicians at the time of the initial new model terminal purchase. This includes topics such as basic maintenance, troubleshooting, repairs, component replacement and operations such as programming and inventory.
8. Log all information from the Customer required to establish contact information, document the nature of the problem and the Customer's hardware/network environment (as applicable).
9. Attempt to resolve problems over the phone on first call.
10. Requests will be assigned to a qualified technician within 30 minutes
11. Make every effort to provide a resolution within 4 hours of request
12. Escalate Parkfolio support requests to next level if, within 4 hours, a resolution could not be implemented.

Customer Responsibilities:

1. Report all requests into Parkeon's TECHNICAL PHONE SUPPORT using the contact methods specified above.
2. Opening the machine and the removal or replacement of any internal component.
3. Execution of Level 1 self-diagnostic and other repair processes, which are outlined in the Service training and/or documented Service Guides provided at the time of training.
4. Perform all recommended Preventive Maintenance actions as per provided schedules and procedures. Failure to complete the procedures could result in unnecessary failures and unit degradation that are not covered under this contract. Labor costs and parts required to restore units caused by the failure to perform these activities will be the customer's responsibility.
5. Programming changes to the terminals using the maintenance procedures as outlined in the Service Training.
6. Maintaining a log of repair activities performed by the technicians, which will be available for reference purposes during a call to TECHNICAL PHONE SUPPORT.
7. Maintaining a local supply of spare parts sufficient to meet the desired repair timelines.
8. Monitoring and ensuring that the Service staff are completing all prescribed diagnostic and repair steps prior to escalating the problem to Parkeon's Technical Services group.
9. Ensuring that all Service staff has sufficient electro-mechanical skills to perform the role of technician for the purposes of supporting the multi-space terminals.
10. Ensure that all staff working on Parkeon equipment has successfully completed Parkeon's Level 1 Service training prior to performing service to the terminals.
11. Use their own staffing, spare parts and logistics processes to provide Service.
12. Use their own appropriate IS group to provide desktop client, server, network and infrastructure service necessary to maintain the proper functioning of the Parkfolio system.
13. Provide all information required to open a support request with Parkeon's Technical Support and be available to work with the Parkeon's support resource assigned to the support request.
14. Will manage the interface into its internal groups in a way that support's provision of services under this agreement. (i.e., help desk, Level I support, maintenance, and collections).
15. Schedule at least two weeks in advance when possible with Parkeon the need for on-site support to be provided at applicable rates. Provide an outline of related issues that need to be addressed during this on-site visit.

Services NOT Covered Under This Agreement - This agreement does not cover the following requests. However, Parkeon can provide a separate statement of work in proposing services to address any of the following:

1. Evaluation or Procurement of new software or hardware—Evaluation or approval of new software or hardware for use by the Customer in conjunction with Parkeon products or services. This includes systems developed outside of the Customer, such as third-party systems, or systems developed by the Customer.
2. This agreement does not include "consumable items" such as paper, batteries, mobile coin vaults and bill note stackers and external enclosure items. Labor to replace parts is not covered under this agreement. The Customer will perform the actual problem diagnosis and part replacement at the terminals. On-call Parkeon dedicated support - Requests for dedicated on-site or on-call support will be quoted on a case by case basis.
3. Level 1 Service – Local Help Desk, Technical and Infrastructure support shall be provided by the Customer for their customers. Examples of this support includes: Parkfolio support, credit card transaction research and resolution, terminal operational and technical support. The Customer will perform all Level 1 duties for the life of this agreement.
4. Assistance with Parkfolio or terminal usage when unsupported or non-standard hardware or software is involved—Use of unsupported or non-standard hardware or software often results in unexpected behaviour of otherwise reliable systems.



5. Adaptive maintenance—Defined as activities relating to upgrades or conversions of the Parkfolio application, the Parkfolio terminals or its associated operating software due to new versions of the operating environment, in which the Parkeon product is functioning.
6. Modifications to original application, changes in the Customer's organization or business needs (such as a reorganization or change in business practice) may make the current specification obsolete. When this occurs, the Customer should initiate a request for enhancement to update the system to address the changes.
7. Parkeon terminals communicate through public cellular communication networks. The cellular providers may experience capacity, interference, equipment and other problems which are unforeseeable and outside Parkeon's ability to correct. The cellular providers may make unannounced changes to their services which impact communications. Parkeon is in no way liable for the impacts caused by the actions of the cellular providers and provides no guarantee regarding the time for the Cellular provider to resolve the problem. Parkeon takes very seriously its responsibility to work with the cellular provider to achieve a timely resolution and treats communications problems that impact multi-space terminals performance as a priority issue.
8. The Customer is responsible for performing the actual problem diagnosis and part replacement at the terminals. Parkeon at its discretion may charge the Customer the actual cost to process any parts that are returned and are found not to be faulty and performing per specifications. Customer is responsible for testing all units before sending them in for repair. This includes general maintenance and cleaning of parts. Failure to perform preventative maintenance on parts may result in charges for processing of these parts.

CITY OF SANTA FE:


ROBERT ROMERO, CITY MANAGER
DATE: 11-2-11

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:


GENO ZAMORA, CITY ATTORNEY
10/14/11

APPROVED:


DR. MELVILLE L. MORGAN, FINANCE DIRECTOR
52155.520300

CRS: 03198329004

Bus Reg: 11 001 09652



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor Parkeon

3 Complete information requested Plus GRT
 Inclusive of GRT
 Original Contract Amount: \$19,975.00

Termination Date: June 30, 2012

Approved by Council Date: N/A

or by City Manager Date: November 2, 2011

Contract is for: Maintenance agreement for pay and display multispace parking meters and software

Amendment # 4 to the Original Contract# 11-1173

Increase/(Decrease) Amount \$ 17,625.00

Extend Termination Date to: June 30, 2015

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for: Extend term date (software and warranty)

4 History Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of GRT
 Amount \$ 19,975.00 of original Contract# 10-0478 Termination Date: 06/30/2012
 Reason: Maintenance agreement for pay and display multispace parking meters

Amount \$ 19,975.00 amendment # 1 Termination Date: 06/30/2013
 Reason: Extend termination date to June 30, 2013

Amount \$ 5,039.76 amendment # 2 Termination Date: 06/30/2014
 Reason: Extend termination of (software portion only) date to June 30, 2014

Amount \$ 2,520.64 amendment # 3 Termination Date: 06/30/2014
 Reason: Amend maintenance agreement amount (from amendment 2)

AMOUNT \$17,625 AMENDMENT #4 TO EXTEND TERM TO JUNE 30, 2015

Total of Original Contract plus all amendments: \$ 65,135



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: November 2, 2011

Other _____

6 **Procurement History:** year to year maintenance agreement renewal
example: (First year of 4 year contract)

7 **Funding Source:** Repair/Maint. Furn/Fix.Equipment **BU/Line Item:** 52156.520300.

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** PJ Griego

Phone # _____ -6857

10 **Certificate of Insurance attached.** (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments: