

CITY OF SAN ANTONIO PURCHASING & GENERAL SERVICES DEPT.

Issued By: PC CITY CONTRACT NO. 1442-09
COOPERATIVE CONTRACT NO.: 1163
PROCURING ENTITY/COOPERATIVE: City of Seattle

Date Issued: January 14, 2010

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TERMS & CONDITIONS FOR CONTRACT FOR
PARKING PAY STATIONS

Contract Documents: The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

- a. This Terms and Conditions Document;
- b. Any Purchase Orders Issued hereunder by the City of San Antonio ("City"); and
- c. Exhibit I – All applicable terms and conditions of Contract #1163, procured by the City of Seattle.

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document and any Purchase Order issued hereunder shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, Price Schedule, any Attachments identified herein.

The City's Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office at 111 Soledad, 11th Floor, San Antonio, Texas 78205, or by calling (210) 207-7260.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Price Schedule. A signature below indicates that the Vendor has read the entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: Jan Newberg Firm Name: Parkeon, Inc.
(Please Print or Type)

Jan Newberg Address: 40 Twosome Drive, Suite 7
Signature of Person Authorized to Sign Offer City, State, Zip Code: Moorestown, NJ 08057

Email Address: inewberg@parkeon.com Telephone No.: 856.234.8000
Fax No.: 856.234.7178

Please complete the following:
Prompt Payment Discount: _____ % _____ days. (If no discount is offered, Net 30 will apply.)

Please check the following blanks which apply to your company:

Ownership of firm (51% or more):
 Non-minority Hispanic African-American Other Minority (specify) _____
 Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)
Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) _____
Tax Identification Number: 01-0770174

FOR CITY USE ONLY

AWARD

Items Accepted: _____ Ordinance No: _____ Date: _____ Amount: _____

Approved: _____

CITY OF SAN ANTONIO

I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.
2. **Rejection of Disclaimers of Warranties & Limitations of Liability.** Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.
3. **Acceptance of Offer.** By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.
4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
5. **Taxes.** Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.
6. **Point of Destination.** All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery. Regardless of shipping terms used, title and risk of loss shall pass to City only upon receipt at City's "ship to" address.
7. **Delivery Times.** Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.
8. **Failure to Meet Delivery Schedule.** When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.
9. **Acceptance By City.** The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
10. **Warranty.** Unless a specific warranty is provided elsewhere in these contract documents, the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.
11. **Change Orders.** In order to comply with Texas law governing purchases made by municipalities, the follow rules shall govern all change orders made under this contract.
 - (a) Any change orders that become necessary during the term of this contract as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished may be

approved by the Director of Purchasing and General Services Department ("Purchasing Director"), or her designee, provided that such change orders:

- (1) are made in writing, signed by the Purchasing Director or her designee;
- (2) do not involve an increase or decrease in contract price of more than \$25,000; and
- (3) sufficient funds have already been allocated by City or are available to the Purchasing Director to cover any increase in contract price.

(b) Any other change will require approval of the City Council, City of San Antonio.

(c) Changes that do not involve an increase in contract price may, however, be made by the Purchasing Director.

12. Contract Termination

TERMINATION-BREACH:

- (a) Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall provide Vendor with written notice of such breach. Vendor shall have 30 days from receipt of said notice within which to cure the breach. If Vendor fails to cure the breach within the 30 day period, City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to the Vendor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract in, whole or in part, for convenience upon ten days prior written notice. Payment shall be made for all services rendered and received by City, including parts received by City, prior to the date of termination.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract, in whole or in part, at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

13. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Contract, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE

APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

14. Assignment and Subcontracting

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing and General Services Department. Such consent shall not be unreasonably withheld. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.
- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

15. Independent Contractor. Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

16. Patents/Copyrights. The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

17. Public Information Act. Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

18. Conflict of Interest. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service

Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

19. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

20. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

21. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

22. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with all applicable federal, state and local laws, rules and regulations.

23. Venue. **Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.**

24. Entire Agreement. This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

25. Invoicing and Payment.

(a) Address for Invoices. All invoices must be sent to: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.

(b) Information Required On Invoice.

All invoices must be in a form and content approved by the City. City may require modification of invoices if necessary in order to satisfy City that all billing is proper and pursuant to the terms of the contract. Invoices are required to show each City Purchase Order Number. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All invoices must show unit prices for each item being billed, the quantity of items being billed and the total for each item, as well as the total for all items on the invoice. If prices are based on list prices basis, then the list

prices, the percentage discount or percentage surcharge, net unit prices, extensions and net total prices must be shown. Prompt payment discounts offered shall be shown separately on the invoice.

- (c) Payment by City. City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date the City receives conforming goods under the contract; (2) the date performance of the service under the contract is completed; or (3) the date the City receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only. See Section 34 – Payment Schedule, for more detailed information on when performance will be considered completed.

This provision shall not apply where there is a bona fide dispute between the City and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount, or the item must be issued by the vendor. City will not make partial payments on an invoice where there is a dispute.

- (d) NECESSITY OF TIMELY INVOICE / WAIVER OF PAYMENT. NOTWITHSTANDING THE FORGOING, THE CITY CANNOT PAY FOR ANY GOODS OR SERVICES WITHOUT AN INVOICE. VENDOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE GOODS ARE DELIVERED OR SERVICES RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 DAY SHALL NEGATE ANY LIABILITY ON THE PART OF CITY AND CONSTITUTE A WAIVER BY VENDOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONEYS THAT VENDOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR GOODS OR SERVICES PERFORMED.

- (e) The total price for all goods and/or services is shown on the Price Schedule. No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by City. The parties hereby agree that all compensable expenses of Vendor are shown on the Price Schedule. If there is a discrepancy on the Price Schedule between the unit price for an item, and the extended price, the unit price shall govern.

- (f) Tax Exemption. The City of San Antonio is exempt from payment of federal taxes, and State of Texas limited sales excise and use taxes. Bidders must not include such taxes in bid prices. An exemption certificate will be signed by City where applicable upon request by bidder after contract award.

- (g) Prompt Payment Discount. Provided Bidder meets the requirements stated herein, City shall take Bidder's offered prompt payment discount into consideration in determining who the low bidder is. The evaluation will not be based on the discount percentage alone, but rather the net price as determined by applying the discount to the bid price, either per line item or total bid amount. However, the City reserves the right to reject a discount if the percentage is too low to be of value to the City, all things considered. The City may also reject a discount if the percentage is so high as to create an overly large disparity between the price City would pay if it is able to take advantage of the discount and the price City would pay if it were unable to pay within the discount period. City may always reject the discount and pay within the 30 day period, at City's sole option.

The City will not consider discounts that provide fewer than 10 days to pay in order to receive the discount.

For example, payment terms of 2% 5, Net 30 will NOT be considered in bid evaluations or in the payment of invoices. However, payment terms of 2% 10, Net 30 will result in a two percent reduction in the bid price

during bid evaluation, and the City will take the 2% discount if the invoice is paid within the 10 day time period.

26. Insurance.

- (a) Prior to the commencement of any work under this Contract, Vendor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's *Purchasing & General Services* Department, which shall be clearly labeled "*Parking Pay Stations*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's *Purchasing & General Services* Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- (b) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
- (c) A Vendor's financial integrity is of interest to the City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Vendor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability	<u>Combined Single Limit for Bodily Injury and</u>

a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Property Damage of \$1,000,000 per occurrence
5. *Professional Liability To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
* Professional liability coverage shall only be required if City exercises its option to require the software to integrate with City's SAP software.	

(d) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Purchasing & General Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

(e) Vendor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

(f) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

(g) In addition to any other remedies the City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the

right to order Vendor to stop work hereunder, and/or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.

- (h) Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payments of damages to persons or property resulting from Vendor's or its subcontractors' performance of the work covered under this Contract.
- (i) It is agreed that Vendor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- (k) Vendor and any subcontractors are responsible for all damage to their own equipment and/or property.

27. Liquidated Damages. Time is of the essence in the performance of this Contract; therefore, Vendor shall strictly adhere to the delivery schedule, which shall be attached hereto and incorporated herein as Attachment 3. No changes in the delivery schedule shall be effective unless in writing, executed by both City and Vendor. The parties agree that if, due to no fault of the City, delivery of any material or performance of any service is delayed beyond the time specified in the Contract, the actual damages sustained by City because of such delay will be uncertain and difficult to determine, and that the reasonable foreseeable damage incurred by the City is hereby stipulated to be \$72 per calendar day for every pay station of the initial order that do not get installed in accordance with the delivery schedule. Vendor shall pay City \$72.00 per calendar day for every pay station not installed by that date. Installation shall mean that the unit is installed in place and fully functional and operational.

28. Records Retention & Audit.

- (a) Vendor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Vendor agrees that the City shall have access during normal working hours to all necessary Vendor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The cost and expense incident to any audits hereunder shall be borne by the City.
- (b) Retention Period. Vendor shall retain any and all documents produced as a result of services provided hereunder for a period of four years from the date of final payment under this Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Vendor shall retain the records until the resolution of such litigation or other such questions. City may, at its election, require Vendor to return said documents to City prior to or at the conclusion of said retention period.
- (c) Vendor further agrees to include in its subcontractor agreements hereunder a provision to the effect that subcontractor agrees that the City shall, until the expiration of four years after final payment under the subcontract have access to and right to examine any books, documents, papers and records of such subcontractor, involving transactions to the subcontract, and further that the City shall have access during

normal working hours to all subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this article.

- (d) Nothing herein shall be construed as limiting City's rights of access to any examination of books, documents, papers and records, which may exist independently of this contract provision.
- (e) Any audits conducted hereunder may be made by the City Auditor or his designated staff, or by a third party auditor of City's choice. Any funds discovered pursuant to an audit hereunder as due to City by Vendor must be paid with interest by Vendor to City within 30 days notice thereof. Interest shall accrue on said funds from the date such funds should have initially been paid to City at the rate of 12% annually, or the maximum rate allowed by law, whichever is less, until paid. If the auditor's report demonstrates that a refund is due to Vendor, City shall pay Vendor the amount due within 30 days receipt of such report.

29. Ownership of Documents.

- (a) With the exception of the licensed software and all documents pertaining thereto, any and all writings, documents, information or data in whatsoever form and character produced by Vendor, or held by Vendor on City's behalf, pursuant to the provisions of this contract is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Vendor.
- (b) Vendor understands and acknowledges that as the exclusive owner of any and all such writings, documents information and data, City has the right to use same as City desires, without restriction.

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II. PRODUCT SPECIFICATIONS & DESCRIPTION OF SERVICES

1. Period of Contract.

- (a) Original Term. Contract shall be for the period beginning Upon Award and terminating December 31, 2014.
- (b) Renewals. The City of San Antonio reserves the right to extend the contract period for one additional 5 year period based on the same terms and conditions. Renewals shall be in writing. The City Manager, her designee, or the Director of the Purchasing and General Services Department shall be the party with authority to execute a renewal on behalf of the City, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore.
- (c) Incremental Extensions. Notwithstanding the foregoing, the City reserves the right to extend the term of the contract in 30 day increments, not to exceed 90 days total with written notice to the vendor; provided, that the City shall give the vendor a preliminary written notice of its intent to extend at least 10 days before the contract expires. The preliminary notice does not commit the City to an extension.

2. Product Description. Vendor shall provide the following parking pay station equipment, products and services to City in accordance with the terms of this Contract. The items, quantities, descriptions that the Vendor will provide include:

Item	Number of Units
*Strada Evolution Rapide Pay Station (Pay and Display) with 5 Year Warranty	105
*Strada Evolution Rapide Pay Station (Pay by Space) with 5 Year Warranty	29
ParkFolio Set Up of New Areas	1
Set Up Fee for Credit Card Banking Accounts Installation	1
Ticket Stock	134
Color Zone Caps	402
ParkFolio Export Engine	134
Metal Coin Transfer Canisters, with 2 Keys Per Canister	1
Test Tokens	50
Keys	100
Training	38
Graphical Tickets	5
	1

*Estimated Quantities – Actual number of units shall be specified on City’s purchase order.

3. Pay Station Features. Strada Evolution Rapide Pay Stations (“Pay Stations”) shall be the 2009 model and include, at a minimum, the following features:

- Pay and display configuration (105 units)
- Pay by space configuration (29 units), including a key pad for space entry and “add-time at meter” capability
- Meets ADA requirements for access and operation, in effect at the time of Unit manufacture
- Color: Titanium Gray
- Accepts coins and dual credit/debit card without requiring PIN
- Credit card/ISO 7816 Smart card dual-purpose reader

- Thermal graphic printer with self-sharpening receipt cutting blade
 - Three language options including English, Spanish and Chinese
 - Graphics screen LCD display; capable of 6 lines of text & character language display
 - Motorized, optical and magnetic sensing, coin selector and validator
 - Single metal coin vault
 - Superior anti-graffiti housing
 - Integrated solar power panel and trickle re-charge battery system
 - Lithium batteries for memory support in case of solar panel failure
 - Internal modem (GPRS) for wireless communication capability and antenna kit
 - Installation of all City supplied unit graphics
 - Fully and completely assembled with system pre-installation testing
 - Wireless functionality and Parkfolio system communication. City and Vendor will mutually develop a test plan for wireless functionality and Parkfolio system communication for each Pay Station.
 - Warranty: Five-year warranty, included in purchase price, to begin upon final acceptance of all units (the "System").
 - High-security electrical locks for collection and maintenance compartments
 - Specialized, super-secure metal coin vault and collection system in "Mobile Cash Box" configuration
4. Option to Purchase Additional Pay Stations. City shall have the option to purchase up to 100 additional Pay & Display Pay Stations at a price of \$8,400 each. Price for the 100 additional pay stations will be valid until March 11, 2011. Prices offered to City after this period shall not be less favorable than prices extended to any other customers in the United States at the time of offer to the City for the same or similar items. City may substitute Pay By Space Pay Stations in any quantity up to 100 for an additional \$175 per Pay Station. Notwithstanding anything to the contrary herein, additional City Council approval shall not be required for these additional purchases, so long as funds therefore are appropriated in the City's budget.
5. Keys. Vendor shall provide the following keys:
- (a) 25 high security mechanical keys for access to upper maintenance compartment and 25 "shim" tools that open the baffle to access the upper door lock;
 - (b) 10 lower pedestal trap door lock keys; and
 - (c) Electronic keys: 3 red master keys that has the City master code (is never to be taken in the field and is to be stored in a safe place); 18 blue programming keys for programming electronic locks (need 1 key per collection route or zone); and 36 black collection keys for revenue collection (1 per collection team per collection zone).
6. Ticket Stock. Vendor shall provide ticket stock, which shall be Strada self-adhesive single-issue receipt ticket stock, 3000 tickets per roll, with a three color print format, including City supplied pre-printed instructions.
7. Parkfolio. Pay Stations shall feature the Parkfolio alarm and system information services, including wireless communications at an installed volume-based monthly price per unit as shown on the Price Schedule. Vendor is responsible for resolving gaps in the communications coverage for areas of planned unit installation. AT&T provides wireless communications services and SKYTEL provides Mobitex wireless communications services as subcontractor to Vendor. Changes to these subcontractors shall require advance written consent of City, through its Director of Purchasing & General Services ("Director"), such consent not to be unreasonably withheld.

Vendor shall provide the following Parkfolio software support to City for the monthly subscription rate stated on the Price Schedule:

- (a) Provide full support, managing and hosting of server, for all aspects of the Parkfolio system. City staff will not be required to provide any application support.
 - (b) Add new pay stations to the Parkfolio environment to meet the City's installation and start-up schedule.
 - (c) Create semi-custom environment on web page as specified by City, including organizing machines into zones/circuits/groups.
 - (d) Ensure successful City system upgrade migrations by providing updated system documentation and any necessary training and issue resolution support required by City personnel.
 - (e) Revise up to 6 machine software originations (customizations) per year for the programming of the pay stations through Parkfolio as requested by City. Vendor shall make such changes within 5 business days of receipt of the change request.
 - (f) Research and provide the results for any disputed transactions.
 - (g) Create and reset passwords as required by City.
 - (h) Monitor Parkfolio and report monthly on error trends, such as machines failing to communicate.
 - (i) Maintain and regularly update the Parkfolio system software and hardware as required to ensure effective and secure City operations.
 - (j) Assist City to develop custom reports and data sets by providing access to all data via Parkfolio interface and manual Parkfolio export tool. Provide City with export engine to automatically export all Parkfolio data (monthly or daily) to a secure location in a .csv format that can be used by the City to create its own custom reports.
 - (k) Support interface with City's SAP software system for reconciliation, if this option is selected by City.
8. Vendor shall provide real time credit card authorization and transaction data communications services, including wireless communication links for transmitting all transaction information from the Pay Stations to the merchant processor, to meet City credit card transaction security requirements, at an installed volume based monthly price per unit as shown on the Price Schedule. Real time credit card authorization services are provided by Credit Call, as a subcontractor to Vendor. Changes to this subcontractor shall require advance written consent of City, through its Director, such consent not to be unreasonably withheld. Additionally, Vendor and its subcontractors must be certified to process credit card transactions through the City's current Merchant Banking Services Provider's platform which is currently the TSYS platform (formerly known as Vital or Visanet). Should the Merchant Banking Services Provider change, the Vendor must have the capability of adjusting and be required to adjust to accommodate possible changes in the platform utilized.
9. Vendor shall provide 10 copies of operating manuals, complete with wiring diagrams and specifications, for installation, maintenance, and use. Manuals shall be in English and shall be provided during the City training period. In addition, Vendor shall provide electronic versions (on both a CD and via the Internet) of the manuals. City shall have the right to edit and change the manuals for its own use.
10. Vendor shall make parts available to City at a 20% discount off the parts price list, or parts catalogue, whichever is lower. The discount shall include all future upgrades of modular components and repair materials, parts supplies, and new features purchased within the term, including renewal period, of this contract. A recommended spare parts list with 2009 pricing is attached hereto and incorporated herein for all purposes as Attachment 1. This pricing shall

remain valid for City's initial purchase of spare parts, if City chooses to order the recommended items within 4 months of its initial purchase order for the Pay Stations. Vendor guarantees that parts or parts compatible with parts currently used for the Pay Stations will be available for 10 years from the effective date of this contract. City may opt to purchase an initial list of spare parts within the first year of this Contract. Vendor shall allow City to return or exchange any spares so purchased if the return or exchange is made within the second year of the contract. In such event, all shipping shall be paid by City. Refunds, if applicable, shall be made by Vendor within 30 days of receipt of returned item.

11. Vendor shall configure units to City's specifications within Pay Stations' current capabilities, including mode of operation, coin and token acceptance, software, languages, and periods of operation. Vendor shall provide development and management of project logistics and schedules, scheduling and general project management.
12. Training.
 - (a) Basic Training. Vendor shall provide training, including 80 hours of instructor time, for operations, enforcement, adjudication, collections, information technology (Parkfolio), and maintenance training at City designated facilities at the time of installation. City reserves the right to approve the training course content. A copy of the Training Outline is attachment hereto and incorporated herein as Attachment 2. Cost of training is included in the purchase price of the initial Pay Stations.
 - (b) Rate Configuration Training. Vendor shall provide, at City's option, rate configuration and download training at the rates stated on the Price Schedule. Training shall be for 5 days for up to 12 people. Training shall enable City to create new rate structures.
 - (c) Additional Training. Vendor shall provide, at City's option, additional meter or Parkfolio training at the rates stated on the Price Schedule.
 - (d) All travel costs associated with training are included, as are costs of training materials. All training shall be provided at a City facility on dates mutually agreed to by the parties, but no later than 30 days after a request for training by City, except for the Basic Training, which must be provided 2 weeks prior to the first installation.
13. Vendor shall provide responsible disposal of all used lithium batteries during the warranty period. Cost is included in the purchase price, including the cost to ship the batteries to Vendor. Vendor shall provide call tags or other instructions necessary to effect shipment. Vendor shall comply with all laws pertaining to disposal.
14. Vendor shall provide a full time on site project manager to assist with project set up and installation for a minimum of 4 weeks from a date to be determined and as required thereafter. In addition, Vendor shall continue to provide on-going technical support for the duration of the warranty period.
15. Vendor shall deliver operable, configured Pay Stations to the City's site for installation in accordance with the Installation Schedule, attached hereto and incorporated herein as Attachment 3.
16. Warranty. Vendor warrants that any new product, manufactured or supplied by Vendor, will be free from defects in material, workmanship, or published function for a period of 5 years from the date the unit is put into service or 6 months after delivery, whichever shall occur earlier. Vendor shall repair and/or replace any part or modular component within 24 hours that is determined to be defective under normal use and service at no additional cost to City. Repair or replacement of any defective product does not extend the warranty period for the Pay Station. However, any module or component installed shall have a 5 year warranty period beginning on the date that it is put into service. Vendor may supply new or rebuilt parts, at its discretion, to replace parts found to be defective during the warranty period. City shall ship defective parts to Vendor within 5 business days of receipt of replacement.

17. Vendor shall provide to the City, free of charge, any new software releases (including parking management and printer software) for a period of 5 years from the date of installation. Specific developments made for the City under this contract will not be included in future standard releases unless agreed to in writing by Vendor. For the first 5 years this will cover applicable terminal, hardware, and back-office management standard software releases free of charge. After 5 years, the changes in terminal software will be billable, unless City chooses to go on a maintenance contract. For the back-office management software, standard software releases will be provided free of charge as part of the monthly fee. Note: In all cases, Vendor shall provide the new release of terminal software, but is not obligated to install it on the terminals. Vendor shall assist in the upgrade of the back-office management software at no charge.

18. Vendor's meter installation and activation includes:

- (a) installation of meters onto pre-mounted bolts;
- (b) deployment and commissioning of meter for revenue service;
- (c) provide mounting bolts and epoxy to City.

City shall perform all site preparation in advance of installation, including all civil work necessary to provide a level site pad and placement of mounting bolts.

19. Vendor shall provide 7.25 inch color zone caps in a color specified by City. City shall specify color at time of issuance of Purchase Order. There shall be no charge for installation if ordered at the time of meter purchase. If ordered after meter installation, pricing does not include Parkeon labor to retrofit meters.

20. Vendor shall provide, at City's option, the capability of fine payment at meter, for the cost shown on the Price Schedule. This feature includes the addition of a yellow "user" button, four additional user types available for fine or different rate payment. There is no set up fee if done at time of initial meter configuration, but shall be subject to a "Perso" change fee if done at a later date.

21. Vendor shall provide, at City's option, rate change downloads, for the cost shown on the Price Schedule.

22. Vendor shall provide credit card account set up for the one time rate shown on the Price Schedule, which shall include:

- (a) all fees for PCI-DSS Level 1 on-line credit card processing;
- (b) account set up and coordination with City's designated bank for transaction funds deposit;
- (c) no additional set up fees if additional new meters are ordered.

23. City Responsibilities. City shall:

- (a) Specify:
 - Mode of operation (pay and display or pay by space) for each Pay Station
 - Coins and tokens accepted
 - Credit Cards accepted (i.e., MasterCard and Visa)
 - Parking rate structure
 - Periods of operation
 - Language requirements and associated translation verification
 - Unit keying requirements;

- (b) Provide graphics design and printed material for unit graphics;
- (c) Provide receipt configuration within unit's current capabilities, including content design input and final approval;
- (d) Provide area to stage deployment;
- (e) Approve credit card transaction process and security procedures.

24. Equipment Performance Standards.

- (a) All replacement components will be readily available in 1 business day. Vendor shall make parts inventory available for next day delivery.
- (b) The average failure rate for units taken across a minimum installation base of 100 units shall not exceed 1 failure per machine per year when Vendor-recommended maintenance procedures are followed. A machine failure shall be defined as an out-of-order condition (unit displaying a red indicator light). Easily remedied, non-repeating, or maintenance negligence-caused out-of-order conditions resulting from acts of God, abuse, vandalism, minor system failures (e.g., battery failure, no receipts, coin box full and other failures that are minor in nature) will not be considered machine failures. Machines that are diagnosed as chronic (as described herein) will be replaced at no charge to City and will not be included in the calculation as described in this section.
- (c) Each newly installed Pay Station will be monitored for faults and/or defects during a 60 day burn-in period. Following that period, failures of any hardware components resulting in that unit being out of service will count against the overall standard.
- (d) City shall have the right to exercise the 5 year warranty clause in this contract to remedy machine failures. In addition, City has the right to demand that a unit be replaced within 1 business day in the event that the unit experiences either a system failure that cannot be corrected in the field or is determined to have a pattern of chronic equipment failures. A unit that is deemed to have chronic equipment failures is a unit that has had 3 equipment failures, as defined herein, in any 12 month period.
- (e) Vendor is responsible for any installation costs involved in replacing a unit that cannot be repaired in the field or has chronic equipment failures. Vendor shall provide 1 refurbished meter to City for use as a replacement unit to address any installed meter that needs replacement. Replacement of a unit does not constitute removal from the performance requirement for overall failure.
- (f) In the event that the average failure rate following 365 days of operation exceeds the parameters defined herein, City shall have grounds to terminate the contract for cause.
- (g) In the event that a design flaw is identified during the warranty period, any required hardware or software replacements or site labor shall be at Vendor's expense. Vendor is required within 30 calendar days of identification of a design flaw to communicate in writing to City the plan to correct the flaw and to perform such correction.
- (h) Each unit shall meet the above performance requirements while operating in an environment with a temperature range of -13 degrees to 130 degrees F and 97% non-condensing humidity.

25. Parking Information Management System Performance Standards.

- (a) City change requests to rates, rate structures, receipt information, display text, payment acceptance, etc., shall be processed by Vendor within 1 business day of final submittal of all required data.
- (b) Alarm, statistical and financial transaction data shall be available on the Web site to City staff within 60 seconds of their occurrence.
- (c) Vendor's information management system will have less than 525 minutes (0.1%) of "off-line" time per year.

26. Transaction Performance and Security Standards.

- (a) The Pay Station, regardless of mode of operation (pay and display or pay by space), shall complete a credit card authorization transaction in less than 18 seconds from receipt print request. Results shall be based on a statistical average of 100 transactions.
- (b) Cash transactions shall be completed within 10 seconds of a receipt print request. Results shall be based on a statistical average of 100 transactions.
- (c) Vendor shall have less than 525 minutes (0.1%) of "off-line" time per year with the credit card verification system.
- (d) Vendor and each of its subcontractors shall exercise an appropriate standard of due care for the management and processing of all data and the related information systems involved, as defined by the applicable PCI specifications. Vendor shall maintain the highest level of PCI certification possible throughout the term of the contract, and all renewal periods. City may require verification of PCI certification at any time.
- (e) Vendor and each of its subcontractors shall complete an annual system security audit similar to Attachment B of the City of Seattle Contract No. 1163. The security audit results shall be subject to approval by City.
- (f) Vendor shall notify City within 1 business day of any system security breach (examples – hacker intrusion, system virus infection, credit card theft) involving Vendor or its subcontractor systems.
- (g) Vendor and its subcontractors shall provide their best effort to format credit card data to minimize merchant institution processing costs.

27. Wireless Two-Way Communication Performance Standards. Vendor shall have less than 525 minutes (0.1%) of "off-line" time per year with the wireless communications system.

28. Technical Support Performance Standards.

- (a) Vendor, or an authorized subcontractor, shall provide technical response to problems within 1 business day of a formal City request. "Formal" includes verbal or written.
- (b) Vendor, or an authorized subcontractor, shall maintain a parts and system software inventory that shall be available to City within 1 business day of a formal request.
- (c) "Formal" includes verbal or written.

29. Planning for Upgrades. At City's option, City shall collaborate with Vendor on developing and testing software and/or hardware upgrades.

30. Parkfolio Software System Management.

- (a) License. Vendor grants City a perpetual, paid-up, non-exclusive, non-transferable license to use the licensed Parkfolio System software for the City's business processes and data processing operations for up to 5 users.
- (b) Training. Vendor shall provide Parkfolio Systems Management software training for up to 5 named users. Training shall occur at a City's designated facility. All travel costs associated with training are included, as are costs of training materials. Cost of training is included in the purchase price of the initial Pay Stations.
- (c) Level II Support. Vendor shall provide City with customer access to its Level II Remote Call-In Parkfolio Service Monday through Friday between 7:00 a.m. and 8:00 p.m. eastern time. Level II support can be reached at 800-234-8000 or by sending an email to: Parkfolio_helpdesk@moorestown.parkeon.com. Level II Parkfolio Remote Call-In Service is defined as remote assistance once the City's fully trained, on-site Level I service has fully attempted to resolve the Parkfolio issue locally and is not able to resolve the issue. Vendor shall provide the same support for future upgrades and enhancements, including smart card compatibility, during the Contract term and renewal.
- (d) Vendor's responsibilities include providing the following:
 - (1) Maintain a staffed and capable Level II Parkfolio support operation, which is capable of assisting City once City has attempted the full range of Level I diagnosis and repair activities to confirm full Internet connectivity at the City site. Diagnosis procedures shall be provided to City by Vendor during training.
 - (2) At the time of installation, conduct training of City's staff in the various elements of supporting Parkfolio.
 - (3) Conduct standard diagnostic tests to isolate failures to a specific device and determine if the failure is related to the Parkeon back-office system or meter equipment.
 - (4) Log all information from City required to establish contact information, document the nature of the Parkfolio system problem and City's hardware/network environment (as applicable).
 - (5) Attempt to resolve Parkfolio system problems over the phone on the first call.
 - (6) Email requests shall be assigned to a qualified technician within 30 minutes of receipt of the request.
 - (7) Make every effort to provide a resolution within 4 hours of request for Parkfolio system problems.
 - (8) Escalate Parkfolio support requests to next level if, within 4 hours, a resolution could not be implemented.
 - (9) Host the Parkfolio application; Access to Parkfolio's Supervisor Financial modules.
 - (10) Credit card server Hosting and Database Administration, which shall include data back-up and archiving.
 - (11) Provide specification/interfaces for creating and maintaining data back-up. City can choose to create its own data extracts or utilize Parkeon's automated export engine tool.
 - (12) Vendor shall provide Tariff and parameter changes for the initial 6 machine software originations (customizations).
 - (13) At City's option, create a solution to effect Parkfolio integration with City's SAP software environment. City shall have the option to move forward with the development and maintenance of an automated Parkfolio interface with SAP for the purpose of recording all received funds. As described below the interface will provide summary collections reports for coin and credit card transactions so that they are exported to City's SAP system automatically and retrievable within that SAP system. Price for the creation of such interfaces is shown on the Price Schedule:
 - i. Currency. This interface will provide for consolidation of transaction entries into a summary collection report where one aggregate number is provided on a daily basis for all the meters that were collected that day. This then can be matched against the deposits made by the city for those meters collected. This summary information (as well as the individual coin collection) will be provided as a .csv file automatically uploaded to a FTP site.

- ii. Credit Cards. This interface will provide for and set up an automatic export for daily summary of credit card transactions to be used for reconciliation with bank statements. This report will include the ability to sort by credit card type (Visa, MasterCard, Amex, Discover) unlike with the current data export options.

Cost for this service, as reflected in the Price Schedule, shall include support through the entire development cycle of the interface, to include requirements definition, functional and technical specifications, design review, full testing (from unit testing to integration testing), and implementation of the interface.

- (e) City's Responsibilities. City is responsible for Level I Parkfolio service and maintenance for all City PCs that are running the Parkfolio application. Level I includes:

- (1) Maintaining local onsite computers, local network applications to ensure operation with Parkfolio.
- (2) City will only request Parkfolio accounts after City employees have completed software training.
- (3) Creating, executing and managing their various reports of using Parkfolio data outside of the Parkfolio software.
- (4) Maintaining regular backups of all data and analysis created by City staff that might be needed at another time.
- (5) Ensuring that City's staff are completing all prescribed Level I diagnosis and repair steps prior to escalating the problem to Parkeon for Level II escalation support. This information will be provided during training.
- (6) Providing all information required to open a support request with Parkeon Level II Parkfolio support and be available to work with the Parkeon support resource assigned to the support request. This information will be provided during training.
- (7) Communicating to Parkeon all the elements of the City's parking policy, including, but not limited to, parking rates by daypart (if applicable), times and days for enforcement, any required zone designations for meters, rules and parameters for parking policies to enforce, and name City's credit card processor.
- (8) Conducting site visits which are due to an incident of Force Majeure.

- (f) Service NOT Covered Under Parkfolio System Management. Parkfolio System Management does not cover the following requests. However, Vendor may provide a separate statement of work I proposing services to address any of the following:

- (1) Evaluation and/or the procurement of new software and/or hardware. Evaluation and/or approval of new software and/or hardware for use by City in conjunction with Parkeon products and/or services. This includes systems developed outside of City, such as third party systems, or systems developed by City.
- (2) On-call Vendor dedicated support - Vendor prioritizes City issues based on severity and order of receipt. Requests for dedicated on-site or on-call support will be quoted on a case by case basis.
- (3) Guaranteed, uninterrupted airtime service provided by third party carriers, such as AT&T, Skytel and T-Mobile. As these are outside entities, Vendor is not able to ensure their performance.
- (4) Level I support - Local Parkfolio support shall be provided by City for its customers.
- (5) Maintenance data older than 90 days. City must archive its data and historical analysis. City can choose to create its own data extracts or utilize Vendor's automated export engine tool.
- (6) Software licensing - Vendor will not provide software or licensing for software being used with Vendor products that are not part of the Parkeon Pay Station, Parkfolio, or other Parkeon products provided by Vendor to City. City will provide such software and licensing as needed.
- (7) Assistance with Parkfolio when unsupported or nonstandard hardware or software is involved - Use of unsupported or nonstandard hardware or software often results in unexpected behavior of otherwise reliable systems.

- (8) Tariff and parameter changes after the initial 6 machine software originations (customizations).
- (9) Re-training of staff and any additional new-hire training after initial training session is held, except as otherwise provided herein.

31. Software Escrow. To ensure that City will have access to Vendor's source code in the event that Vendor is unable to support the software, a copy of the Vendor's source code shall be kept by a trusted third party agreeable to the City. A copy of an executed Software Escrow Agreement, attached hereto and incorporated herein for all purposes as Attachment 4, shall be submitted by Vendor to City to evidence the deposit of the source code and the maintenance of the escrow account. Vendor may submit its own Software Escrow Agreement, provided it is in substantially similar form to the sample attached as Attachment 4 hereto, which may include adding City as a beneficiary under an existing contract with similar terms. The determination of substantial similarity shall be within the sole discretion of the City, but shall not be unreasonably withheld. Vendor shall maintain said Software Escrow Agreement and pay the all fees therefore, except for the beneficiary fee shown on Attachment 4, for the term of this agreement and any renewal hereof. City shall pay the beneficiary fee directly to the escrow agent, in accordance with Attachment 4, in order to be included as a beneficiary under said agreement. City may maintain the Software Escrow Agreement by paying any fees associated therewith after the term of this contract and all renewals hereof expire.

32. Notices. Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio, Attn: Paula Stallcup, Downtown Operations Department, P.O. Box 839966, San Antonio, Texas 78283-3966 or 400 N. St. Mary's, Suite 100, San Antonio, Texas 78205.

If intended for Vendor, to: Parkeon, Inc., Attn: Finance Manager, 40 Twosome Drive, Suite 7, Moorestown, NJ 08057.

33. SAS 70, TYPE II. Within 90 days of the close of each of Vendor's fiscal years, Vendor shall provide annual audited financial statements and a report on the processing of transactions as required by Statement on Auditing Standards No. 70 (SAS) Type II or the international equivalent of ISA 402, prepared by an independent certified public accountant. Both documents shall be submitted to City throughout the term of this contract, and any renewals hereof. City shall pay Vendor the fee shown on the Price Schedule for the first year the SAS 70 or ISA 402 audit report is provided. Thereafter, Vendor shall provide said report at its own cost.

34. Payment Schedule.

(a) Parties recognize that Pay Stations shall be delivered incrementally. Performance shall be considered completed for a Pay Station after the unit has been delivered, installed, configured and accepted by City. City shall have 30 days from installation within which to inspect and test the units prior to acceptance. Further, the Parkfolio Software System and Credit Card Processing must be operational for performance to be considered completed for acceptance of units. City shall provide written notice of acceptance to Vendor stating the date on which the unit was accepted. For ease of contract management, units shall be accepted in groups (one acceptance date per group), as delivered and installed, with the exception of any identified units that fail to perform. Notwithstanding the foregoing, City agrees to pay Parkeon for Pay Stations within 60 days of delivery to City's warehouse.

(b) City shall pay the set up fee for credit card banking accounts within 30 days of invoice.

- (c) City shall pay the ParkFolio export engine fee within 30 days of receipt of invoice. Vendor shall not invoice City for this fee until the first Pay Station units to be delivered under the schedule have been accepted.
- (d) City shall pay the Parkfolio annual support fee within 30 days of receipt of invoice. Vendor shall not invoice City until the first Pay Station units to be delivered under the schedule have been accepted.
- (e) Parkfolio software management system monthly maintenance and support fees shall be invoiced monthly in arrears and paid by City within 30 days. Vendor shall begin invoicing City for this service no earlier than the first month after the first Pay Station units to be delivered under the schedule have been accepted.
- (f) Real time credit card authorization & transaction data communications, including wireless communication links fees shall be invoiced monthly in arrears and paid by City within 30 days. Vendor shall begin invoicing City for this service no earlier than the first month after the first Pay Station units to be delivered under the schedule have been accepted.
- (g) City shall pay Vendor the fee(s) for SAP Interface, if selected by City, once the integration has been completed and City has had a 30 day period to test the integration for acceptance purposes.

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III. PRICE SCHEDULE

Item	Estimated Number of Units	Unit Price	Extended Price
*Strada Evolution Rapide Pay Station (Pay and Display) with 5 Year Warranty	105	\$8,400.00	\$882,000.00
*Strada Evolution Rapide Pay Station (Pay by Space) with 5 Year Warranty	29	\$8,575.00	\$248,675.00
**ParkFolio Set Up of New Areas for Pay by Space	1	\$600.00	\$600.00
Set Up Fee for Credit Card Banking Accounts	1	\$3,000.00	\$3,000.00
Installation	134	\$150.00	\$20,100.00
Ticket Stock	402	\$34.00	\$13,668.00
Zone Caps	134	\$114.00	\$15,276.00
ParkFolio Export Engine	1	\$1,900.00	\$1,900.00
Coin Transfer Canisters, with 2 Keys Per Canister	50	\$252.00	\$12,600.00
Test Tokens	100	\$2.00	\$200.00
Keys	38	0.00	0.00
Training	5	0.00	0.00
Graphical Tickets	1	\$500.00	\$500.00

*These quantities are estimates only and may be increased or decreased at the time of issuance of the initial purchase order.

** This fee includes all areas using Pay by Space included in the initial purchase order.

Parkfolio Software Management System at an installed volume-based monthly price per unit -

Covers:

- 2-way wireless connectivity between meter and hosted software management system
- On-line access to hosted secure server
- All transactions, maintenance, alarms, statistics being processed and stored, etc.
- Database for storing statistics
- Secure user-rights management

Monthly Price: Parkfolio Fees

- Up to 500 total installed units \$25.00/month/unit
- Between 501-1000 total installed units \$22.50/month/unit
- Over 1000 total installed units \$20.00/month/unit

Real Time Credit Card Authorization & Transaction Data Communications, including Wireless Communication Links at an installed volume-based monthly price per unit -

- Up to 500 total installed units \$27.50/month/unit
- Between 501-1000 total installed units \$25.00/month/unit
- Over 1000 total installed units \$22.50/month/unit

Export Engine Annual Support Fee: \$1,100.00

Spare Parts: 20% Discount Off List Price

Fee for Statement on Auditing Standards No. 70 (SAS) Type II or the international equivalent of ISA 402 (One time fee only): \$10,000.00.

Optional Pay Station Rate Programming Training Fee: \$6,750.00 (5 days for up to 12 people)

Optional Additional meter or Parkfolio Training Fee: \$1,350.00 per day

Optional Customize Parkfolio system software to provide interface with SAP:

Currency Only: \$1,000.00

Credit Cards: \$6,000.00

Additional fee for professional liability insurance, if not carried by Vendor at time this option is exercised, to be negotiated by the parties, unless the requirement is waived by City.

Optional: Fine Payment at Meter Fee:

\$100.00/meter if placed at time of initial Purchase Order

\$175.00 if not placed at time of initial Purchase Order (does not include Parkeon labor to retrofit into meters)

Optional: Rate Change Download Fee:

\$5.00/meter (1-100); \$3.50/meter (101-500); \$2.00/meter (> 500)

\$195.00 Perso change fee after 6 customizations

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Statement:

"Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us/forms/CIQ.pdf. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205."

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IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING & GENERAL SERVICES
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING & GENERAL SERVICES
111 SOLEDAD, 11TH FLOOR
SAN ANTONIO, TEXAS 78205

REMARKS:

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Attachment 1
Spare Parts Price List 2009

Note: Prices listed below do not include freight charges. Non-warranty shipments are FOB Destination, with City paying freight. Parts shipped under warranty will be FOB destination with Vendor paying freight.

Strada Rapide and Transfer - Recommended Spares List

Column B for 100 Pay Stations

Reference	Description	B	Price per part	TOTAL (B)
6014002769	Main Board - NEOPS	6	\$1,652	\$9,912.00
6010135154	Display Module - NEOPS	6	\$528	\$3,168.00
400770311	4A Slow Blow Fuse (Pack of 10)	3	\$10	\$30.00
122510	Thermal Printer	6	\$953	\$5,718.00
126094	Programmed Coin Selector (.05, .10, .25, 1.00)	6	\$862	\$5,172.00
400600403	Solar 12V 27Ah Battery	5	\$174	\$870.00
404402613	Cable for Solar Power Supply	3	\$40	\$120.00
ELM1000001431	NEOPS Data Module w/cell battery	5	\$112	\$560.00
404304570	EPSUM M900 Card Reader (no magnetic strip kit)	6	\$1,300	\$7,800.00
404304511	EPSUM M900 Magnetic Strip Kit	5	\$246	\$1,230.00
143537	GPRS Modem (with modem, board, cable)	5	\$1,548	\$7,740.00
142757	GPRS Modem Antenna	3	\$68	\$204.00
148125	Yellow button	2	\$17	\$34.00
148126	Grey button	2	\$17	\$34.00
148127	Blue button	2	\$17	\$34.00
148128	Green button	2	\$17	\$34.00
148129	Red button	2	\$17	\$34.00
148110	6 button board	5	\$92	\$460.00
6004001694	Connector board	6	\$118	\$708.00
404001714	Relay board	5	\$72	\$360.00
125277	Escrow	5	\$198	\$990.00
143430	Equipped Rack	2	\$678	\$1,356.00
MEC1000001695	Upper Door Lock (ball type) Advise Combination	2	\$140	\$280.00
SVTCAS 18	Upper Door Key	4	\$53	\$212.00
135065	Lower Door Lock Square	3	\$41	\$123.00
135078	Square Key	3	\$25	\$75.00
148114	Upper Instructions Glass and Gasket	5	\$35	\$175.00
148103	Upper Front Panel	2	\$96	\$192.00
148117	Reinforced Display Glass and Gasket	5	\$38	\$190.00
148107	Tariff Glass and Gasket	5	\$29	\$145.00
130599	Ticket Bowl with Antistatic Brush	3	\$53	\$159.00
120341	Ticket Bowl Flap	3	\$19	\$57.00
135410	Coin Bowl	3	\$55	\$165.00
135493	Coin Bowl Flap	3	\$20	\$60.00
Reference	Rapide Units Only	B		
135693	Electronic Lock Kit	5	\$1,100	\$5,500.00
135694	Elock key Interface	6	\$24	\$144.00
146545	Mobile Cash Box	8	\$252	\$2,016.00
Reference	Solar Units Only	B		
404002394	Solar Charger Board	6	\$114	\$684.00

135765	Integrated Solar Module	2	\$770	\$1,540.00
Reference	Pay & Display Units Only	B		
ELM1000003890	Lower Front Panel w/ coin inlet	6	\$173	\$1,038.00
Reference	Pay By Space Units Only	B		
ELM1000002898	Lower Front Panel w/ coin inlet	4	\$173	\$692.00
MEC1000002568	12 key keypad	5	\$111	\$555.00
135283	Set of 12 round buttons for numerical keypad	5	\$36	\$180.00

Attachment 2
Multi-Space Parking Pay Station Training Outline

- I. Introduction
- II. The Multi-Space Concept
 - Definition of Multi-Space & Training Goals
 - Pay Station Concept
 - Question & Answer Period
- III. Hardware Overview
 - Introduction to Each Machine Module and its Function Within the System
 - Question & Answer Period
- IV. Installation Procedure*
 - Machine Installation
 - Commissioning
 - Question & Answer Period
- V. Theory of Operation
 - Solar Power
 - Coin System
 - Card System
 - Question & Answer Period
- VI. Troubleshooting
 - Using Machine Self-Diagnostics
 - Using the "Theory of Operation" to Diagnose Faults
 - Question & Answer Period
- VII. Preventative Maintenance
 - Preventative Maintenance
 - Biannual Preventative Maintenance
 - Question & Answer Period
- VIII. Machine Application Software (On-site Programming)
 - Initialization
 - RAM/Flash Memory Rate Changes
 - Question & Answer Period
- IX. Receipts and Enforcement Procedures
 - User Receipts
 - Collection Receipts
 - Enforcement Procedures

- Question & Answer Period

X. Collections Procedures

- Coin/Token Collection
- Credit Card Data Collection
- Question & Answer Period

XI. Software Modification and/or Upgrade

- Personalization "PERSO" Request Form
- RAM rate changes
- Question & Answer Period

XII. Pay Station & Parts Ordering Procedures (Inventory)

- Machine Order Worksheet
- Spares Order Worksheet
- Question & Answer Period

XIII. Peripheral Support Systems

- Parkfolio
 - Set Up and Maintenance of User Passwords
 - Programming Changes
 - System Monitoring and Auditing
 - Raw Data File Collection
 - Credit Card File Analysis
 - Use of Financial and Statistical Capability
 - Reports
 - Question & Answer Period

XIV. Wrap-up & Final Question & Answer Period

*Installation training shall be initiated in the field during the installation of the first group of Pay Stations at the City site. Vendor factory and distribution partner personnel shall be on site at the time to manage the installation and conduct the training.

Notes:

This training program shall be presented in conjunction with the initial installation of Pay Stations at the City site. A refresher training program is recommended by Vendor at 3-4 months after completion of the initial installation. This refresher training shall be customized to address specific City questions that result from the experience gained during the first months of Pay Station Operation.

Attachment 3

INSTALLATION SCHEDULE

STREET	BLOCK	Install Week	Go Live Week	# Pay Stations
HOUSTON NOLAN	179	5/3/2010	5/10/2010	4
I-35 LOT 1	339	5/3/2010	5/10/2010	5
I-35 LOT 2	71	5/3/2010	5/10/2010	2
Totals				11
Commerce E	600	5/10/2010	5/17/2010	4
Market	700/800	5/10/2010	5/17/2010	3
Dolorosa	900	5/10/2010	5/17/2010	2
Dolorosa	700	5/10/2010	5/17/2010	1
Dolorosa	600	5/10/2010	5/17/2010	1
Dolorosa	500	5/10/2010	5/17/2010	1
Laredo	200	5/10/2010	5/17/2010	4
Laredo	100	5/10/2010	5/17/2010	1
Totals				17
Broadway	400	5/17/2010	5/24/2010	1
Broadway	600	5/17/2010	5/24/2010	1
Broadway	200	5/17/2010	5/24/2010	1
Broadway	400	5/17/2010	5/24/2010	1
Jefferson	100	5/17/2010	5/24/2010	1
Jefferson	300	5/17/2010	5/24/2010	1
Jefferson	200	5/17/2010	5/24/2010	2
Pecan E	300	5/17/2010	5/24/2010	2
Pecan E	300	5/17/2010	5/24/2010	2
Totals				12
Travis E	100	5/24/2010	6/1/2010	1
Travis E	400	5/24/2010	6/1/2010	1
Richmond	400	5/24/2010	6/1/2010	2
Richmond	400	5/24/2010	6/1/2010	1
Martin E	300	5/24/2010	6/1/2010	1
Martin E	100	5/24/2010	6/1/2010	1
Camden	300	5/24/2010	6/1/2010	1
Camden	300	5/24/2010	6/1/2010	2
Camden	200	5/24/2010	6/1/2010	1
Totals				11

CITY CONTRACT NO.: A1442-09 PC Parking Pay Stations

Seymour		6/1/2010	6/7/2010	1
Seymour		6/1/2010	6/7/2010	4
Soledad	200	6/1/2010	6/7/2010	2
Soledad	300	6/1/2010	6/7/2010	2
Camaron	200	6/1/2010	6/7/2010	1
Camaron	200	6/1/2010	6/7/2010	1
Convent	300	6/1/2010	6/7/2010	1
Convent	300	6/1/2010	6/7/2010	1
Totals				13
Main N	300	6/7/2010	6/14/2010	1
Main N	400	6/7/2010	6/14/2010	1
Main N	200	6/7/2010	6/14/2010	2
Main N	300	6/7/2010	6/14/2010	1
Main N	200	6/7/2010	6/14/2010	2
Main Plaza	200	6/7/2010	6/14/2010	2
Main S	300	6/7/2010	6/14/2010	1
Main S	400	6/7/2010	6/14/2010	1
Main S	500	6/7/2010	6/14/2010	1
Totals				12
San Saba N	100	6/14/2010	6/21/2010	1
San Saba N	200	6/14/2010	6/21/2010	2
San Saba S	100	6/14/2010	6/21/2010	1
San Saba S	200	6/14/2010	6/21/2010	1
Houston W	500	6/14/2010	6/21/2010	2
Houston W	500	6/14/2010	6/21/2010	2
Commerce W	500	6/14/2010	6/21/2010	2
Leona S	100	6/14/2010	6/21/2010	2
Leona S	100	6/14/2010	6/21/2010	1
Totals				14
Dwyer	300	6/21/2010	6/28/2010	2
Dwyer	200	6/21/2010	6/28/2010	1
Flores S	300	6/21/2010	6/28/2010	1
Flores S	200	6/21/2010	6/28/2010	1
Flores S	100	6/21/2010	6/28/2010	1
Old Guilbeau	200	6/21/2010	6/28/2010	2
Old Guilbeau	200	6/21/2010	6/28/2010	2
Old Guilbeau	100	6/21/2010	6/28/2010	2
Old Guilbeau	100	6/21/2010	6/28/2010	1
Totals				13

CITY CONTRACT NO.: A1442-09 PC Parking Pay Stations

Jack white	400	6/28/2010	7/6/2010	2
Stumberg	100	6/28/2010	7/6/2010	1
Stumberg	100	6/28/2010	7/6/2010	1
Stumberg	200	6/28/2010	7/6/2010	1
Stumberg	200	6/28/2010	7/6/2010	1
Villita	200	6/28/2010	7/6/2010	1
Villita	200	6/28/2010	7/6/2010	1
Villita	100	6/28/2010	7/6/2010	1
Villita	100	6/28/2010	7/6/2010	1
Villita	100	6/28/2010	7/6/2010	1
Totals				11
ALAMO Lot		7/6/2010	7/12/2010	1
ROSSY Lot		7/6/2010	7/12/2010	1
SAC Lot		7/6/2010	7/12/2010	4
SAN FERNANDO Lot		7/6/2010	7/12/2010	1
SAWS Lot		7/6/2010	7/12/2010	1
Totals				8
				103

Attachment 4

IRON MOUNTAIN ESCROW AGREEMENT



EFFECTIVE DATE: _____

DEPOSIT ACCOUNT NUMBER: _____

THREE-PARTY ESCROW SERVICE AGREEMENT

1. Introduction.

This Three Party Escrow Service Agreement (the "Agreement") is entered into by and between Parkeon, Inc. (the "Depositor"), and by the City of San Antonio, Texas (the "Beneficiary") and by Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

(a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("Services"). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("Work Request") via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com, or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "Iron Mountain Website").

(b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement ("License Agreement") conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities and Representations.

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("Deposit Material") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term (as defined below) of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.
- (d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

3. Beneficiary Responsibilities and Representations.

- (a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Iron Mountain's obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than Iron Mountain's inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.

- (b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and consents to Iron Mountain's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Iron Mountain Responsibilities and Representations.

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.
- (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by all the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.
- (g) Should transport of Deposit Material be necessary in order for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

5. Payment.

The Party responsible for payment designated in Exhibit A ("Paying Party") shall pay to Iron Mountain all fees as set forth in the Work Request ("Service Fees"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). The Paying Party is liable for any taxes (other than Iron Mountain income taxes) related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

6. Term and Termination.

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("Initial Term") and will automatically renew for additional one (1) year terms ("Renewal Term") (collectively the "Term"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.
- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. Unless otherwise directed by Depositor, Iron Mountain will use a commercially recognized overnight common carrier such as Federal Express or United Parcel Service to return the Deposit Material to the Depositor. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit

Material while in the custody of the common carrier. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.

- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 9) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

7. Infringement Indemnification.

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend and hold Beneficiary and Iron Mountain (the "Indemnified Party") fully harmless against any claim or action asserted against the Indemnified Party (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's proper administration of this Agreement or Beneficiary's use of the Deposit Material, within the scope of this Agreement, infringes any patent, copyright, license or other proprietary right of any third party. When the Indemnified Party has notice of a claim or action, it shall promptly notify Depositor in writing. At its option, Depositor may elect to control defense of such claim or action and may elect to enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of the Indemnified Party without such Party's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

8. Warranties.

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH THE MEASURES IRON MOUNTAIN TAKES TO PROTECT ITS OWN INFORMATION OF A SIMILAR NATURE, BUT IN NO CASE LESS THAN A REASONABLE LEVEL OF CARE. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.
- (b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.

9. Confidential Information.

Iron Mountain shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any Party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

EXCEPT FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (IV) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 7, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS

MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS.

11. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

12. General.

- (a) **Incorporation of Work Requests.** All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) **Purchase Orders.** In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) **Right to Make Copies.** Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) **Choice of Law.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Texas, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws. Venue for any legal proceedings shall be in Bexar County, Texas.
- (e) **Authorized Person(s).** Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("Authorized Person" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement.
- (f) **Right to Rely on Instructions.** With respect to Release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person(s). In all other cases, Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (g) **Force Majeure.** No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) **Notices.** All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or through messenger or commercial express delivery service.
- (i) **No Waiver.** No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any other right under this Agreement.
- (j) **Assignment.** No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of Parties.

- (k) **Severability.** In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the other Parties.
- (l) **Independent Contractor Relationship.** Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) **Attorneys' Fees.** In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) **No Agency.** No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (o) **Disputes.** Parties agree to attempt non-binding mediation prior to filing a lawsuit for breach of this Agreement.
- (p) **Regulations.** All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the Parties hereto.
- (r) **Entire Agreement.** The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of all the Parties.
- (s) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) **Survival.** Sections 6 (Term and Termination), 7 (Infringement Indemnification), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability), 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

(balance of this page left intentionally blank – signature page follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

DEPOSITOR

COMPANY NAME:	Parkeon, Inc.
SIGNATURE:	<i>Ian Newberg</i>
PRINT NAME:	Ian Newberg
TITLE:	President
DATE:	2-5-10
EMAIL ADDRESS:	inewberg@parkeon.com

BENEFICIARY

COMPANY NAME:	City of San Antonio, Texas
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	<u>ipmclientservices@ironmountain.com</u>

NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW

DEPOSITOR – AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	Christopher Perry
TITLE:	Director of Finance
EMAIL ADDRESS:	cperry@parkeon.com
ADDRESS 1:	40 Twosome Drive, Suite 7
ADDRESS 2:	
CITY/STATE/PROVINCE:	Moorestown, NJ 08057
POSTAL/ZIP CODE:	08057
PHONE NUMBER:	856.234.8000
FAX NUMBER:	856.234.7178

BENEFICIARY – AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS:	
ADDRESS 1:	
ADDRESS 2:	
CITY/STATE/PROVINCE:	
POSTAL/ZIP CODE:	
PHONE NUMBER:	
FAX NUMBER:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmclientservices@ironmountain.com OR

Iron Mountain Intellectual Property Management, Inc., Attn: Client Services
2100 Norcross Parkway, Suite 150
Norcross, Georgia, 30071, USA.
Telephone: 800-875-5669
Facsimile: 770-239-9201

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

DEPOSITOR

BENEFICIARY

PRINT NAME:	Christopher Perry
TITLE:	Director of Finance
EMAIL ADDRESS	cperry@parkeon.com
STREET ADDRESS	40 Twosome Drive, Ste. 7
PROVINCE/CITY/STATE	Moorestown, NJ
POSTAL/ZIP CODE	08057
PHONE NUMBER	856. 234. 8000
FAX NUMBER	856. 234. 7178
PURCHASE ORDER #	

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

MUST BE COMPLETED EXHIBIT A - Escrow Service Work Request - Deposit Account Number:

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE- TIME FEES	ANNUAL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
<input checked="" type="checkbox"/> Setup Fee <input checked="" type="checkbox"/> Deposit Account Fee- including Escrow Management Center Access <input checked="" type="checkbox"/> Beneficiary Fee including Escrow Management Center Access	<p>Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.</p> <p>Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee of \$200 USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.</p> <p>Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.</p>	<p>\$1500</p>	<p>\$1,000</p> <p>\$700</p>	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary <input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	<p>At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.</p>	<p>N/A</p>	<p>\$375</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add File List Test	<p>Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited FTP.</p>	<p>\$2,500</p>	<p>N/A</p>	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	<p>Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.</p>	<p>\$5,000 or based on SOW if custom work required</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 2 - Compile Test	<p>Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 3 - Binary Comparison	<p>Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 4 - Full Usability	<p>Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remote Vaulting	<p>Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.</p>	<p>N/A</p>	<p>\$500</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	<p>Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Material" the Escrow Service Agreement.</p>	<p>\$500</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	<p>Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.</p>	<p>\$175/hour</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Custom Contract Fee	<p>Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.</p>	<p>\$750</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

**EXHIBIT B
DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: _____ DEPOSIT ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____
(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Electronic Deposit			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Yes or No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
PRINT NAME:	PRINT NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.
Attn: Vault Administration
2100 Norcross Parkway, Suite 150
Norcross, GA 30071

Telephone: 800-875-5669
Facsimile: 770-239-9201

FOR IRON MOUNTAIN USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)	

EXHIBIT C

RELEASE OF DEPOSIT MATERIAL

Deposit Account Number: _____

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(h) Notices.

1. **Release Conditions.** The Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as “**Release Conditions**”):
 - (i) Depositor’s breach of the license agreement or other agreement between the Depositor and the Beneficiary regulating the use of the Deposit Material covered under this Agreement; or
 - (ii) Failure of the Depositor to function as a going concern or to operate in the ordinary course; or
 - (iii) Depositor is subject to voluntary or involuntary bankruptcy.
2. **Release Work Request.** A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor’s Authorized Person(s).
3. **Contrary Instructions.** From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor Authorized Person(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured (“**Contrary Instructions**”). Contrary Instructions shall be on company letterhead and signed by a Depositor Authorized Person. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary’s Authorized Person(s). Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Person(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary with instructions to release the Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.
4. **Release of Deposit Material.** If Iron Mountain does not receive timely Contrary Instructions from a Depositor Authorized Person, Iron Mountain is authorized to release Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.
5. **Termination of Agreement Upon Release.** This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.
6. **Right to Use Following Release.** Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

EXHIBIT Q
ESCROW DEPOSIT QUESTIONNAIRE

Introduction

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain to the attention of laimie.mcstey@ironmountain.com

Escrow Deposit Questionnaire

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

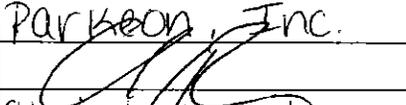
Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:

COMPANY:	Parkeon, Inc.
SIGNATURE:	
PRINT NAME:	Christopher Perry
ADDRESS 1:	40 TWOSOME Drive, Suite 7
ADDRESS 2:	
CITY, STATE, ZIP	Moorestown, NJ 08057
TELEPHONE:	656.234.8000
EMAIL ADDRESS:	cperry@parkeon.com

For additional information about Iron Mountain Technical Verification Services, please contact your Sales Representative.