

RESOLUTION NO. 15 - 2334

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH PAYBYPHONE TECHNOLOGIES, INC. AND THE TOWN OF SURFSIDE; PIGGYBACKING OFF THE COMPETITELY BID CONTRACT AWARDED BY THE CITY OF MIAMI DEPARTMENT OF OFF-STREET PARKING A/K/A/ MIAMI PARKING AUTHORITY; AUTHORIZING THE TOWN MANAGER AND/OR DESIGNEE TO DO ALL THINGS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the PayByPhone system operates independent of the Town's existing Pay Stations and is an easy and convenient way to pay for parking using a smartphone; and

**WHEREAS**, the Surfside Parking Department has completed a successful six month pilot program with PayByPhone Technologies Inc. to determine the effectiveness of their parking payment option system; and

**WHEREAS**, drivers find the system easy to use and appreciate the many user friendly options including the ability to receive text message reminders before their parking session expires and can add more time from any phone without returning to their vehicle; and

**WHEREAS**, the Town Commission of the Town of Surfside, Florida desires to enter into an agreement with PayByPhone Technologies, Inc., by piggybacking off a competitively bid contract awarded by City of Miami Department of Off-Street Parking a/k/a/Miami Parking Authority for pay by phone services; and

**WHEREAS**, PayByPhone Technologies, Inc., was selected by the City of Miami Department of Off-Street Parking a/k/a/ Miami Parking Authority pursuant to Request for Proposal No. 14-06 and in accordance with the Surfside procurement process and pursuant to Section 3-13(3) of the Code of Ordinances, the Town may enter into contracts entered into by another governmental agency through a competitive bid process; and

**WHEREAS**, the Town Commission of the Town of Surfside, Florida finds it is in the best interest of the Town to enter into the Agreement with PayByPhone Technologies, Inc., for pay by phone services.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** That the above and foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Authorization to enter into an Agreement.** The Town Commission hereby authorizes the Town Manager to enter into the Agreement by and between PayByPhone Technologies, Inc., and the Town of Surfside attached as Attachment "A."

**Section 3. Implementation.** The Town Manager and/or designee are hereby authorized to take any and all action necessary to implement this Resolution and Agreement in accordance with the terms, conditions and purposes of this Resolution and Agreement.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 10<sup>th</sup> day of November 2015.

Motion by Commissioner Karukin.

Second by Commissioner Cohen.

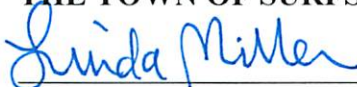
**FINAL VOTE ON ADOPTION**

Commissioner Barry Cohen	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Eli Tourgeman	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>

  
Daniel Dietch, Mayor

ATTEST:   
Sandra Novoa, Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR  
THE TOWN OF SURFSIDE ONLY:**

  
Linda Miller, Town Attorney

**AGREEMENT FOR PAYBYPHONE SERVICES**

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2015 between the Town of Surfside, a municipal corporation, organized and existing under the laws of the State of Florida, whose address is 9293 Harding Avenue, Surfside, Florida, 33154 (the "Town") and PayByPhone Technologies, Inc., a British Columbia corporation authorized to do business in Florida with its principal place of business located at #403 - 1168 Hamilton Street, Vancouver, British Columbia, Canada ("PayByPhone").

**WITNESSETH**

**WHEREAS**, the Town desires to enter into this Agreement (the "Agreement") with PayByPhone for payment by phone services; and

**WHEREAS**, the Town and PayByPhone agree to incorporate the terms and conditions of the Miami Parking Authority's Request for Proposals for PayByPhone Services RFP No. 14-06 (the "RFP") and the contractual arrangement, dated November 30, 2014, (the "Contract" attached hereto as Exhibit "A") between the City of Miami Department of Off-Street Parking a/k/a Miami Parking Authority, an agency and instrumentality of the City of Miami, and PayByPhone Technologies, Inc. into this Agreement; and

**WHEREAS**, Section 3-13(3) of the Town Code of Ordinances the Town authorizes the Town to enter into contracts entered into by another governmental agency through a competitive bid process.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**Section 1. Term.** The term of this Agreement commences upon full execution hereof and continues as specified in the Contract, unless terminated earlier as provided in the Contract. Upon the expiration of the initial three year term of this Agreement, the Town Manager shall have the option to extend this Agreement for two additional consecutive one year renewal terms provided all terms, conditions and specifications remain the same and both parties agree to the extension.

**Section 2. Termination without Cause.** This Agreement may be terminated by the Town for any reason or no reason upon ninety (90) calendar days written notice to PayByPhone.

## PayByPhone Services Agreement

**Section 3. Contract Terms.** PayByPhone agrees to provide the PayByPhone services on the same terms and in the same manner as set forth in the Contract, except as otherwise provided herein. All recitals, representations, and warranties of PayByPhone made by PayByPhone in the Contract or in response to the RFP are restated as if set forth fully herein, made for the benefit of the Town, and incorporated herein, except that all references to the “MPA”, “Miami Parking Authority”, “City of Miami” or “Client” are hereby replaced with the “Town” or “Town of Surfside”, including the requirement to be named as additional insured on the required liability policies, together with the following additional provisions:

**A. Chapter 119 (Public Records).** PayByPhone acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Chapter 119, Florida Statutes. PayByPhone agrees to maintain public records in PayByPhone’s possession or control in connection with PayByPhone’s performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. PayByPhone shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of Town. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, PayByPhone, whether finished or unfinished, shall become the property of Town and shall be delivered by PayByPhone to the Town Manager, at no cost to the Town, within seven (7) days of termination of this Agreement. All such records stored electronically by PayByPhone shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Upon termination of this Agreement, PayByPhone shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to PayByPhone shall be withheld until all documents are received as provided herein. PayByPhone’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

PayByPhone Services Agreement

**Section 4. Assignment.** Neither party may assign its rights or obligations under this Agreement without the consent of the other.

**Section 5. Notice.** Notwithstanding Section 10.9 of the Contract, notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

For Town:                      Town Manager  
   Town of Surfside  
   9293 Harding Avenue,  
   Surfside, Florida, 33154

For PayByPhone:          PayByPhone Technologies, Inc.  
   Attention: \_\_\_\_\_  
   #403 - 1168 Hamilton Street  
   Vancouver, British Columbia, Canada

**Section 5. Severability.** If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

**Section 6. Entire Agreement.** This Agreement, including the Contract, the RFP and PayByPhone's response to the RFP, sets forth the entire agreement between PayByPhone and Town with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature.

PayByPhone Services Agreement

ATTEST:

**TOWN OF SURFSIDE, FLORIDA**

\_\_\_\_\_  
Sandra Novoa, MMC, Town Clerk

By: \_\_\_\_\_  
Guillermo Olmedillo, Town Manager

\_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE TOWN OF SURFSIDE ONLY:

By: \_\_\_\_\_  
Linda Miller, Town Attorney

WITNESS

**PAYBYPHONE TECHNOLOGIES,  
INC.**

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

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

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

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

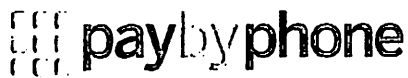
\_\_\_\_ day of \_\_\_\_\_, 2015.

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

(Corporate Seal)

**EXHIBIT "A"**  
**CONTRACT**  
**BETWEEN**  
**MIAMI PARKING AUTHORITY**  
**AND**  
**PAYBYPHONE TECHNOLOGIES, INC.**  
**FOR PAY BY PHONE SERVICES**





## COOPERATION AND SERVICE AGREEMENT

This Cooperation and Service Agreement (the "Agreement") is entered into as of November 3<sup>rd</sup>, 2014 between PayByPhone Technologies Inc., a developer of enhanced mobile commerce solutions, a British Columbia corporation with its principal place of business at #403 - 186 Hamilton Street, Vancouver, British Columbia, Canada ("PayByPhone") and City of Miami Department of Off-Street Parking a/k/a Miami Parking Authority, an agency and instrumentality of the City of Miami located at 40 NW 3<sup>rd</sup> Street, Miami, Florida 33128 ("MPA" or "Client").

### RECITALS

For and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, PayByPhone shall provide wireless applications to enhance the payment process for parking at parking facilities and metered parking stalls owned and/or managed by Client. PayByPhone mobile commerce solutions will also provide Client with a management information system, including real-time operation and transaction reports.

### AGREEMENT

#### Section 1 INCORPORATION OF SOLICITATION AND RESPONSE; CONTROLLING DOCUMENT

The Parties hereby incorporate the solicitation, all addenda ("RFP") and PayByPhone's response as if all fully set forth herein and a part of this Agreement. In the event of any conflict between the RFP, PayByPhone's response and this Agreement, the RFP shall control, followed by this Agreement and ending with PayByPhone's response.

#### Section 2 THE PAYBYPHONE MOBILE PAYMENT PLATFORM AND APPLICATIONS

##### 2.1 PAYBYPHONE MOBILE PAYMENT APPLICATION

PayByPhone agrees to utilize the PayByPhone mobile payment service for use at Client's managed and owned parking facilities as agreed upon by PayByPhone and Client, to allow for consumers to pay for the use of those facilities through personal wireless devices (e.g., cellular telephones) or other wireless systems.

##### 2.2 PAYBYPHONE MANAGEMENT INFORMATION SYSTEM

PayByPhone will operate and manage a software application for Client that will provide near real time information and management reports on the transactions conducted utilizing the PayByPhone Parking Payment Application (the "Management Information System"). PayByPhone will host the Management Information System on its network. Client will access the Management Information System through a browser-based program installed on Client's computer hardware.

##### 2.3 COMPUTER, NETWORKING AND TELECOMMUNICATION SYSTEMS

PayByPhone will own or possess, and will operate and maintain, all computer and networking hardware and software and data (collectively, "computer information") required to operate the PayByPhone mobile payment services service as contemplated in this Agreement, other than Client's existing computer and telecommunications systems. PayByPhone's shall be solely responsible for the security of any computer information stored on its system.

##### 2.4 MOBILE PAYMENT SERVICE ENFORCEMENT

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

##### 2.5 REPORTS

PayByPhone will provide Client with a set of standard reports in the self-serve PayByPhone Service Management Interface System. Any changes or customizations to the standard set of reports will be subject to then-current PayByPhone Professional Services fees. See Appendix B for sample rates.



### **Section 3 FEES AND PAYMENTS**

#### **3.1 PRICING AND PAYMENT**

Client agrees to pay the fees, as outlined in Appendix A. All amounts payable hereunder are exclusive of any and all taxes, including taxes applicable on fees paid by the consumer, and Client is responsible for payment of such taxes. All prices are stated, and Client shall pay, in US dollars. Payment is due within 30 days of invoicing.

#### **3.2 MERCHANT ACCOUNT**

Merchant account refers to Client's merchant account set up with Client's acquiring bank. PayByPhone will cover the cost of linking one (1) Client merchant account with PayByPhone's gateway provider. Client agrees to cover the cost of merchant account updates including all third party fees and then-current PayByPhone Professional Services fees. See Appendix B for sample rates.

#### **3.3 TRANSACTION TESTING**

PayByPhone reserves the right to execute test transactions from time to time to ensure top performance of the system and account. PayByPhone may execute up to ten (10) test transactions per month without adjusting the Client invoice.

#### **3.4 THIRD PARTY INTEGRATION**

In the event system changes (such as upgrades) by a third party impact the PayByPhone integration with Company sub-systems such as enforcement, Client agrees to cover any PayByPhone development costs required to maintain integration. PayByPhone will notify Client, in advance, of any such integration costs that could be added.

### **Section 4 MARKETING, PROMOTION AND USER EDUCATION**

#### **4.1 SIGNAGE**

Client agrees to provide signage and adequate space for PayByPhone signage at each parking facility at which the PayByPhone mobile payment services service is to be available, with sign size and placement to be mutually agreed by PayByPhone and Client. Client agrees that signs will be hung and/or located near payment machines at parking facilities enabled with the PayByPhone mobile payment services service. Client will provide all decals and signs required for implementation. Client agrees to supply all future decals and signage, including new locations. Client agrees to supply replacement decals which may be required in the future.

PayByPhone will provide the first round of signage at Client's location offering PayByPhone as mobile payment service provider. PayByPhone will provide one sign to be located at each paystation, plus one at each level of the parking structure without a paystation. Additionally, one decal will be placed on each paystation and/or meter.

#### **4.2 MARKETING EVENTS**

PayByPhone may conduct on-site marketing events and campaigns for the service, whereby PayByPhone will inform parking lot consumers of the availability of the PayByPhone mobile payment services as well as any promotions available, with the knowledge and approval of Client which is not to be reasonably withheld.

#### **4.3 CLIENT TRAINING**

PayByPhone will provide initial training to Client using a "Train the Trainer" model on the self-served PayByPhone Service Management Interface (SMI). The said Client Trainer will, at its own expense, train its staff and employees, including patrollers, to operate the mobile payment services and related applications and technology. Additional training sessions are available at the then current professional services rates. See Appendix B for sample rates.

### **Section 5 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

The parties shall cooperate with each other in protecting their respective trade names, designs, trademarks and other similar intellectual property rights from unauthorized use.

## **Section 6 TERM AND TERMINATION**

### **6.1 TERM AND RENEWAL**

This Agreement shall enter into force for a period of three (3) consecutive years from the date signed unless earlier terminated in accordance with this Section 6.

The contract shall be automatically renewed annually on the anniversary of the termination date above unless either party gives the other party at least ninety (90) days prior written notice of its intent not to renew the Agreement.

### **6.2 TERMINATION**

Should a party breach a material term and such breach remains uncorrected for thirty (30) days after receipt of a written notice by the breaching party, the non-breaching party may, in addition to all other remedies available at law, terminate this Agreement by providing written notice to the breaching party, without further obligation provided, however, that if the nature of the breach is such that it cannot be reasonably cured within such thirty (30) day period, the breaching party will not be deemed in default of this Agreement so long as such party commences efforts to effect a cure and is diligently pursuing such efforts. Provided, further, that if the breach is as a result of the non-payment of any fee, the non-breaching party may terminate this Agreement if such breach remains uncorrected for ten (10) days after the breaching party's receipt of notice of such breach. Within thirty (30) days after the termination of this Agreement.

## **Section 7 REPRESENTATIONS AND WARRANTIES**

### **7.1 MUTUAL REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants to the other that:

- i) it has the full corporate right and authority, and possesses all licenses, permits, authorizations and rights to intellectual property, necessary to enter into and perform this Agreement;
- ii) its entry into and performance of this Agreement do not and will not conflict with or result in a breach or violation of any agreement or order by which it is bound; and
- iii) this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement.

## **Section 8 DISCLAIMER, INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **8.1 DISCLAIMER**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PAYBYPHONE DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PAYBYPHONE MOBILE PAYMENT SERVICES INCLUDING ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CLIENT ACKNOWLEDGES THAT THE PAYBYPHONE MOBILE PAYMENT SERVICES AND SERVICES FURNISHED BY PAYBYPHONE UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY SERVERS OR OTHER HARDWARE, SOFTWARE, APPLICATIONS AND ANY OTHER ITEMS USED OR PROVIDED BY PAYBYPHONE OR ANY THIRD PARTIES IN CONNECTION WITH PROVIDING ACCESS TO OR HOSTING ANY OF THE FOREGOING OR THE PERFORMANCE OF ANY SERVICES BY PAYBYPHONE UNDER THIS AGREEMENT) ARE PROVIDED BY PAYBYPHONE "AS IS".

### **8.2 INDEMNIFICATION**

Subject to Section 9.3, PayByPhone will protect, defend, indemnify and hold harmless the Client and the City of Miami its officers, employees, volunteers, and agents from and any against any and all third party claims, actions,

losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, (collectively, "Losses") resulting from or arising out of PayByPhone's breach of any representation, warranty set forth in this Agreement. The provisions and obligations of this section shall survive the expiration of earlier termination of this Agreement for a period no greater than the date of termination of the original agreement and shall only apply to events that took place during the term of this agreement. In the event the Parties are notified of the existence of any covered Losses, the Parties shall agree upon a mutually satisfactory local attorney to defend the Client as necessary.

### **8.3 LIMITATION OF LIABILITY**

IN NO EVENT SHALL ANY PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **8.4 PARKING RATES**

Client will be given access to confirm the parking rates at each location via the PayByPhone back office system. PayByPhone will make every attempt at ensuring the rates are configured correctly; upon completion of each location setup, it is the Client's responsibility to ensure all rates are configured correctly. Failing to do so shall exclude PayByPhone from any liability. Client shall provide PayByPhone with sufficient notice of any rates change during PayByPhone standard business hours.

## **Section 9 CONFIDENTIALITY**

Subject to the provisions of Chapter 119, Florida Statutes (2014), neither party will disclose the other party's confidential or proprietary information (including this Agreement and any information provided by the other party that is confidentially maintained or proprietary or which derives value from not being generally known to persons who can obtain economic value from its disclosure or use) except:

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

Each party shall exercise reasonable commercial care in protecting the confidentiality of the other party's confidential information disclosed to it. The parties agree that an actual or threatened breach of this provision would result in irreparable harm to the party whose confidential information would be disclosed in breach, and shall entitle that party to temporary or permanent injunctive relief without proof of actual damages.

For purposes of this Section 10, the parties agree that confidential or proprietary information does not include any information that is (a) already known to the receiving party at the time of disclosure hereunder (other than from the other party hereto) as demonstrated by its written records; (b) now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or anyone to whom the receiving party disclosed such information; (c) disclosed to the receiving party, by a third party, under no obligation of confidentiality to the disclosing party or any other party; or (d) independently developed by the receiving party without reliance on the confidential information of the disclosing party as shown by its written records.

## **Section 10 MISCELLANEOUS**

### **10.1 ASSIGNMENT**

This Agreement shall be binding on the parties, their successors and their permitted assigns. Neither party may assign its rights or obligations under this Agreement without the written consent of the other.

#### **10.2 NO AGENCY**

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

#### **10.3 GOVERNING LAW**

This Agreement, and all matters relating hereto, shall be governed in all respects by the laws of State of Florida, excluding the application of any conflict of laws principles and/or rules. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the competent courts located in Miami Dade County Florida and consent to the personal and exclusive jurisdiction and venue of these courts.

#### **10.4 SEVERABILITY**

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

#### **10.5 ATTORNEY'S FEES**

In any legal proceeding between the parties, the parties shall be responsible for their own attorney's fees and expenses.

#### **10.6 FORCE MAJEURE**

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

#### **10.7 ENTIRE AGREEMENT**

This Agreement, together with the Appendix attached to it, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, any prior agreements with respect to the subject matter hereof. This Agreement may not be modified, amended or any provision waived except by the parties' mutual written agreement.

#### **10.8 NO WAIVER**

Failure by either party to enforce any provision of this Agreement (whether in any one or more instance) shall not be deemed a waiver of future enforcement of that or any other provision.

#### **10.9 NOTICE**

Any notices hereunder provided to PayByPhone shall be given at the address specified below or at such other address as PayByPhone specifies in writing. Any notices hereunder provided to Client shall be given at the address specified below or at such other address as Client specifies in writing. Any notice or other communication required to be given hereunder by either party shall be deemed duly given (a) when personally delivered to the other party, or (b) on the date of receipt when such notice was mailed by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth above, or such other address as either party may designate by giving written notice to the other; or (c) on the date of receipt when such notice was sent by facsimile or e-mail to the other party; provided the sending party receives a written or electronic notice of receipt from the other party of the facsimile or e-mail.

#### **10.10 COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. The parties further agree that a signature transmitted via facsimile shall be deemed original for all purposes hereunder.

**10.11 CAPTIONS**

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

**10.12 TRADEMARKS, TRADE NAMES, LOGOS**

Except as expressly provided in this Agreement, no trademark, trade name, logo, trade dress, copyright or license therein, or other intellectual property rights (collectively, "Intellectual Property") are conveyed by this Agreement. Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance. All Intellectual Property owned by either party shall remain the exclusive property of such party and shall be returned to such party promptly after the expiration of this Agreement.

**10.13 AGREEMENT APPROVAL**

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

**10.14 SOPHISTICATION OF PARTIES**

Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the agreement.

**10.15 CLIENT'S CONDUCT OF BUSINESS THROUGH AFFILIATES**

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

**10.16 PUBLIC RECORDS**

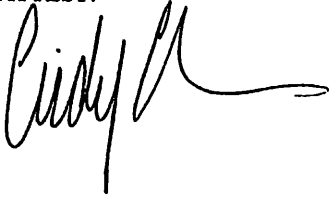
PayByPhone understands that the public shall have access, at all reasonable times, to all documents and information pertaining to MPA contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by MPA and the public to all documents subject to disclosure under applicable law. PayByPhone's failure or refusal to comply with the provisions of this Section shall result in MPA's immediate cancellation of this Agreement. PayByPhone acknowledges that this termination is not subject to cure provisions contained elsewhere in this Agreement. PayByPhone shall additionally comply with the provisions of Section 119.0701, Florida Statutes, entitled "Contracts; public records", as may be applicable, which statute is deemed as being incorporated by reference herein.

**[SIGNATURES TO FOLLOW ON THE NEXT PAGE]**

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

ATTEST:

PAYBYPHONE:



Print Name: Cindy Clark  
Title: Senior Client Relationship manager

By: \_\_\_\_\_  
Print Name: Maggie Clay  
Title: VP Finance & Administration

ATTEST:

CLIENT:



By: AN  
Arthur Noriega, MPA  
Chief Executive Officer

Print Name: Rolando Tripanes  
Title: Dir. of Planning & Dev.

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
Victoria Mendez  
City Attorney

Notice Address  
40 NW 3<sup>rd</sup> Street  
#1103  
Miami, FL 33128

Notice Address:  
#403 - 1168 Hamilton St.  
Vancouver, British Columbia,  
Canada

## APPENDIX A

RFP Response From PayByPhone



APPENDIX A

**SERVICES TO BE PROVIDED:**

PayByPhone Mobile Payment Service

**SYSTEM WILL:**

1. Register consumers by phone or online who wish to pay for parking by cellphone or web-enabled device.
2. Activate and collect payment via credit card for parking using PayByPhone in accordance with parking rates specified by the Client.
3. Display payment status of license plate, space or meter number on internet-capable handheld device such as mobile phone, handheld computer or other Wireless Device for enforcement.
4. Provide a secure web-based administration interface for rates control, management and accounting reports.

**PRICING:**

<i>One Time Setup Fees:</i>		
	Mobile payment services set-up	waived
	Additional locations	waived
	Integration with Third Party	none
<i>Monthly Fees:</i>		
	Monthly minimum	waived
<i>Per Transaction Charges:</i>		
<b>Option 1:</b>		
	Consumer pays (convenience fee added to price of parking)	\$0.35

**NOTES:**

1. One time set-up fee includes, but is not limited to development, testing and implementation of a dedicated client account within the PayByPhone system; merchant account integration and testing; set up and training on reporting, customer service and other elements of the PayByPhone Service Management Interface, signage design, marketing coordination.
2. Monthly fees apply when mobile payment services fees (transaction charges) per calendar month total less than as specified here. Client is responsible for covering the difference between the monthly minimum and the total fees.
3. Client's own credit card processing and merchant banking fees will apply.
4. For pricing option where the consumer does not pay any additional fee on top of the price of parking, uptake / usage of the PayByPhone service is significantly higher. The PayByPhone fees are more than off-set by increased volume, repeat usage by consumers who prefer this payment option, extensions to parking sessions paid remotely via PayByPhone and a reduction in cash handling and processing.
5. All fees and charges are payable within 30 days of invoicing.

Application Trainer	A PayByPhone Applications Trainer will design and deliver training programs for the PayByPhone system. They will also design training course materials and other documents such as handouts, manuals and exercises. Training is typically conducted via a web session, either one on one in a train-the-trainer scenario or in a group setting.
Support Agent	A PayByPhone support agent interacts with client contacts to address inquiries regarding the PayByPhone system, reporting interface, log-ins and general administration.
Tester	The PayByPhone Quality Assurance (QA) testers will thoroughly evaluate, stress-test and troubleshoot all new code, programs and software. The PayByPhone QA testers will log and prioritized any issues/bugs found and work closely with the Software Development team for a resolution.

A B C D E F G H I J K L M N O P

	Pricing Tier 1	Pricing Tier 2	Pricing Tier 3
3 pricing options	The first 99,999 transactions/month will be charged at:	The next 150k transactions/month will be charged at:	All transactions over 260k /month will be charged at:
Option 1 - PBP fee paid by MPA excl text	\$ 0.170	\$ 0.153	\$ 0.138
Option 1 - PBP fee paid by MPA incl text	\$ 0.220	\$ 0.203	\$ 0.188
Option 2 - PBP fee paid by MPA	\$ 0.200	\$ 0.18	\$ 0.16
Option 2: Non-resident consumer pays text	\$ 0.10	\$ 0.10	\$ 0.10
Option 3 - PBP (convenience) fee paid by consumer	\$0.27		