



# City of Hermosa Beach

Civic Center, 1315 Valley Drive, Hermosa Beach, CA 90254-3885

## **CONTRACT FOR PROFESSIONAL SERVICES FOR MOBILE PARKING PAYMENT SYSTEMS (PARKING PAY-BY-APP) BETWEEN THE CITY OF HERMOSA BEACH AND PARKMOBILE, LLC**

This AGREEMENT is entered into this 4 day of November, 2022, by and between the CITY OF Hermosa Beach, a general law city a municipal corporation ("CITY" or "CLIENT") and Parkmobile, LLC, a Delaware limited liability company ("VENDOR" or "PARKMOBILE").

### **RECITALS**

- A. The City desires to enter into an agreement with VENDOR for mobile parking payment systems.
- B. The City does not have the personnel able and/or available to perform the services required under this agreement and therefore, the City desires to contract for consulting services to accomplish this work.
- C. The Vendor warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Vendor to perform the services as described in Exhibit A of this Agreement.

**NOW, THEREFORE**, based on the foregoing recitals, the City and the Vendor agree as follows:

**1 CONSIDERATION AND COMPENSATION** As partial consideration, VENDOR agrees to perform the work listed in the SCOPE OF SERVICES, attached as EXHIBIT A.

As additional consideration, VENDOR and CITY agree to abide by the terms and conditions contained in this Agreement.

As additional consideration, CITY agrees to pay VENDOR in accordance with EXHIBIT A.

No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager or his/her designee.

**2 SCOPE OF SERVICES**. VENDOR will perform the Services and activities set forth in the SCOPE OF SERVICE attached hereto as Exhibit A and incorporated herein by this reference. "Services" means the ParkMobile Application, the Platform, and all other services provided by ParkMobile under this Agreement. "ParkMobile Application" means any and all mobile and/or web applications, services, or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile and that are made available to the general public and that facilitates the payment of parking transactions. "Platform" means access-controlled mobile and/or web applications, services or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile that are made available to Client to administer, configure, manage and/or monitor parking sessions, parking rates, and/or parking restrictions associated with Client's Parking Locations.



"Parking Location" means the location or locations of Client's on-street parking, off-street parking, reservation parking, parking lots, parking decks, permitted parking, and other facilities where ParkMobile Users may park. "ParkMobile User" means an end user that uses the ParkMobile Application.

Except as herein otherwise expressly specified to be furnished by CITY, VENDOR will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space, and facilities necessary or proper to perform and complete the work and provide the professional services required of VENDOR by this Agreement.

The parties agree that ParkMobile does not own, operate, manage, or maintain any Parking Location. Client agrees that ParkMobile is not responsible for the condition or operation of any Parking Location, including, but not limited to, the operation of third-party hardware and/or software-based solutions used by Client at the Parking Location or for the delivery and/or fulfillment of parking or other services at the Parking Location.

Client will not, directly or indirectly, and will not permit any third party to, access or use the Platform except as expressly permitted by this Agreement.

**3 PAYMENTS.** Client shall pay ParkMobile the fees set forth in this Agreement.

3.1 PAYMENT TERMS. The parties designate Client as the merchant of record. Client is responsible for the payment of payment processing and related fees. ParkMobile will pass real-time authorized debit/credit card transactions to Client via a gateway solution. Client agrees to pay ParkMobile \$0.05 per transaction for this service. ParkMobile will issue invoices to Client on a monthly basis for all fees due to ParkMobile under this Agreement. Client shall pay each invoice within thirty (30) days of the invoice date. Client shall make all payments hereunder in US dollars to the address or account specified on the applicable invoice.

3.2 TAXES. All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on ParkMobile's income.

3.3 FEE INCREASES. ParkMobile may increase Fees once for any contract year, by providing Client at least sixty (60) calendar days written notice.

**4 TIME OF PERFORMANCE.** The services of the VENDOR are to commence upon receipt of a notice to proceed from the CITY and shall continue until all authorized work is completed to the CITY's reasonable satisfaction, in accordance with the schedule incorporated in "Exhibit A," unless extended in writing by the CITY.

**5 FAMILIARITY WITH WORK.** By executing this Agreement, VENDOR represents that VENDOR has (a) thoroughly investigated and considered the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

**6 KEY PERSONNEL.** VENDOR's key person assigned to perform work under this Agreement is Kristen Locke. VENDOR shall not assign another person to be in charge of the work contemplated by this Agreement without the prior written authorization of the City.



**7 TERM OF AGREEMENT.** The term of this Agreement shall commence upon execution by both parties and shall continue for three (3) years, terminating on November 4, 2025, unless earlier termination occurs under Section 11 of this Agreement, or this Agreement. This Agreement may be renewed for additional successive one (1) year terms (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term") by mutual written agreement of the parties at least sixty (60) days before the end of the then-current term.

**8 CHANGES.** CITY may order changes in the services within the general scope of this Agreement, consisting of additions, deletions, or other revisions, and the contract sum and the contract time will be adjusted accordingly. All such changes must be authorized in writing, executed by VENDOR and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with written agreement between the parties.

**9 TAXPAYER IDENTIFICATION NUMBER.** VENDOR will provide CITY with a Taxpayer Identification Number.

**10 PERMITS AND LICENSES.** CONTRACTOR will obtain and maintain during the term of this Agreement all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

**11 TERMINATION.** Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination shall be in writing.

VENDOR may terminate this Agreement. Notice will be in writing at least 30 days before the effective termination date.

In the event of such termination, the CONTRACTOR shall cease services as of the date of termination, and all finished or unfinished documents, data, drawings, maps, and other materials prepared by VENDOR shall, at CITY's option, become CITY's property, and VENDOR will receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination.

Either party may terminate this Agreement effective immediately on written notice to the other party, if the breaching party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.

**12 INDEMNIFICATION.** VENDOR shall indemnify, defend, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) ("Losses") of every nature incurred as a result from any third-party claim, suit, action, or proceeding ("Third-Party Claim") arising out of or in connection with VENDOR's performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, but excepting such loss or damage which is caused by the negligence or willful misconduct of the CITY provided that Client promptly notifies ParkMobile in writing of the claim, cooperates with ParkMobile, and allows ParkMobile sole authority to control the defense and settlement of such claim. The VENDOR shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.



ParkMobile will indemnify, defend, and hold harmless CITY from and against any and all Losses incurred by CITY resulting from any Third-Party Claim arising from ParkMobile's negligence or misconduct and any Third-Party Claim that the Platform or any use of the Platform in accordance with this Agreement, infringes or misappropriates such third party's IP Rights, provided that CITY promptly notifies ParkMobile in writing of the claim, cooperates with ParkMobile, and allows ParkMobile sole authority to control the defense and settlement of such claim.

"IP Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

If any of the Services are claimed to, or in ParkMobile's opinion are likely to, infringe, misappropriate, or otherwise violate any third-party IP Rights, or if Client's use of the Services is enjoined or threatened to be enjoined, ParkMobile may, at its option and sole cost and expense: (a) obtain the right for Client to continue to use the Services as contemplated by this Agreement; (b) modify or replace the Services, in whole or in part, to seek to make the Services (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute the Services, as applicable, under this Agreement; or (c) by written notice to Client, terminate this Agreement and require Client to immediately cease any use of the Services.

CITY shall indemnify, defend and hold harmless VENDOR, its officers, officials, employees and volunteers from and against any and all Losses incurred by Vendor resulting from any Third Party Claim arising out of or in connection with CITY's negligent or wrongful performance of this AGREEMENT. Client will also indemnify, defend, and hold harmless ParkMobile from and against any and all Losses incurred by ParkMobile resulting from any Third-Party Claim out of Client's disclosure or use of ParkMobile User Data in violation of this Agreement.

The requirements as to the types and limits of insurance coverage to be maintained by VENDOR as required by Section 17, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by VENDOR pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

**13 ASSIGNABILITY.** This Agreement is for VENDOR's professional services. VENDOR's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

**14 INDEPENDENT CONTRACTOR.** CITY and VENDOR agree that VENDOR will act as an independent contractor and will have control of all work and the manner in which it is performed. VENDOR will be free to contract for similar service to be performed for other employers while under contract with CITY. VENDOR is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct VENDOR as to the details of doing the work or to exercise a measure of control over the work means that VENDOR will follow the direction of the CITY as to end results of the work only.

**15 AUDIT OF RECORDS.** VENDOR agrees that CITY, or designee, has the right to review, obtain, and copy all records pertaining to the performance of this Agreement. VENDOR agrees to provide CITY, or designee, with any relevant information requested and will permit CITY, or designee, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of



determining compliance with this Agreement. VENDOR further agrees to maintain such records for a period of three (3) years following final payment under this Agreement.

VENDOR will keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

**16 CORRECTIVE MEASURES.** VENDOR will promptly implement any corrective measures required by CITY regarding the requirements and obligations of this Agreement. VENDOR will be given a reasonable amount of time as determined by the City to implement said corrective measures. Failure of VENDOR to implement required corrective measures shall result in immediate termination of this Agreement.

**17 INSURANCE REQUIREMENTS.**

A. The VENDOR, at the VENDOR's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:

1. Workers Compensation Insurance as required by law. The VENDOR shall require all subcontractors similarly to provide such compensation insurance for their respective employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by the CONTRACTOR for City.
2. General Liability Coverage. The VENDOR shall maintain commercial general liability insurance in an amount of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
3. Automobile Liability Coverage. The VENDOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the VENDOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

B. Endorsements. Each general liability and automobile liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by City, and shall be endorsed as follows. VENDOR also agrees to require all contractors, and subcontractors to do likewise.

1. "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the VENDOR, including materials, parts, or equipment furnished in connection with such work or operations."
2. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with this policy.
3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.





4. The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.
  5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.
  6. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
- C. VENDOR agrees to provide immediate notice to CITY of any claim or loss against VENDOR arising out of the work performed under this agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.
- D. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the VENDOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- E. The VENDOR shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.
- F. Failure on the part of the VENDOR to procure or maintain required insurance shall constitute a material breach of contract under which the CITY may terminate this Agreement pursuant to Section 11 above.
- G. The commercial general and automobile liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the VENDOR (as the named insured) should VENDOR fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. VENDOR understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by VENDOR as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on VENDOR's behalf upon the VENDOR's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against VENDOR for breach of this Agreement in addition to any other damages incurred by City due to the breach.

**18 USE OF OTHER VENDORS.** VENDOR must obtain CITY's prior written approval to use any sub-VENDORS while performing any portion of this Agreement. Such approval must include approval of the proposed VENDOR and the terms of compensation.

**19 FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE.** The acceptance by the VENDOR of the final payment made under this Agreement shall operate as and be a release of the CITY from all claims and liabilities for compensation to the VENDOR for anything done, furnished or relating to the VENDOR'S work or services. Acceptance of payment shall be any negotiation of the CITY'S check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the CITY shall not constitute, nor be deemed, a release of the responsibility and liability of the VENDOR, its employees, sub-VENDORS and agents for the accuracy and competency of the information provided and/or work



performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the CITY for any defect or error in the work prepared by the VENDOR, its employees, sub-VENDORS and agents.

**20 CORRECTIONS.** In addition to the above indemnification obligations, the VENDOR shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the VENDOR's report or plans. Should the VENDOR fail to make such correction in a reasonably timely manner, such correction shall be made by the CITY, and the cost thereof shall be charged to the VENDOR. In addition to all other available remedies, the City may deduct the cost of such correction from any retention amount held by the City or may withhold payment otherwise owed VENDOR under this Agreement up to the amount of the cost of correction.

**21 NON-APPROPRIATION OF FUNDS.** Payments to be made to VENDOR by CITY for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that CITY does not appropriate sufficient funds for payment of VENDOR'S services beyond the current fiscal year, the Agreement shall cover payment for VENDOR'S services only to the conclusion of the last fiscal year in which CITY appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

**22 NOTICES.** All communications to either party by the other party will be deemed made when received by such party at its respective name and address as follows:

CITY	VENDOR
City of Hermosa Beach 1315 Valley Drive Hermosa Beach, CA 90254 ATTN: Angela Crespi, Deputy City Manager	Parkmobile, LLC 1100 Spring St. NW Ste 200 Atlanta, GA 30309 Attn: Kristen Locke Kristen.Locke@parkmobile.io  For legal notices:  with a copy to ParkMobile's Legal Department at the above address and to legal- notices@parkmobile.io.

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

**A. SOLICITATION.** VENDOR maintains and warrants that it has not employed nor retained any company or person, other than VENDOR's bona fide employee, to solicit or secure this



Agreement. Further, VENDOR warrants that it has not paid nor has it agreed to pay any company or person, other than VENDOR's bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Should VENDOR breach or violate this warranty, CITY may rescind this Agreement without liability.

- B. THIRD PARTY BENEFICIARIES. This Agreement and every provision herein is generally for the exclusive benefit of VENDOR and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of VENDOR's or CITY's obligations under this Agreement.
- C. INTERPRETATION. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.
- D. ENTIRE AGREEMENT. This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written.
- E. RULES OF CONSTRUCTION. Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.
- F. AUTHORITY/MODIFICATION. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment with signatures of all parties to this Agreement. CITY's city manager, or designee, may execute any such amendment on behalf of CITY.

**23** ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

**24** FORCE MAJEURE. Should performance of this Agreement be impossible due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.

**25** TIME IS OF ESSENCE. Time is of the essence to comply with dates and schedules to be provided.

**26** ATTORNEY'S FEES. The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.





**27 STATEMENT OF EXPERIENCE.** By executing this Agreement, VENDOR represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. VENDOR represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private VENDORS, and experience in dealing with public agencies all suggest that VENDOR is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

**28 OWNERSHIP OF DOCUMENTS.** It is understood and agreed that the City shall own all documents and other work product of the VENDOR, except the VENDOR's notes and workpapers, which pertain to the work performed under this Agreement. The City shall have the sole right to use such materials in its discretion and without further compensation to the VENDOR, but any re-use of such documents by the City on any other project without prior written consent of the VENDOR shall be at the sole risk of the City.

Client Data remains the sole and exclusive property of Client. Client grants ParkMobile a perpetual, irrevocable, royalty-free license to use Client Data in connection with the Services. "Client Data" means any data specific to Client's operation that is provided by Client to ParkMobile to be used in the provision of Services that is not available to ParkMobile publicly or by other means.

Client acknowledges that, as between Client and ParkMobile, ParkMobile owns all right, title, and interest, including all IP Rights, in and to the Services, including but not limited to the ParkMobile Application and the Platform.

ParkMobile User Data remains the sole and exclusive property of ParkMobile. ParkMobile may sublicense certain ParkMobile User Data to Client upon Client's execution of ParkMobile's Data Protection Agreement. Client will not, directly or indirectly: (i) sell or resell ParkMobile User Data in any capacity or form; (ii) create any derivative work using ParkMobile User Data; or (iii) use ParkMobile User Data for purposes other than those specifically allowed in this Agreement. Notwithstanding the foregoing, the parties acknowledge and agree that ParkMobile will not sublicense or provide any PCI Data to Client. "ParkMobile User Data" means information, data, and other content, in any form or media, that is submitted, posted, or otherwise transmitted by or on behalf of a ParkMobile User, directly or indirectly, through the ParkMobile Application. "PCI Data" means, as applicable, payment card number, cardholder name, expiration date, card verification code or value, service code, and/or security-related information used to authenticate cardholders and/or authorize payment card transactions. Resultant Data remains the sole and exclusive property of ParkMobile. ParkMobile grants Client a revocable, royalty-free, non-exclusive, non-assignable, non-transferable license to applicable Resultant Data for the duration of the term only for Client's internal use in connection with the Services. "Resultant Data" means data and information related to Client's, Authorized Users' and/or ParkMobile Users' use of the Services that is used by ParkMobile in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. "Authorized User" means Client's employee, consultant, contractor, and agent who is authorized by Client to access and use the Platform under the rights granted to Client pursuant to this Agreement.

**29 DISCLOSURE REQUIRED.** (City and VENDOR initials required at one of the following paragraphs)



By their respective initials next to this paragraph, City and VENDOR hereby acknowledge that VENDOR is a "VENDOR" for the purposes of the California Political Reform Act because VENDOR's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were VENDOR employed by the City. VENDOR hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to VENDOR commencing services hereunder, the City's Manager shall prepare and deliver to VENDOR a memorandum detailing the extent of VENDOR's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

VENDOR Initials \_\_\_\_\_

**OR**

By their initials next to this paragraph, City and VENDOR hereby acknowledge that VENDOR is not a "VENDOR" for the purpose of the California Political Reform Act because VENDOR's duties and responsibilities are not within the scope of the definition of VENDOR in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

Vendor Initials \_\_\_\_\_

**30** COMPLIANCE WITH COVID-19 VACCINATION POLICY. All VENDOR'S employees, agents, officers and subcontractors who will be physically present in the City and have contact with City officials and employees or with the public shall be fully vaccinated from COVID-19. VENDOR agrees to certify in writing to CITY that it complies with the foregoing.

DISCLAIMERS. PARKMOBILE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PARKMOBILE DOES NOT WARRANT THAT THE SERVICES OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. PARKMOBILE SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

IN NO EVENT WILL PARKMOBILE OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES,



REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**31** CONFIDENTIAL INFORMATION. Neither party will disclose the other party's Confidential Information except to its employees, affiliates, agents, or professional advisors ("Representatives") who need to know it and who have a legal obligation to keep it confidential. The receiving party will use the disclosing party's Confidential Information only to exercise rights and fulfill obligations under this Agreement. The receiving party will ensure that its Representatives are also subject to the same non-disclosure and use obligations. The receiving party may disclose the other party's Confidential Information when required by law after giving reasonable notice to the disclosing party, if permitted by law.

"Confidential Information" means information that one party (or an affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations or becomes public through no fault of the recipient.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF HERMOSA BEACH

PARKMOBILE, LLC

\_\_\_\_\_  
[MAYOR/CITY MANAGER]

By: \_\_\_\_\_  
NAME/TITLE

ATTEST:

\_\_\_\_\_  
Mayra Maravilla, City Clerk

\_\_\_\_\_  
Taxpayer ID No.

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Jenkins, City Attorney



# City of Hermosa Beach

Civic Center, 1315 Valley Drive, Hermosa Beach, CA 90254-3885

## **EXHIBIT A Scope of Services**

The vendor services should consist of the following components to provide the necessary experience to operate a reliable and complete mobile parking payment system. The City intends to utilize the system for on and off-street parking stalls. The number of parking stalls and location of stalls covered by the system will remain the sole discretion of the City; however, the City welcomes input from the selected vendor regarding industry best practices.

The City is seeking to implement a system that is easy to use for customers and staff, has the ability to interface with existing parking payment enforcement systems, and offers flexible integration options with other payment systems, including other mobile payment systems. The ideal vendor will possess the ability to develop integrations with existing and new software and services. The system must communicate real-time payment status to existing and future parking citation and meter systems.

The mobile parking payment system is to achieve the following goals:

- Provide consistent, reliable, cost-effective, and easy to use mobile parking payment options.
- Ensure that the City maintains a flexible infrastructure that can adopt to changing user needs.
- Assist the City in identifying improvements in parking asset utilization, including parking rate optimization and technological enhancements.

The selected vendor must have a payment system that provides the following functionality:

- Interfaces with existing parking enforcement citation writing software provided by TurboData, and parking meter services provided by IPS.
  - Interfaces that allow users to pay with mobile parking payment systems provided by other vendors is highly desirable.
- Free online and telephone customer service support for users and City staff. Telephone options must include the option to speak with a live customer service agent during the vendor's standard business hours.
- Capability to interface with multiple platforms, such as a smartphone (both Android and iOS systems), desktop browser, and mobile browser.
- Provides users the opportunity to create individual and multi-user (e.g., family or business) accounts, register multiple license plates/vehicles, view past transactions, and modify customer account data (e.g., customer profile, mailing and billing addresses, credit/debit card payment information, passwords, etc.)
  - The City would prefer that all accounts provide users multi-layer security features that exceed industry standards (e.g., multi-factor authentication options, automatic logout, password encryption, etc.).



- Comply with, or exceed, all parking payment industry credit card processing security standards, and applicable Payment Card Industry Data Security Standards.
- Accepts, at a minimum, the following payment options:
  - Credit, debit, and prepaid cards displaying the Visa, Mastercard, American Express, and Discover logos.
  - Apple Pay (Apple Wallet), Google Pay.
- Allow users to:
  - Easily discern the cost of parking, any fees charged by the vendor, and the total cost of the parking session prior to approving payment (purchase).
  - Purchase and pre-purchase parking session time within specific time zones or areas. The system should be capable of prohibiting purchases during periods when posted signs restrict parking (e.g., during restricted periods in City lots, during street sweeping periods, etc.). The pre-purchase of parking session time would allow users to pay for parking in advance of the designated enforcement period, but not in excess of the posted time limit.
  - Provide for the use of discount codes or coupons.
  - Easily view remaining parking session time using an app or other mobile device and receive a near "end of session" warning of the user's choice (e.g., text message 10 minutes prior to end of session).
  - Extend parking session time via an app, or by text message. The City values a system that would allow users to purchase additional parking time by text message and via app with little effort.
  - Receive a detailed receipt via email and/or text message after each parking session purchase (users may opt-in or out of each type of receipt).
- Vendor must be able to provide to the City:
  - "Back office" access to create accounts, reports, and download parking occupancy data into Excel. City shall be able to determine:
    - In real-time, for every parking session: the applicable zone; the length of the parking session; the date and time the parking session was initiated; the license plate associated with the parking session; the dollar amount of each parking session; and the payment method of each parking session.
    - Parking zone or area occupancy, revenue, and coupon or discount code use.
    - Options that users select when paying for parking sessions (e.g., rate at which users purchase minimum or maximum time allowed or extend sessions).
  - Financial transactions and services that include:
    - Automated clearing house (ACH) transaction debits for fees, and credits for deposits (revenue) to City accounts.
    - Any applicable merchant account reporting should include, at a minimum, the following elements: summary by day; summary by card type; summary by batch; chargebacks and reversals; adjustments; fees.
  - The ability to make parking price changes; add, delete, or change parking zones; create special parking session rules (e.g., prevent parking session purchases during City events).





- Initial implementation training for City staff for all services associated with the system and user manuals (online or paper based). Provide an annual training at the City's request. The City may consider a combination of in person or live online training.
- Timely notification of system errors or service interruptions and provide an estimated time for resumption of service.
- System up-time of 99% and provide pro-rated allowances for any non-transaction-based fees paid by the City when system services are unable to process user transactions.
- A detailed implementation project management plan, and a system acceptance testing plan.
- All signage, stickers, appliques, decals, and advertising collateral necessary to successfully implement the system.
- A City branded advertising package for social media and direct email use. The City's primary social media websites are Facebook and Instagram. The City also uses a direct email system.
- A project manager must be designated for the entire duration of the project and until the City agrees to conclude system acceptance testing. Contract management and support must continue to be provided to the City throughout the duration of the contract.

SERVICE TERMS	
<b>Services</b>	ParkMobile will provide Client with the Services related to the following types of parking transactions: <b>On-Demand, Reservations</b>
<b>Merchant of Record</b>	The parties designate Client as the merchant of record. Client is responsible for the payment of payment processing and related fees. ParkMobile will pass real-time authorized debit/credit card transactions to Client's processing partner via a gateway solution. If Client elects to use a processing partner with which ParkMobile is not integrated, Client agrees to pay ParkMobile \$0.05 per transaction for this service. ParkMobile will issue invoices to Client on a monthly basis for all fees due to ParkMobile under this Agreement. Client shall pay each invoice within thirty (30) days of the invoice date.
<b>Parking Locations</b>	The Services will be provided to Client in the following locations / geographical territory:  <b>Parking Lot A, Parking Lot B, Parking Lot C</b>
<b>Signage</b>	Client will receive one free welcome kit that includes the aluminum signs and/or decal stickers necessary to complete implementation (installation not included). All signage included in the welcome kit is designed using ParkMobile's standard signage templates. Custom signage may be made available to Client for purchase at ParkMobile's current signage rates. Any requested changes to ParkMobile's standard signage templates will be treated as custom signage. Additional and/or replacement signage may be purchased by Client at ParkMobile's then-current signage rates. Installation and maintenance of all signage is Client's sole responsibility.



IMPLEMENTATION FEES			
Description	Units	Rate	Price
Implementation Fee	0	\$1,000.00	\$0.00
Custom Development	0	\$165.00/hr	\$0.00
<b>Total Implementation Fees:</b>			<b>\$0.00</b>

ADDITIONAL FEES	
Call Center & Customer Support	WAIVED
Client Support & Maintenance	WAIVED
Hosting	WAIVED
Enforcement Portal	WAIVED
Reporting Portal	WAIVED
Marketing & Advertising	WAIVED
Promotional Codes	WAIVED

USER FEES		
On-Demand User Fee	\$0.25	per transaction
Reservation User Fee	12%	of parking fee
"No-Charge" Reservation Service Fee	\$1.00	per no-charge reservation

### ON-DEMAND PARKING SERVICES

ParkMobile offers a service to ParkMobile Users that facilitates the activation of and payment for on-demand parking using the ParkMobile Application ("On-Demand Parking").

ParkMobile Users may begin and, if applicable, end a parking transaction in a variety of ways: (1) visiting <https://app.parkmobile.io>; (2) calling ParkMobile's IVR System, or (3) using the ParkMobile Application. In order to register with ParkMobile and begin a parking session, a consumer simply provide ParkMobile with the information required by ParkMobile to create an account, including payment method information and license plate number. Thereafter, subsequent parking sessions only require the ParkMobile User to enter or select the applicable parking duration available for the applicable location.

The parking zone code of the Client parking areas are indicated on parking signs or on parking meters. Enforcers of the Client check the validity of parking status real time against the Platform via a web service offering, provided as part of the Services, to determine if a valid parking right exists. This information can be accessed by using a handheld terminal, mobile device or personal digital assistant (PDA).



ParkMobile does not provide or pay for Client's use of handheld terminals, mobile devices or PDAs for enforcement or any data plans or other items needed for communication between such items and the Services.

At their option, ParkMobile Users will receive parking alert services from ParkMobile via SMS, ParkMobile Application push notification or email. The ParkMobile User may be notified, for example, when parked for an extended period of time or when the maximum parking time nears expiration.

ParkMobile Users can use On-Demand Parking anywhere the Services are available.

All parking charges are automatically charged to the ParkMobile User's payment method, and ParkMobile Users have real time access to an online account-based personal page accessible from <https://app.parkmobile.io> to access and print parking history, receipts, and statements.

### **OPTIONAL -- RESERVATION PARKING SERVICES**

ParkMobile offers a service to ParkMobile Users that facilitates the activation of and payment for reservation parking using the ParkMobile Application ("Reservation Parking").

For each Parking Location that the parties agree to on-board for Reservation Parking Services, ParkMobile shall make the Parking Location's parking inventory available for sale through the ParkMobile Application and shall market and advertise such availability. The number of parking spaces and corresponding reservation periods and parking rates making up the parking inventory shall be specified by Client and may be altered by Client at any time for unreserved parking inventory.

#### **Responsibilities of Client.**

In order for ParkMobile to provide Reservation Parking Services, Client shall maintain an agreed upon number of parking spaces or transportation services at the Parking Location which shall be maintained at all times unless ParkMobile is notified otherwise in writing by Client.

If access to the Parking Location is denied for any reason other than a ParkMobile User's error or failure to abide by Client's rules and regulations, Client agrees to forfeit its share of the applicable parking fee and authorizes ParkMobile to refund the entire Parking Fee to the ParkMobile User. If access to the Parking Location is denied because of a ParkMobile User's error or failure to abide by Client's rules and regulations, no Parking Fees will be refunded to the ParkMobile User.

Client shall promote and market the Services through mutually agreed upon methods which shall include:

- o a persistent, prominent "call to action" link/button on the parking and/or transportation pages of the Parking Location website(s) that directs users to the Client-branded website created by ParkMobile (e.g. a "Reserve Parking Now" button);



- Embedded content on the parking and/or transportation pages of the Parking Location website(s) describing why and how to reserve parking through ParkMobile (e.g. FAQs, videos, etc.), such content to be provided by ParkMobile; and
- mentions in emails promoting the Parking Location, including "know before you go" emails, all of which shall include a "call to action" to reserve event parking and link to the Client-branded website created by ParkMobile.

Client agrees to use commercially reasonable efforts to obtain for ParkMobile a license to use photo and video assets of the Parking Location (where Client is not the Parking Location owner) and any tenants of a Parking Location in connection with ParkMobile's marketing of the Services as available at such Parking Location.