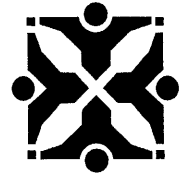


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: R 100-15

Department Source: Public Works

To: City Council

From: City Manager & Staff

Council Meeting Date: 6/15/2015

Re: License Agreement with Parkmobile for the Downtown Employee Parking Permit Pilot Project

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibit to Resolution/Ordinance

Supporting documentation includes: Map

Executive Summary

Authorizing the City Manager to execute a license agreement with Parkmobile LLC for a proposed Downtown Employee Parking Permit pilot project anticipated to begin August of 2015.

Discussion

On July 5, 2011, Council established the Downtown Parking Task Force commissioned to review, among other things, the current technology used in the Parking Utility and the availability and feasibility of employing improved technology. One recommendation from the Task Force was for City Council to authorize the issuance of hang tag permits to be used for parking at ten-hour meters. The hang tags would be specifically marketed to downtown business owners, and their employees, at a monthly rate of \$35/each.

It's estimated that 7,000 individuals are employed by downtown businesses and many of those employees park their cars at on-street meters close to their places of employment, or that of their competitors, and "plug the meter" throughout the day. This is an inappropriate use of the on-street meters, and limits the number of high-value parking spaces available to potential consumers. Typically, customers park in front of retailers, businesses, and restaurants for shorter periods of time, creating frequent turnover of prime parking spaces, which improves access to The District, eases parking frustrations and potentially translates into higher sales for businesses.

Staff believes that one reason downtown employees plug the on-street meters during their work shifts is because they simply can't afford to purchase a parking permit for one of the downtown parking facilities at cost of \$60/month. However, employees may be willing to purchase a lower priced permit to park at on-street 10-hour parking meters. The proposed license agreement with Parkmobile, LLC will allow the City to use their mobile app to administer a Downtown Employee Parking Permit pilot project whereby monthly permits can be purchased for parking at on-street 10-hour meters. Two hundred (200) permits would be marketed to downtown employees; however, anyone could apply. Only one permit would be issued per person, and their license plate number would serve as their permit. When a permit holder parks in a 10-hour meter space, the meter would indicate that time is expired; however, enforcement agents will have the capability to check license plate numbers via

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their hand-held ticketing device to ensure that the individual is a valid permit holder, and no ticket would be issued. If a permit holder owns more than one vehicle, they could easily change the license plate number through Parkmobile's web page. The cost of the permit is \$35/month, of which the City will receive \$34 and Parkmobile \$1. An option for automatic renewal of the permit each month is available to the permit holder.

The attached map shows locations of current 10-hour parking meter spaces, as well as 10-hour metered spaces that will be added, and some removed. The 10-hour meters will be added to current locations of low parking occupancy, or free parking, to expand the total available 10-hour metered spaces from 254 to 313. With Council's authorization of the license agreement with Parkmobile, LLC, the Downtown Employee Parking Permit pilot project could be introduced to the public by mid-August of 2015.

Fiscal Impact

Short-Term Impact: The one time Parkmobile mobile app setup fee is \$500, and will be paid from the Parking Utility.

Long-Term Impact: Staff anticipates the program will be revenue neutral; however, parking revenue will be monitored and rates adjusted if needed.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Downtown

Strategic Plan Impact: Infrastructure

Comprehensive Plan Impact: Infrastructure

Suggested Council Action

Authorize a license agreement with Parkmobile LLC for a Downtown Employee Parking Permit pilot project.

Legislative History

6/15/15 (B144-15) Amending Chapter 14 of the City Code Relating to Downtown Parking Zones

6/01/15 (R96-15) Authorizing a First Amended Parking Services Agreement with Parkmobile for activation and payment of parking transactions using mobile technology

12/1/14 (R225-14) Authorizing a Parking Services Agreement with Parkmobile USA, Inc.

2/04/13 (REP 18-13) Purchase of Single-space Credit Card Capable Parking Meters


Department Approved


City Manager Approved

Introduced by _____ Council Bill No. R 100-15

A RESOLUTION

authorizing a license agreement with Parkmobile, LLC for a software application relating to a proposed downtown employee parking permit pilot project.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a license agreement with Parkmobile, LLC for a software application relating to a proposed downtown employee parking permit pilot project. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof.

ADOPTED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor



mobile

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is made and entered into as of this ___ day of _____, 2015 (the “Effective Date”) by and between **PARKMOBILE, LLC** a Delaware limited liability company (“Parkmobile”), and the City of Columbia, a Missouri municipality (“Client”).

RECITALS:

WHEREAS, Parkmobile is engaged in the business of providing integrated solutions for the management of all parking-related matters, including non-gated visitor parking, on-street parking, parking permits, including providing a system for the payment of permit parking by mobile phone, and back-office administration; and

WHEREAS, Parkmobile and Client desire to enter into a mutually beneficial license arrangement, pursuant to which Parkmobile will provide certain services and license certain software to Client, upon the terms and subject to the conditions contained herein.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and in order to effectuate the above arrangement, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Certain Defined Terms. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“Administrative Support” means the interaction between the Parkmobile’s Client Management Team and the City’s stakeholders who need assistance or have questions related to the services provided.

“Customer Service” means the interactions between the membership base who choose to use the service and Parkmobile’s Call & Support Center providing assistance and clarification to issues that arise relative to the use of the service.

“Documentation” means materials in hard copy or electronic form describing the use and operation of the Software, including any manuals and programming tools, provided by Parkmobile.

“Error” means a failure of the Software to substantially conform to the Documentation, which may be reported by Parkmobile to Client or vice versa.

“Error Corrections” means revisions, modifications, alterations and additions to the Software, bug fixes or workarounds provided by Parkmobile to Client to correct Errors.

“Reasonable” is defined as good faith effort to accomplish the goal/objective of the service.

“Software” means computer software programs (i.e., e-Permixx) and Documentation developed and owned by Parkmobile (or its affiliates) and identified on Schedule 1 as the same may from time to time be amended and upgraded.

“Technical Support” means the interaction between Parkmobile’s Client Management Team with the City’s stakeholders who need assistance or have inquiries related to the product’s features, functionalities, or other integrations involved in the deployment of our services.

“Term” has the meaning set forth in Section 4.1 hereof.

1.2 Other Definitional Provisions. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement, unless otherwise specified. The term “including” shall mean “including without limitation.”

ARTICLE 2 LICENSE; SERVICES

2.1 License and Services Provided by Parkmobile. Effective as of the Effective Date, Parkmobile hereby grants to Client a nonexclusive, nontransferable, limited license during the Term, to use the Software in object code form, in the conduct of Client’s own internal business operations in accordance with the terms hereof.

2.2 Help and Support. Parkmobile agrees to use its reasonable efforts to assist Client with any technical support that Client may reasonably require in relation to using the Software. In furtherance of the foregoing, Parkmobile agrees to provide Client with preventative maintenance, corrective maintenance, adaptive maintenance and online, on-site and telephone support with respect to the Software. Parkmobile and the Client shall promptly notify the other of any Errors or Error Corrections that arise during Client’s use of the Software or the services hereunder. Parkmobile shall provide a fully staffed 24/7 customer support center to ensure quality and quick resolution to any issues that may arise.

2.3 Reservation of Rights. All rights not expressly granted to Client herein are reserved to Parkmobile.

2.4 No Performance Warranty. Parkmobile agrees that the Software shall be provided hereunder in accordance with the service levels set forth on Schedule 2, as the same may be amended from time to time as mutually agreed upon by the parties in writing.

2.5 Error Corrections. Notwithstanding Section 2.5, in the event of an Error in the Software, Parkmobile’s sole and exclusive obligation shall be to use reasonable efforts to repair that portion of the Software as promptly as possible. Repair may take the form, at the option of Parkmobile, as the case may be, of: (i) corrected Software; (ii) corrected Documentation; (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented; or (iv) correction/clarification of the functional definition of the Software.

2.6 Publicity of Services. All brochures and promotional materials to be distributed by Client in connection with the Services shall be in a form mutually agreed upon by the parties.

2.7 Cooperation. Each party shall reasonably cooperate with the other party to permit such party to perform its duties and obligations under this Agreement in a timely manner.

2.8 Authority of the Parties. Each party acknowledges and agrees that it has no authority to act on behalf of the other party other than as set forth in this Agreement or to enter into any contract or to incur any liability on behalf of the other party, except with prior written consent of an authorized officer of such party.

Each party covenants that it shall not at any time represent, either orally or in writing, that it has any right, power or authority with respect to the other party not expressly granted to the other party by such party.

ARTICLE 3 FEES; PAYMENT

3.1 Fees. The fees (the “Fees”) applicable to the license of the Software granted to Client hereunder and services related thereto are set forth on Schedule 3. Schedule 3 may be updated from time to time in writing upon the mutual agreement of the parties to reflect any changes or modifications in the Fees payable hereunder.

3.2 Payment. Payment is due not later than thirty (30) days after invoice. Late payment interest of ten percent (10%) per annum may be assessed by Parkmobile on any payment past due, in which case such interest shall accrue from the payment due date to the date payment is received.

3.3 Taxes. Parkmobile’s prices do not include sales, use, revenue or excise taxes, and accordingly, in addition to the price specified herein, the amount of any sales, use, excise or other similar tax applicable to the services provided hereunder shall be paid by Client, or, in lieu thereof, Client shall provide Parkmobile with a tax exemption certificate issued by the appropriate taxing authority.

3.4 Billing Disputes. Client shall not be entitled to suspend payment of any disputed invoices. Any disputes must be submitted to Parkmobile in writing and with an explanation of the reason for the dispute. In the event that any payment dispute is resolved in favor of Client, Parkmobile shall credit Client on the immediately subsequent invoice issued to Client.

ARTICLE 4 TERM; TERMINATION

4.1 Term. The initial term of this Agreement shall commence as of the Effective Date and terminate one year from the Effective Date unless the parties agree to renew. _____ (the “Initial Term”). Following the Initial Term, the Agreement shall be eligible for four consecutive one (1) year renewal terms (each a “Renewal Term”), by written consent of both parties at least sixty (60) days prior to the end of the then-current Renewal Term. The date on which this Agreement is terminated or expires as provided herein is called the “Termination Date,” and the period from the Effective Date through the Termination Date is herein called the “Term.”

4.2 Termination for Cause.

a) Either party may terminate this Agreement and the rights granted herein if the other party breaches any of the provisions of this Agreement and (i) fails to remedy such breach within thirty (30) days after receiving written notice thereof, or (ii) provided the breach does not relate to a monetary obligation, fails to (A) commence a good faith action to remedy such breach within five (5) days after receiving written notice thereof, and (B) diligently pursue such action to conclusion.

b) Should either party (i) make a general assignment for the benefit of creditors; (ii) institute liquidation proceedings or proceedings to be adjudicated as voluntarily bankrupt; (iii) consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a

decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in an insolvency covering all or substantially all of such party's property or providing for the liquidation or dissolution of such party's property or business affairs; then, in any such event, the other party, may terminate this Agreement effective no sooner than 30 days prior to being notified in writing.

4.3 Effect of Termination.

a) Upon termination or expiration of this Agreement, (i) Client shall pay to Parkmobile any portion of the Fees then accrued and properly payable under this Agreement; and (ii) Client shall promptly return to Parkmobile all Documentation and other materials in its possession provided by Parkmobile or otherwise created or produced by Parkmobile in connection with the performance of the services provided by Parkmobile hereunder.

b) Notwithstanding the exercise by any party of its rights under this Article 4, no termination of this Agreement shall relieve either party of its liability for the payment or performance of any obligation accrued prior to the Termination Date (including any indemnification obligation arising hereunder, whether or not notice of such indemnification claim has been given before such termination or of any rights or obligations under any other provisions which, by their meaning or content, are intended to survive the termination hereof).

ARTICLE 5 DATA OWNERSHIP AND SECURITY

5.1 Data Ownership and Security. Parkmobile and its software shall comply with the requirements of this Section. Parkmobile shall require its subcontractors or third party software providers to at all times comply with the requirements of this section. Parkmobile covenants that any data from the City, its employees or customers or derived there from (hereinafter "City Data") shall be stored in the United States of America. City Data or any information derived there from shall not be transferred, moved, or stored to or at any location outside the United States of America. All such City Data and any information derived there from shall be confidential and proprietary information belonging to either the City or its customers or the users of the Software. Parkmobile covenants that Parkmobile, its subsidiaries or subcontractors shall not sell or give away any such City Data or information derived there from. Parkmobile shall maintain the security of City Data and that of City's customers and any user that is stored in or in any way connected with Software Products and applications. If either Party believes or suspects that security has been breached or City Data compromised whether it be from harmful code or otherwise, the Party shall notify the Other Party of the issue or possible security breach within forty-eight (48) hours.

5.2 Binding Subcontractors and Subsidiaries to Data Security Standards. Parkmobile shall include similar provisions in Parkmobile's agreement(s) with subcontractors and subsidiaries who perform work or services related to these Software Products and or the City's Data contained therein or in the cloud storage.

5.3 No Harmful Code. Parkmobile warrants that the Software Products do not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any

software, program, data, device, system or service, including without limitation, any time bomb, virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door. Parkmobile shall include in contracts with any subcontractors a provision which prohibits the use of Harmful Code. Parkmobile shall include a similar provision in its contract with subcontractor.

5.4 Software Upgrades. If, during the Term or any extended Maintenance Term of this Agreement, Parkmobile upgrades its software, City at its option, shall receive the upgrades at no additional charge.

5.5 Cloud Storage. Parkmobile shall comply with the City's Cloud Computing Requirements contained in Exhibit C.

5.6 Red Flag Compliance. Parkmobile's Software shall at all times comply with the terms of this Agreement, the Contract Documents, Good Financial Industry and Accounting Practices, Applicable Laws, City's Red Flag Policy, SAS70 auditing standards, and the City's Cloud Computing Requirements. Parkmobile shall comply with the City's Red Flag policy, attached as Exhibit A and timely report any Red Flags to the City's Program Administrator. Said report shall include Red Flags detected by Parkmobile or its subcontractors or subsidiaries and Parkmobile's response to the Red Flags so detected. Parkmobile shall provide City with a copy of its existing Red Flag policies and procedures, and shall promptly provide copies of any changes to its Red Flag policies and procedures.

5.7 Compliance with Applicable Regulations and Standards for the use, storage or processing of Credit and Debit Cards. If any Software module or Software upgrade includes the storage, processing, or use of credit cards and/or debit cards, Parkmobile shall comply and shall warrant that the Parkmobile's software and services (including any modifications, customizations or interfaces) comply with the Payment Card Industry (PCI) Data Security Standards and the rules and regulations of payment card industry organizations including Visa, Mastercard, Discover, and any other applicable payment card industry organizations. Parkmobile shall further warrant that such software and/or modules be in compliance with Good Financial Industry and Accounting Practices; SAS70 auditing standards; NACHA (The Electronic Payments Association) Operating Rules; and the City's Red Flag Policy as applicable. Parkmobile shall further require that any subcontractor's software, modules, or upgrades be in compliance with this section in its contracts with those subParkmobiles or third party software providers. Compliance is required to be maintained with all listed applicable regulations, standards, etc. as they are updated and modified over the time period of the contracts.

Parkmobile shall notify City promptly of their failure or subcontractor's failure to maintain such compliance. In addition to Parkmobile's hold harmless agreement, Parkmobile shall be required to bear the cost of any fees, penalties, or costs accrued to City because of such failure to maintain such compliance.

Parkmobile shall provide annually to the City a copy of its PCI compliance audit certification.

ARTICLE 6
ADDITIONAL COVENANTS OF THE PARTIES

6.1 Insurance. Parkmobile shall maintain, on a primary basis and at its sole expense, at all times during the life of the Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Parkmobile is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Parkmobile under the Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.

- a) Workers' Compensation & Employers Liability. Parkmobile shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 each accident, disease each employee and disease policy limit.
- b) Commercial General Liability. Parkmobile shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- c) Business Auto Liability Parkmobile shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Parkmobile does not own automobiles, Parkmobile agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- d) Parkmobile may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Parkmobile agrees to endorse the City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- e) The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least 10 days prior to the Effective Date of the Agreement between the Parkmobile and the City. Parkmobile is required to maintain coverages as stated and required to notify the City of a Carrier Change or cancellation within two (2) business days. The City reserves the right to request a copy of the policy.
- f) The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the City, or its elected officials or employees.
- g) Failure to maintain the required insurance in force may be cause for termination of the Agreement. In the event Parkmobile fails to maintain and keep in force the required

insurance or to obtain coverage from its subParkmobiles, the City shall have the right to cancel and terminate the Agreement without notice.

The insurance required by the provisions of this article is required in the public interest and the City does not assume any liability for acts of the Parkmobile and/or their employees and/or their subParkmobiles in the performance of this Agreement.

6.2 Confidentiality.

a) The City of Columbia is subject to the Missouri Sunshine Law, *See* Section 610.021 RSMo and Section 2-25.3 of the City Code. Therefore, this agreement and any other related documentation are subject to the provisions of the Missouri Sunshine law.

b) Each party acknowledges that all information and trade secrets relating to any of the other party's products and the services hereunder, including, without limitation, software, ("Confidential Information"). Except as otherwise set out herein, neither party shall disclose any Confidential Information of the other party to any third party or use it for its own benefit or the benefit of a third party, and each party shall take all commercially reasonable measures to protect the confidentiality of Confidential Information of the other party and prevent its disclosure to others.

c) Each party may disclose the Confidential Information of the disclosing party to its affiliates and their respective employees and agents who are directly involved in the performance of this Agreement, who have a need to know and who are obligated to honor the restrictions on disclosure and use of such Confidential Information set forth in this Agreement (the persons to whom such disclosure is permissible being collectively known as "Representatives"). Each party shall be responsible for any breach of this Section 5.2 by its Representatives. The parties shall not disclose, without the prior written consent of the disclosing party, any of such disclosing party's Confidential Information that it has learned either during the course of this Agreement or in discussions and proposals leading up to this Agreement, except as may be required by Law. The parties shall not use the Confidential Information of a disclosing party for any purpose other than that for which it was disclosed.

d) All Confidential Information of Parkmobile and Client shall remain the property of each respective party. Upon any termination or expiration of this Agreement, each party shall return to the other party the other party's original version of all Confidential Information of such other party in document form, including any electronic media version, such as CD-ROM or computer disk, and shall confirm to such other party in writing that all such documents and things have been so provided and that all copies thereof have been destroyed subject to compliance with applicable Law. The foregoing shall not apply to any Confidential Information that is in the public domain without breach of this Agreement, Confidential Information that a party can demonstrate was known prior to receipt from the other party or Confidential Information that was subsequently received from a third party without any obligation of confidentiality to the other party.

e) To the extent any party determines it necessary or advisable to file a copy of this Agreement with a governmental agency, including the United States Securities and Exchange Commission, or otherwise in accordance with Law, that party and its counsel shall work with the non-disclosing party and its counsel to obtain confidential treatment of relevant portions of this Agreement, including, without limitation, product and service specifications and pricing information.

f) Each party agrees that irreparable damage would occur, and that monetary damages would be an insufficient remedy at Law, in the event that any of the provisions of this

Section 5.2 were not performed by the other party in accordance with the terms hereof and that the each party shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

g) Each party's obligation with respect to the Confidential Information of a disclosing party shall expire three (3) years after the termination or expiration of this Agreement; provided, however, that each party's obligations with respect to the trade secrets of a disclosing party shall remain in effect throughout the Term and at all times thereafter, but only for so long as such information remains a trade secret.

6.3 Information. Subject to Section 5.2 and any applicable Laws and privileges, each party covenants and shall provide the other party with all information regarding itself and the transactions under this Agreement that the other party reasonably believes is required to comply with all applicable Law and to satisfy the requesting party's obligations hereunder. Any information owned by one party that is provided to any other party pursuant to this Agreement shall remain the property of the providing party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such information.

6.4 Records. Each party shall maintain and retain records related to the provision of the Services under this Agreement consistent with such party's historical policies regarding retention of records. As needed from time to time during the period in which Services are provided, and upon termination of the provision of any Service, unless otherwise prohibited by applicable Law, the parties shall provide each other with records related to the provision of the Services under this Agreement to the extent that (a) such records exist in the ordinary course of business, and (b) such records are reasonably necessary for the requesting party to comply with its obligations under this Agreement or applicable Law.

6.5 Privacy. Client agrees (a) to comply with all applicable Law; (b) not to use the information provided to it by Parkmobile to market similar goods or services; (c) that it will use reasonable security measures to safeguard the information; and (d) not to disclose to others the information.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

7.1 Representations and Warranties. Each of Parkmobile and Client hereby represents, warrants and covenants to the other party hereto as follows:
It is duly organized and validly existing under the laws of the state of its incorporation and has full power and authority to carry on its business as it is now being conducted and to own and operate its properties and assets;

- a) The execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or limited liability company action, as applicable;
- b) It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and
- c) The execution, delivery and performance by it of this Agreement and its compliance with the terms and provisions hereof do not and will not conflict with or result in a breach of any of the terms or provisions of or constitute a default under the provisions of its charter

documents or bylaws, or any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

7.2 Disclaimer of Warranties. OTHER THAN AS SPECIFICALLY SET FORTH HEREIN, NEITHER OF THE PARTIES MAKES ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, DIRECTLY OR INDIRECTLY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES TO BE PERFORMED HEREUNDER BY SUCH PARTY OR THE RESULTS OBTAINED THEREBY.

7.3 Indemnification.

- a) **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.
- b) **Hold Harmless Agreement.** To the fullest extent not prohibited by law and without waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law, each party shall indemnify and hold harmless the other, its directors, officers, agents and employees from and against all claims, damages, losses, liability and expenses in connection with these responsibilities, improvements and services in this Agreement.

7.4 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF PARKMOBILE FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR THE SERVICES PURCHASED HEREUNDER; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY IN THE EVENT THAT THE DAMAGES ARISE (A) FROM A DATA SECURITY BREACH OF PARKMOBILE'S SYSTEM; (B) FRAUD OR WILFUL MISCONDUCT FROM PARKMOBILE OR ITS EMPLOYEES, REPRESENTATIVES, AND AGENTS, (C) INTELLECTUAL PROPERTY INFRINGEMENTS OR (D) VIOLATION OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT. EACH PARTY HERETO AGREES THAT THE OTHER PARTY SHALL NOT BE LIABLE TO SUCH PARTY OR ANYONE ACTING THROUGH SUCH PARTY UNDER ANY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL THEORY) FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

ARTICLE 8 MISCELLANEOUS

8.1 Force Majeure. Neither party shall be liable for failure or delay in performance of its obligations under this Agreement to the extent such failure or delay is caused by an act of God, act of a public enemy, war or national emergency, rebellion, insurrection, riot, epidemic, quarantine restriction, fire, flood, explosion, storm, earthquake, interruption in the supply of electricity, power or energy, terrorist attack, labor dispute or disruption or other event beyond the reasonable control of such party and without the fault of or negligence by such party (each, a "Force Majeure Event"). If a party's performance under this Agreement is affected by a Force Majeure Event, such party shall give prompt written notice of such event to each other party, stating the date and extent of such suspension and the cause thereof, and shall at all times use commercially reasonable efforts to mitigate the impact of the Force Majeure Event on its performance under this Agreement; provided, that such party shall take measures to overcome the condition that are consistent in all material respects with the measures taken in connection with such party's business. The parties shall promptly confer, in good faith, on what action may be taken to minimize the impact, on both parties, of such condition. In the event of a Force Majeure Event that affects either or both parties' ability to perform under this Agreement, the parties agree to cooperate in good faith to resume the affected services as soon as commercially possible to the extent commercially reasonable.

8.2 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (a) in person; (b) by any national overnight courier or other service providing evidence of delivery, or by registered or certified mail (postage prepaid, return receipt requested); or (c) by facsimile with a copy delivered the next business day by any overnight courier or other service providing evidence of delivery, to the respective parties at the following addresses:

To Parkmobile:	Parkmobile, LLC 3200 Galleria Parkway, Suite 100 Atlanta, Georgia 30339 Attention: Cherie Fuzzell Telephone: (770) 818-9036 Facsimile: (770) 818-9039 Email: Cherie.fuzzell@parkmobileglobal.com
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To Client:	City of Columbia 701 E. Broadway Columbia, MO 65205 Attention: Tanner Morrell Telephone: (573) 874-7674 Facsimile: (573) 874-7308 Email: twmorrel@gocolumbiamo.com
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or to such other address (or fax number, if applicable) as the party to whom notice is given may have previously furnished to the others in writing in the manner set forth above (provided that notice of any change of address or fax number shall be effective only upon receipt thereof).

8.3 Independent Contractor. The parties are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship that did not already exist prior to the Effective Date, or to authorize any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations or to create any liabilities on behalf of the other.

8.4 Entire Agreement. This Agreement and the documents and schedules referred to herein contain the complete agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement.

8.5 Amendment and Waiver. The parties hereto may not amend or modify this Agreement, except as may be agreed upon by a written instrument executed by the parties hereto. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

8.6 Successors and Assigns. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either party without the prior written consent of the other party; provided that Parkmobile may assign its rights, interests or obligations under this Agreement without the consent of Client to (i) any affiliate of Parkmobile so long as Parkmobile remains the primary obligor under this Agreement or (ii) any lender to Parkmobile or its affiliates as security for borrowings.

8.7 Third-Party Beneficiaries. The parties to this Agreement do not intend this Agreement to benefit or create any right or cause of action in or on behalf of any person or entity other than Parkmobile and Client.

8.8 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

8.9 Governing Law. This Agreement shall be governed by interpreted and enforced in accordance with the laws of the State of Missouri, and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or related to this Agreement Document, shall be Boone County, Missouri or the United States Western District of Missouri. The Parties hereto, irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum no conveniens.

8.10 Arbitration. Should there be any ambiguity, contradiction or inconsistency in this Agreement, or should any disagreement or dispute arise between the parties in connection with this Agreement, the component representatives of the parties shall first attempt in good faith amicably to settle the matter by mutual negotiations. If such negotiations are unsuccessful, any controversy, dispute or claim arising out of, or in connection with, this Agreement must be settled by final and binding

arbitration to be held exclusively in Boone County, Missouri, in accordance with the Commercial Arbitration Rules, as amended and in effect from time to time, of the American Arbitration Association (the “Rules”). The procedures and law applicable during the arbitration of any controversy, dispute or claim shall be both the Rules and the internal laws of the State of Missouri excluding, and without regard to, its or any other jurisdiction’s rules concerning any conflict of laws. The arbitrator shall have the power to order injunctive relief or provide further equitable remedies. All fees and expenses relating to the work performed by the arbitrator(s) shall be shared equally between the parties. Nothing in this paragraph shall prevent a party from seeking injunctive relief from any the state or federal courts located in Boone County, Missouri. The parties consent to the exclusive jurisdiction and venue of such courts with respect to any matter not within the arbitrator’s jurisdiction. Any award of the arbitrator may be enforced in any court of competent jurisdiction.

8.11 No Strict Construction; Headings. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. The headings used in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.12 Counterparts; Delivery. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties agree that this Agreement may be executed and delivered by facsimile or other electronic transmission.

(Signatures begin on following page)

IN WITNESS WHEREOF, this License Agreement has been executed as of the day and year first above written.

"PARKMOBILE":

PARKMOBILE, LLC

By: Cherie Fozzell

Name: Cherie Fozzell

Title: CEO

"CLIENT":

CITY OF COLUMBIA

By: _____

Name: Mike Matthes

Title: City Manager

ATTESTED BY:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

SCHEDULE 1

SYSTEM DESCRIPTION

Parkmobile's digital permit management system offers permit holders, new applicants and parking staff a 24/7 web-based permit management solution. Processes available online range from the application to the payment process and from changing, renewing, or canceling the permit. The total lifecycle of a permit is automated and integrated. Virtual "e-permits" are based on license plate numbers with the added functionality of allowing permit holders the ability to print a hang tag receipt upon the purchase of a permit if so desired.

The system is designed with scalability and flexibility needed to support functionality required to configure permit rules, tariffs, zones, and work flows managed by Parkmobile. On-line management of digital permits will increase the customer experience, reduce the administrative burden of permit management, and improve accuracy. The permit system can be configured to mirror the look and feel of the municipality or operator.

Digital permits will help reduce fraud, reduce overhead associated with back office support and fulfillment, save time for the applicant and, as a bonus provide a green initiative (no travel to the permit office, no parking, no queue). In addition, Parkmobile's digital permit system will support both wait list management and multiple payment methods.

The registration and application processes are easy, fast, and secure. Email alerts provide applicants with the necessary status information in order to complete the process. The web based personal pages allow permit holders to apply for, purchase or renew permits manually or automatically, and manage their personal information.

In order to limit fraud, the Parkmobile digital permit system utilizes the vehicle's license plate number (LPN) as a main identifier. Each permit is valid for only one LPN / vehicle – so customers cannot "share" permits among multiple vehicles.

The system is designed to support the enforcement of permit parking through a number of methods:

1. Integration with license plate recognition (LPR) software service providers
2. Integration with enforcement partners utilizing web-enabled hand held devices
3. Native mobile enforcement application designed by Parkmobile to run on web-enabled mobile devices
4. Physical hang tags

The following table represents a description of Parkmobile's Permit Management functionality:

Client Functionality (the Permit Holder)	Supplier Functionality (the Parking Authority)
Register for an Account Apply for and purchase Permits Payment Management Access Payment History Manage Personal Information Manage Account Information	Same Functionality & Options as Client Payment Options: Check and Credit Card Communication to Client Application & Permit Management Renew Expiring Permits Ability to Disable and/or End Permit

SCHEDULE 2

SERVICE LEVELS

1. Operation, Management and Maintenance of the System

(a) Scheduled Maintenance – Scheduled maintenance shall be performed outside of normal business hours.

(b) Emergency Maintenance – Emergency maintenance, defined as an outage condition, may be performed at any time. Parkmobile will use its best efforts to minimize the impact of any such maintenance and will communicate updates on status at regular intervals to the Client.

(c) Parkmobile performs daily backups of data. Backups are retained for three months.

2. Errors and Interruptions

(a) When an error or interruption occurs in the Services, Client shall inform Parkmobile as soon as possible. Parkmobile shall confirm its receipt of such notification either in writing. If any error or interruption cannot be repaired by Parkmobile within five (5) business days from the date when the error or interruption is reported to Parkmobile, then Parkmobile may issue a credit for the Services during such downtime. Time spent by Parkmobile to restore and support interruptions and errors caused by Client and not attributable to Parkmobile shall be charged at the hourly rate of \$180.

(b) In the event that Client and Parkmobile disagree about whether an error or interruption has been resolved, Client and Parkmobile shall discuss in good faith and reach a mutual resolution regarding whether such error or interruption has been adequately resolved.

3. Security and Authorization

Parkmobile shall protect and authenticate a limited number of representatives that shall have access to the system and confidential information. The parties shall respect and utilize security access codes.

4. Reports

Parkmobile shall provide Client via the Internet, access to a set of standard reports related to the Services such as: monthly parking history, active permit holders and permit parking revenues. Custom reports can be developed for the Client on a fee for services basis at the hourly rate of \$180. All access to online reports shall be protected by secure user login credentials.

SCHEDULE 3

FEEES

Standard offer included as Exhibit A

The Digital Permit System will be offered “as is”, based upon the current operational version. This Standard Offer includes the following:

Banner customization with Client’s logo is included.

Parkmobile will provide a **specific link** which needs to be added to the Client’s website (as appropriate) **to access the personal permit pages**. Customers can register, apply and pay for a permit, and manage their account information online 24x7.

Hosting fee is included. The system will be offered as a hosted solution only.

Configuration of the required permit types according to the permit regulations provided by Client is included.

Project management is included until the system has been officially deployed.

Training: A one (1) week training period (equivalent of forty hours) for the first year, and one (1) week refreshment training (equivalent of forty hours) for the second and per consecutive year, is included. All travel expenses shall be reimbursed at cost.

Technical Support Helpdesk is included.

Customer Service Support is included.

Administrative Support is not included. Transition of parker information and relevant parker communication support is available for an additional cost.

Hang Tag Option: Permits are either validated on license plate number or via hang tag delivered by email and printed by the customer (no fulfillment costs necessary).

LPR Integration for Enforcement: Access to Parkmobile’s enforcement database is available at no cost to Client. However, any and all equipment or hardware costs associated with LPR enforcement are specifically excluded from this offer.

Marketing/Advertising is included.

Total duration of developing, configuring, and testing Standard Offer is 2 months.

In lieu of any desire by Client for additional enhancements to Parkmobile’s Standard Offer, Parkmobile is willing to provide the additional services on an hourly basis + travel expenses if/when necessary:

Data Migration

Expanded features & functionality above and beyond the current version

Additional integrations to third-party solutions not covered above

Configuration changes after implementation/acceptance

Non-Integrated Gateway Service

Customized Reporting

Citation/Enforcement support

Additional Training, outside of what is being offered in “Standard Offer” noted above

Permit Administration Service

Permit Fulfillment

Miscellaneous

Pricing

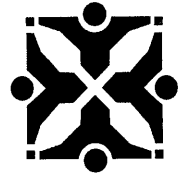
Parkmobile proposes no initial license fee to install the system. However, a one-time set-up cost and recurring subscription for every permit ***either purchased or renewed utilizing the system*** is assessed. A price matrix reflecting the proposed pricing structure can be observed below:

	Fees
Hosting Fee	Free
Maintenance Fee	Free
Initial Set Up (one-time)	\$500
Permit Pricing (per permit)	\$1.00/per active permit per month charged to customer

****Parkmobile shall charge the user a convenience fee up to \$0.45 per card transaction. All costs associated with the acceptance and/or processing of card and/or electronic payments, including but not limited to, merchant processing fees, third party processing fees, interchange fees, etc. shall be borne by ParkMobile. No fees shall be charged to the Client for payment processing.**

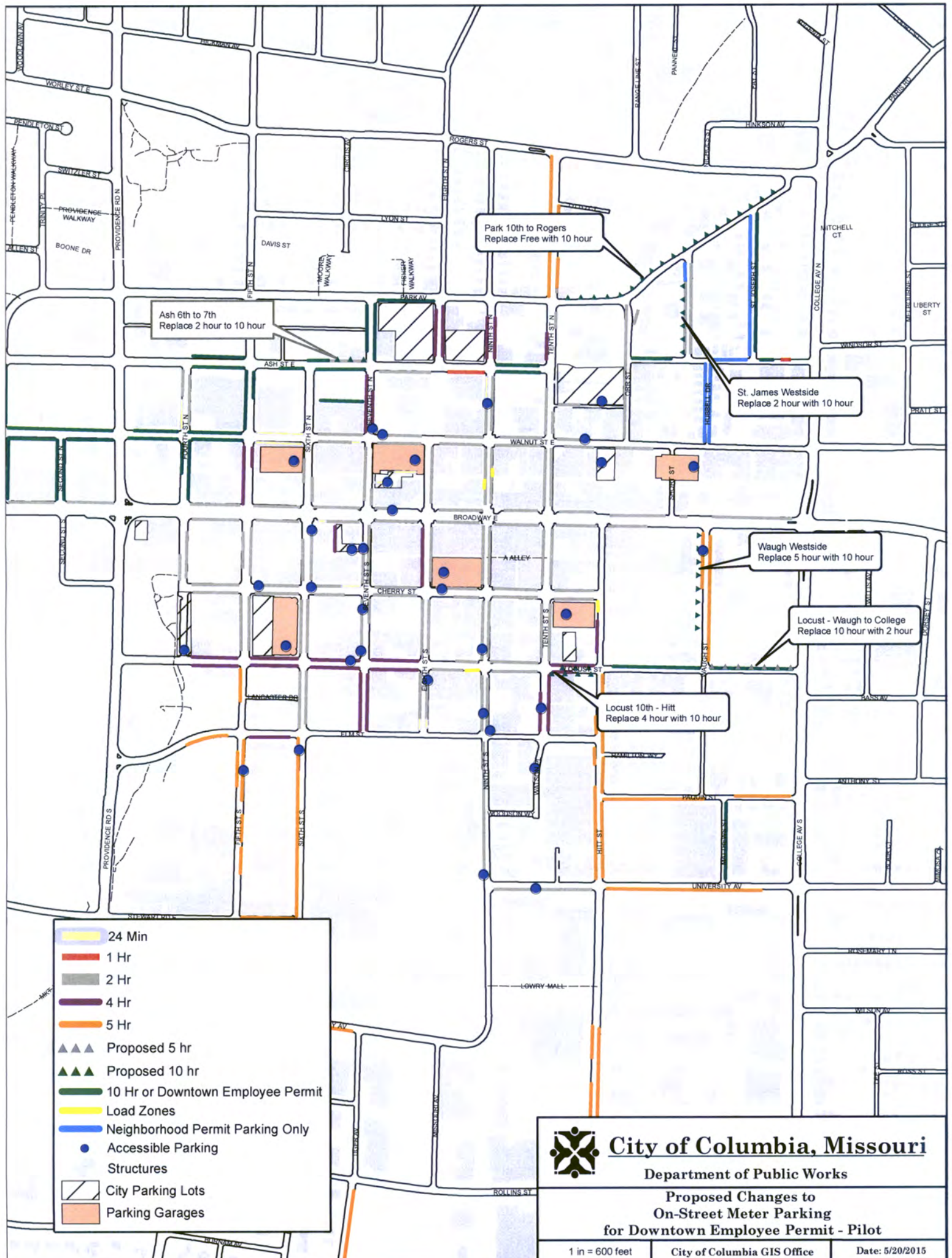
The Total Fee outlined in the Standard Pricing Offer above shall be billed monthly in arrears. All invoices submitted by Parkmobile shall be due and payable 30 days after the invoice date.

Parkmobile reserves the right to increase permit fees upon ninety (90) days written notice to Client.



SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Map



Park 10th to Rogers
Replace Free with 10 hour

Ash 6th to 7th
Replace 2 hour to 10 hour


St. James Westside
Replace 2 hour with 10 hour

Waugh Westside
Replace 5 hour with 10 hour

Locust - Waugh to College
Replace 10 hour with 2 hour

Locust 10th - Hitt
Replace 4 hour with 10 hour

- 24 Min
- 1 Hr
- 2 Hr
- 4 Hr
- 5 Hr
- Proposed 5 hr
- Proposed 10 hr
- 10 Hr or Downtown Employee Permit
- Load Zones
- Neighborhood Permit Parking Only
- Accessible Parking Structures
- City Parking Lots
- Parking Garages

**City of Columbia, Missouri**
Department of Public Works

**Proposed Changes to
On-Street Meter Parking
for Downtown Employee Permit - Pilot**

1 in = 600 feet

City of Columbia GIS Office

Date: 5/20/2015