



## **Duncan Liberty**

Single Space Parking Meter

Trial Agreement for

The City of Coral Gables, FL

**THIS AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Coral Gables, Florida, whose principal place of business and mailing address is 2801 Salzedo Street, (hereinafter called the “City”) and Duncan Parking Technologies, Inc., a Delaware corporation, whose principal place of business and mailing address is 633 W. Wisconsin Avenue, Suite 1600, Milwaukee, Wisconsin 53203 (hereinafter called “Duncan”).

**WITNESSETH:**

**WHEREAS**, the City desires to contract with Duncan to perform a dual trial (“Trial”) and evaluation program whereby the City will peruse new parking management equipment (“Equipment”) and has further requested that Duncan supply its equipment and services for such purposes;

**WHEREAS**, the Trial objectives are two-fold in nature: (1) to test the applicability of Duncan’s technology to the City’s current environment; and (2) providing the City with the ability to evaluate the effectiveness of the Duncan Liberty single space parking meter mechanism (“Liberty”), which features the ability to accept alternate forms of payment including credit card payments via wireless communications to Duncan’s AutoTRAX Meter Management System (“AutoTRAX”);

**WHEREAS**, the Trial is anticipated to include a comparison to the City’s existing meter solution of meter revenue generation, motorist acceptance of new technology and alternative payment options, maintainability, enforcement efficiency and management reporting; and

**WHEREAS**, the Trial will include the detail of the cost, timelines and scope, as well as define the rights and privileges of each party during the Trial including their roles and responsibilities;

Now, therefore, the City and Duncan, in consideration of the mutual covenants hereinafter set forth, mutually agree as follows:

1. **Term.**

This Agreement shall be deemed effective on the date that Duncan notifies the City, in writing, that the Liberty meters have been installed and are fully operational (the “Effective Date”). Both the City and Duncan shall effectively evaluate the Trial program throughout its initial period of sixty (60) calendar days (the “Trial Period”), with the mutual flexibility to extend the Trial Period by written agreement of both parties.

2. **Termination.** Either party may amend the scope of this agreement to conclude the Trial early, without cause, by providing the other party a minimum of ten (10) days written notice with the full understanding that all of the Equipment will continue to remain the sole and exclusive property of Duncan.

3. **Duncan's Responsibilities.** Duncan shall:
- a) provide the Equipment, as detailed in Exhibit 2, to the City for the Trial Period;
  - b) configure the Liberty meters and system to accept payments based upon the information provided by City;
  - c) provide implementation services and training;
  - d) provide the City with technical training and phone support during regular business hours so that the City can undertake general care and maintenance to simulate a normally supported installation as detailed in Exhibit 2;
  - e) Duncan will supply, at no cost to the City, a standard package of modular spare parts designed to reduce downtime in the event of damage or vandalism;
  - f) pay for shipping to and from the City's designated facility for any repairs to the Liberty that cannot be successfully completed by the City;
  - g) regularly communicate with the City, in person or by phone, to review the performance of the meters; and
  - h) maintain appropriate property and public liability insurances as related to the Equipment;

Notwithstanding the above, Duncan reserves the right, in its sole discretion and at its option, to repair, replace, or remove the Equipment, or any portion thereof, that is lost, stolen or damaged. Duncan further reserves the right to upgrade and make improvements to the Equipment during the term of the Trial Period.

4. **City's Responsibilities.** The City shall:
- a) remit payment to Duncan for all fees as defined in Exhibit 1 on the City's payment schedule;
  - b) provide all details for the Trial as defined in Exhibit 2;
  - c) provide all necessary permits and approvals for the Trial;
  - d) assist Duncan with the installation of the Liberty, including keys to open the head of the meter housings;
  - e) provide any customer specific meter numbering or external labels;
  - f) be responsible for making site visits at least once per week to inspect for possible operational or maintenance issues, as well as perform first line maintenance of the equipment in accordance with the maintenance guidelines to be provided by Duncan during training;
  - g) perform enforcement on the meters using one of the available enforcement options to be provided by Duncan during training;
  - h) perform cashbox collection and counting services;

- i) be responsible for any public outreach and marketing activities associated with the Trial;
  - j) provide Duncan, prior to the start of the Trial, with all relevant data regarding historical revenue performance of existing metered spaces to be managed by the Liberty meter during the Trial period based upon audit data from three (3) previous years;
  - k) provide Duncan with all relevant data to allow a proper comparison of the Liberty performance with historical performance of existing equipment;
  - l) allow Duncan the option to write and publish an City approved case study and customer testimonial, based on the data gathered and performance of the Liberty meter during the Trial period;
  - m) be a customer reference for Duncan to support Duncan's business development activities for the Liberty meter in the future; and
  - n) remove the Liberty meters, at the conclusion of the Trial, and ship all equipment back to Duncan (5924 Balfour Ct, Carlsbad, CA 92008) at Duncan's expense for shipping.
5. **Notices.** Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder, shall be in writing and shall be deemed to have been validly served, given or delivered, (a) forty-eight (48) hours after deposit in the U.S. Mail, with proper postage prepaid, certified return receipt requested; or (b) one (1) business day after delivery to a reputable overnight delivery service; or (c) upon delivery by courier or in person to the following addresses:

As to the CITY: City of Coral Gables  
Attn: Kevin Kinney, Parking Director  
2801 Salzedo Street  
Coral Gables, FL 33134  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

As to DUNCAN: Duncan Parking Technologies, Inc.  
Attn: Mike Sinkinson, VP Operations  
5924 Balfour Court, Suite 102  
Carlsbad, CA 92008  
Fax: (866) 449-7575  
Email: contracts@DuncanSolutions.com

6. **Force Majeure.** In the event that either party shall be prevented from performing its obligations due under the terms of this Agreement by an act of God, by acts of war, riot

or civil commotion, by an act of State, by strikes, fire, flood, or by occurrence of any other event beyond the control of the parties hereto (other than a lack of funds), that party shall be excused from any further performance of the obligations and undertakings set forth under the terms of this Agreement with the exception of any financial obligations hereunder.

7. **Indemnification.** Both parties shall indemnify and hold each other harmless from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from, or related to, any violation on the part of the other, its employees, agents, or subcontractors of any such law, rules, regulations, ordinances or directives.
  
8. **Limited Warranty/Disclaimer of Warranties.** Because this Agreement contemplates a limited trial evaluation of the Equipment, Duncan warrants that the Equipment will operate substantially in accordance with the Equipment specifications when used in accordance with the Equipment instructions. City acknowledges and agrees that the Equipment is provided to City for evaluation purposes only. Certain features or components of the Equipment may be a pre-release version, and may not represent a final product from Duncan, and may contain bugs or lack certain features. OTHER THAN THE LIMITED WARRANTY DESCRIBED ABOVE, THE EQUIPMENT IS PROVIDED AS IS; AND DUNCAN EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, INCLUDING (BUT NOT LIMITED TO) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
  
9. **Limitation of Liability and Disclaimer.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, OR ANY OTHER THIRD PARTY, FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGE, WHETHER BASED ON LOST REVENUE, TORT, PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES IN ADVANCE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. DUNCAN'S TOTAL AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM BROUGHT AGAINST DUNCAN SHALL BE LIMITED TO THE EVALUATION LICENSE FEE PAID BY CITY FOR ANY DEFECTIVE PORTION OF THE SYSTEM.
  
10. **Compliance with Applicable Law.** Both parties shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.
  
11. **Ownership.** The City acknowledges and agrees that the Equipment shall remain the property of Duncan unless the City enters into a separate written purchase agreement with Duncan. The City shall not sell, license, dispose of the Equipment, or any portion

thereof, without the express written permission of Duncan; or otherwise use the Equipment for any purpose other than to evaluate the Equipment.

12. **Confidentiality.** Duncan acknowledges the City is a public agency, with certain legal obligations for transparency and public disclosure. The City acknowledges that the Equipment Duncan has provided incorporates proprietary specifications, know-how, compilations of data, software and other technology, usages and requirements, trade secrets and data, the disclosure of which could materially harm Duncan. Therefore, the City will not knowingly assist a third party in any attempt to reverse engineer, document, abuse or otherwise evaluate the Equipment without the express written permission of Duncan; or otherwise use the Equipment for any purpose other than to evaluate the Equipment.
13. **Captions and Paragraph Headings.** Caption and paragraph headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.
14. **Severability.** If any provision in this Agreement, or the application thereof to any person or circumstance is determined by any competent court to be held invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remainder of this Agreement, unless that effect is made impossible by the absence of the omitted provision.
15. **Authorization.** Each party represents and warrants that the person executing this Agreement is an authorized agent who has actual authority to bind themselves to each and every term, condition, and obligation of this Agreement and that all requirements have been fulfilled to provide such actual authority.
16. **Signatures Required.** This Agreement shall be considered null and void unless signed by both Duncan and the City.
17. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.
18. **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.
19. **Changes and Amendments of Terms.** Either party reserves the right to change any portion of the work required under this Agreement or to amend such other terms and conditions which may become necessary. For any change which does not materially affect the scope of work, period of performance, payments, or any other term or

condition included under this Agreement, a Change Notice shall be prepared by the City and signed by both parties. For any revision which affects the scope of work, period of performance, payments, or any term and condition included in this Agreement, a mutually negotiated modification to this Agreement shall be executed by the authorized officials of the City and Duncan.

IN WITNESS WHEREOF, the City and Duncan have caused this Agreement to be signed by their duly authorized officials. This Agreement may be signed in multiple counterparts, each of which shall be deemed and original but all of which taken together shall constitute one Agreement.

**DUNCAN PARKING TECHNOLOGIES, INC.,**  
a Duncan Solutions company

**CITY OF CORAL GABLES, FLORIDA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Exhibit 1 – Price List

1. **Equipment:** Duncan is providing the Liberty single space meter mechanisms for the purposes of evaluation for the Term at no cost to the City per mechanism. At the conclusion of the Term, all equipment furnished by Duncan for the trial shall be returned by the City.
2. **Project Implementation Services:** Duncan will provide Project implementation, installation oversight and training services at no cost to the City, inclusive of travel and accommodations.
3. **Duncan AutoTRAX Management System:**
  - a) The City will be charged an AutoTRAX service fee of \$8.50 per Liberty meter mechanism per month for a license to use the Duncan AutoTRAX Management System for the Term of the evaluation.
  - b) This service fee covers all setup, user licensing and wireless communications fees for the meters during the Trial period.
  - c) The City will be provided with up to five user licenses to access Duncan’s hosted AutoTRAX Management system during the trial period.
4. **Credit Card Transaction Fees**
  - a) The City shall establish a credit card gateway service agreement for the processing of electronic payments throughout the Trial with Duncan’s recommended credit card gateway provider. The City will be responsible for all applicable credit card transaction fees (gateway fees, merchant fees and interchange fees).
5. **Payments**
  - a) Duncan will invoice the City at the end of each month during the Trial period for all equipment and service fees outlined in item 3 above.
  - b) The fees exclude any taxes that may be applicable to the City. Any applicable taxes will be added to the fees outlined above and will be paid by the City.

## Exhibit 2 – Trial Specifications

### 1 Summary

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<b>No.</b>	20 Duncan Liberty Single Space Meter Mechanisms
<b>Meters</b>	
<b>Term</b>	Sixty (60) Calendar Days
<b>Location</b>	Details to be provided by the City prior to delivery

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### 2 Key Dates

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<b>Meter Installation Date</b>	February 13, 2012
<b>Trial End Date</b>	April 12, 2012

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### 3 Delivery Details

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**All Deliveries will be to:**

City of Coral Gables  
Attn: Kevin Kinney, Parking Director  
2801 Salzedo Street  
Coral Gables, FL 33134

Attention: Details to be provided by the City prior to delivery

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### 4 Meter Specifications

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**All Meters**

- Duncan Liberty Single Space Meter Mechanism with
    - GPRS Wireless communications
    - Solar and Battery Powered
  - Installation accessory kits (if necessary)
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<b>Payment Options</b>	<ul style="list-style-type: none"> <li>• <b>Coins</b> –5c, 10c, 25c, \$1 coins</li> <li>• <b>Credit Card</b> – Visa, MasterCard</li> </ul>
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**Meter Rate Configuration 1:**

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<b>Meter Location</b>	Configuration details to be provided to Duncan by the City at least 3 weeks prior to delivery
<b>Configuration</b>	<b>Days of Week:</b> <b>Operating Hours:</b> <b>Rates:</b> <b>Maximum Stay:</b>
<b>Special Requirements</b>	Free parking for the following holidays-

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**5 Management Systems**

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<b>Duncan AutoTRAX Management System</b>	<ul style="list-style-type: none"> <li>• Duncan AutoTRAX Management System required</li> <li>• The City to provide             <ul style="list-style-type: none"> <li>○ Up to five named users requiring access to AutoTRAX management system</li> <li>○ Cell phone numbers for Text (SMS) message notifications of alarms and warnings</li> <li>○ Email address for daily reports and notifications</li> </ul> </li> </ul>
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**6 Enforcement Requirements**

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<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• City will perform meter enforcement</li> <li>• The enforcement option to be used for the Trial will be             <ul style="list-style-type: none"> <li>○ Rear enforcement LCD of the Liberty Meter</li> </ul> </li> </ul>
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## 7 Collections, Support and Maintenance Strategy

<b>Coin box Collections and Counting</b>	• City
<b>1<sup>st</sup> Level Maintenance and Inspections</b>	• City
<b>2<sup>nd</sup> Level Remote Maintenance</b>	• Duncan
<b>Additional Support Requirements</b>	• Training and Service Manuals to be provided by Duncan

## 8 Training Requirements and Schedule

Duncan will provide sufficient training to the City to allow thorough evaluation of the Trial. Training will cover the following areas:

- Installation
- Meter Maintenance, routine support and parts replacement
- Cash Collection training
- Enforcement Officer Training
- Duncan AutoTRAX Management System training