

**MASTER SERVICE AGREEMENT  
PIGGYBACK ADDENDUM**

THIS PIGGYBACK ADDENDUM (the "Addendum") is entered into this 3<sup>rd</sup> day of August, 2015 (the "Effective Date") by and between T2 Systems Canada Inc. (formerly Digital Payment Technologies Corp.) (the "Contractor or T2") and the City of Coral Gables (the "City"). T2 Systems Canada Inc. and the City are each referred to individually herein as a "Party" and referred to collectively as the "Parties." The Parties hereto acknowledge, understand, and agree that the City of Miami Beach, Florida, Contract for the Purchase and Installation of the Luke pay stations (Contract Number RFP 46-10/11), by and between City of Miami Beach, Florida and Digital Payment Technologies is hereby piggybacked, in accordance with Section 2-978 of the City of Coral Gables' Municipal Code. City of Miami Beach, Florida, contract for Purchase and Installation and Maintenance of the Luke pay stations (Contract Number RFP 46-10/11), by and between the City of Miami Beach, Florida, and Digital Payment Technologies Corp., shall be referred to herein as the "Piggyback Agreement". The Piggyback Agreement is hereby modified as follows:

1. The Contract being piggybacked is the City of Miami Beach, Florida- Contract for Installation and Maintenance of the Luke pay stations (Contract Number RFP 46-10/11), effective August 10, 2012 through August 10, 2014 with a two (2) year extension through August 10, 2016 (the "Piggyback Agreement"). All prior agreements, understandings, and work orders between the City of Miami Beach, Florida and Digital Payment Technologies Corp. are hereby nullified and superseded, and to the extent that the Piggyback Agreement is inconsistent with or contrary to this Addendum or any of the provisions contained herein, this Addendum shall govern and take precedence over such contrary terms.
2. The terms of this agreement should be effective from the date of execution through the date of piggyback agreement contract.
3. Amount of Agreement will not exceed the amount of \$600,000.00 (not a guaranteed contract amount).
4. All references to the City of Miami Beach, Florida are replaced with the City of Coral Gables, Florida.
5. Training was previously provided to the City of Coral Gables.
6. Compensation – Exhibit A Product & Service Price List to be replaced with T2 System (Sales Quote No.31802 ) dated April 7, 2015 in the amount of \$240,589.30 . Digital Connect Wireless Data (EMS Service) will be budgeted annually and billed monthly by T2 System quoted April 21, 2015 (Sales Quote No. 501281).
7. T2 warranty terms, Extended warranty pricing and Onsite Maintenance pricing apply to all products for a period of two (2) years from the date of installation.
8. Shipping & Handling is included in the base price.
9. The below Indemnification and Hold Harmless provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any indemnification provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with provisions stated below. The Indemnification and Hold Harmless provisions shall state as follows:
  1. T2 agrees to indemnify, defend, and hold harmless the City of Coral Gables and its elected and appointed officials, employees, and agents, from and against any and all actions, claims, liabilities, losses and expenses, including but not limited to attorney's fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, in law or in equity, which arise from the negligent acts or omissions or other wrongful conduct of T2, its employees, or agents in connection with the performance of service pursuant to this Agreement; T2 shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses.

- 2 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL T2 BE LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE (INCLUDING WITHOUT LIMITATION ANY TRADE PRACTICE, UNFAIR COMPETITION OR OTHER STATUTE OF SIMILAR IMPORT) OR ON ANY OTHER BASIS, FOR INDIRECT, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES SUSTAINED BY THE CITY OR ANY OTHER PERSON ARISING OUT OF OR IN CONNECTION WITH ANY ASPECT OF THIS AGREEMENT OR ITS PERFORMANCE OR ANY FAILURE IN PERFORMANCE OR BREACH, OR THE USE OR PERFORMANCE, OR CONSEQUENCES OF USE OR PERFORMANCE, OF ANY PRODUCTS MANUFACTURED OR FURNISHED BY T2 WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT T2 IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, FAILURE OR INTERRUPTION IN THE OPERATION OF ANY EQUIPMENT OR SOFTWARE, DELAY IN REPAIR OR REPLACEMENT, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF GOODWILL, OR LOSS OF BUSINESS UNLESS EXPLICITLY PROVIDED FOR HEREIN. IF, DESPITE THE FOREGOING LIMITATIONS, T2 IS HELD LIABLE TO CITY UNDER ANY PROVISION OF THIS AGREEMENT, THE ENTIRE AND SOLE LIABILITY OF T2 SHALL BE LIMITED TO 100% OF THE TOTAL AMOUNT OF THIS AGREEMENT MINUS ANY FEES PAID BY THE CITY FOR THE PARTICULAR SERVICES TO WHICH THE LIABILITY RELATES.
- 3 Whenever any claim shall arise for indemnification hereunder, the party seeking indemnification (the "Indemnified Party") shall promptly notify the party from whom indemnification is sought (the "Indemnifying Party"). Such notice shall specify the nature of the claim and, when known, the facts constituting the basis therefor, as well as any amount or an estimate of the amount of the liability claimed by any such party for such claim. Failure to promptly notify shall not relieve a Party from its indemnity obligations hereunder except to the extent of prejudice caused by such failure. The Indemnified Party shall not settle or compromise any claim by a third party for which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, unless suit shall have been instituted against it and the Indemnifying Party shall not have taken control of such suit after notification hereunder.
10. The below Insurance provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any insurance provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with provisions stated below. The Insurance provisions shall state as follows:

#### **INSURANCE REQUIREMENTS**

##### **GENERAL CONDITIONS**

Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Human Resources Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public.

Consequently, prior to commencing work, the Contractor shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Contractor shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of Human Resources Department for review and approval.

##### **INSURER REQUIREMENTS**

The Contractor shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

#### **TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT**

**Workers' Compensation and Employers Liability Insurance** covering all employees, subcontractors, and/or volunteers of the Contractor and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

**Workers' Compensation - Coverage A**  
Statutory Limits (State of Florida or Federal Act)

**Employers' Liability - Coverage B**  
\$1,000,000 Limit - Each Accident  
\$1,000,000 Limit - Disease each Employee  
\$1,000,000 Limit - Disease Policy Limit

**Commercial General Liability Insurance** written on an occurrence basis including, but not limited to; Coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000

Fire Damage Limit (Damage to rented premises) - \$100,000

Personal & Advertising Injury Limit - \$1,000,000

General Aggregate Limit - \$2,000,000

Products & Completed Operations Aggregate Limit - \$2,000,000

**Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

#### **-MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):**

##### **Workers Compensation**

The standard form approved by the State of Jurisdiction

##### **Commercial General Liability**

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable .

### **Commercial Auto Liability**

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

### **REQUIRED ENDORSEMENTS**

**In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language:**

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
P.O. BOX 12010-CE  
HEMET, CA 92546-8010

All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the City.

### **HOW TO EVIDENCE COVERAGE TO THE CITY**

**The following documents must be provided to the City;**

**A Certificate of Insurance containing the following information:**

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

**All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf.**

**The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.**

The city reserves the right to require additional insurance requirements at any time during the course of the agreement.

#### WAIVER OF INSURANCE REQUIREMENTS

Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division. The Risk Management Division will approve or reject the requested waiver of insurance and will forward the waiver to the City Attorney's Office for further evaluation.

CONTRACTOR is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com) and copy to [druiz@coralgables.com](mailto:druiz@coralgables.com). Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance  
Phone: (951) 652-2883.  
Fax: (770) 325-0417  
Email: [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com)

When submitting Professional, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables  
Insurance Compliance  
PO Box 12010 –CE  
Hemet, CA 92546-8010

11. The below Notice provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any notice provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Notice provision shall state as follows:

#### Notice

All notices related to this Agreement and/or the Parties' performance of this Agreement must be in writing. Written notice, moreover, shall be deemed to have been duly served if delivered in person to the Contractor or the City, with a written receipt, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any Party may specify by notice to all other Parties as aforesaid):

For City:  
City of Coral Gables  
City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134  
cc: City Attorney

For Contractor:  
Chris Chettle  
Executive Vice President, General Manager  
T2 Systems Canada, Inc.  
330-4321 Still Creek Drive  
Burnaby, BC V5C 6S7, Canada

12. The below Sovereign Immunity provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any sovereign immunity provisions that may be set forth in the

Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Sovereign Immunity provision shall state as follows:

#### **Sovereign Immunity**

The Contractor acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Contractor against the City other than claims arising out of this Agreement. Specifically, the Contractor acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Contractor acknowledges that it has no right and will not make any claims based upon any of the following:

- (a) Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the Parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
  - (b) Claims based upon negligence or any tort arising out of this Agreement;
  - (c) Claims upon alleged acts or inaction by any City Employee or Agent of the City; and
  - (d) Claims based upon an alleged waiver of any of the terms of this Agreement. The Contractor affirms that the provisions regarding notice to claims, and the requirement for a written change order cannot be waived and further, without timely notice of a claim or a written change order as required in this Agreement, the Contractor shall not be entitled to additional compensation or an extension of the Contract Time. Such claims for additional compensation or extensions of the Contract Time are waived if the Contractor has not given all required notices and obtained a written change order when required.
13. The below Waiver of Consequential Damages provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any waiver of consequential damages provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Waiver of Consequential Damages provision shall state as follows:

#### **Waiver of Consequential Damages**

The Contractor waives claims against the City for consequential damages arising out of or related to this Agreement or its performance, including but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed by Contractor.

14. The below Termination provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any termination provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Termination provisions shall state as follows:

#### **Termination for Cause**

If the Contractor breaches the conditions and obligations imposed by the Contract Documents, or if it makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to proper materials in accordance with the Contract Documents, or if it fails to make prompt payment to subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the City may, without prejudice to any right or remedy and after giving the Contractor five (5) calendar days' written notice, terminate this Agreement and secure the Goods contemplated herein by whatever method the City deems expedient. In such case, if applicable, the Contractor shall not be entitled to receive any further payment until the City receives, through alternate means, the Goods contemplated herein. If the unpaid balance of the Contract Sum exceeds the costs of securing the Goods contemplated herein (which costs shall include expenses made necessary thereby and all other damages incurred by the City), such excess shall be paid to the

Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall promptly pay the difference to the City. This provision shall in no way limit the City's right to claims for any additional damages, including but not limited to, liquidated damages, damages for defective or nonconforming Goods, and all damages and setoffs allowable to the City in accordance with this Agreement, for which the Contractor shall be liable. If, after notice of termination for cause, it is determined for any reason that the Contractor was not in default, the rights and obligations of the City and Contractor shall be the same as though the termination had been a Termination for Convenience, as set forth herein.

#### **Termination for Convenience**

The City may also terminate this Agreement for the City's convenience and without cause upon thirty (30) calendar days' written notice to the Contractor; except where the Contractor anticipatorily repudiates the Agreement, the City may immediately, without prior notice, terminate this Agreement for the City's convenience and without cause. If the Contractor is terminated for convenience, the Contractor shall be paid for actual and documented expenditures for the Goods received and accepted by the City to the date of termination, less payments made and damages for any defective or non-conforming Goods, and less any amounts that the City is entitled to withhold pursuant to the terms of this Agreement and by law. The City shall not be liable to the Contractor for lost profits on any Goods not provided and accepted by the City, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs must be fully supported by the Contractor's invoices and other documentation acceptable to the City, and shall be subject to the City's audit.

#### **Termination by Contractor**

If the City fails to make payment to Contractor for a period of thirty (30) days after delivery of the Goods requested in a valid Purchase Order, through no fault of the Contractor and the Invoice submitted in relation to the above described Purchase Order is submitted in accordance with the procedures outlined in the Contract Documents, then the Contractor may, after fourteen (14) calendar days' written notice to the City, terminate this Agreement and recover from the City payment for the Purchase Order Amount outlined in the particular Purchase Order for which payment has not been made; however, such sum shall never exceed the Purchase Order Amount, less payments made, less the cost to replace any damaged, defective, or non-conforming Goods, and any setoffs to which the City is entitled to under this Agreement. This sum shall be Contractor's sole remedy under this Agreement.

15. The below Public Records provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any public records provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Public Records provision shall state as follows:

#### **Public Records Law, Florida Statutes Chapter 119**

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Contractor acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Contractor also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Contractor agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

16. The below Ownership of Documents provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any ownership of documents provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Ownership of Documents provision shall state as follows:

#### **Ownership of Documents**

Any and all documents, records, disks, or other information developed exclusively by T2 for the City pursuant to this Agreement, shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.

17. The below Resolution of Disputes, Governing Law, and Venue provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any resolution of disputes, governing law, and venue provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Resolution of Disputes, Governing Law, and Venue provisions shall state as follows:

**Resolution of Disputes, Governing Law, and Venue**

Contractor understands and agrees that all claims by Contractor against the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner. Any claims by Contractor arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in the Notices Paragraph herein. Upon receipt of said notification City Manager or designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim consistent with Section 2-953 of the City of Coral Gables Code of Ordinances, unless City Manager or designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, the Contractor and the City shall act in good faith to mitigate any potential damages. The decision of City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure; however, the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein.

The Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

**Attorneys' Fees** In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

18. The below Successors and Assigns provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any successors and assigns provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Successors and Assigns provision shall state as follows:

**Successors and Assigns**

The City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder, without the prior written consent of the City.

19. The below Modification provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any modification provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Modification provision shall state as follows:

**Modification**



No change or modification of this Agreement shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

20. The below Rights and Remedies is hereby added to the Piggyback Agreement and said provision shall replace and supersede any rights and remedies provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Rights and Remedies provision shall state as follows:

**Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

21. The below Severability and Waiver provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any severability and waiver provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Severability and Waiver provision shall state as follows:

**Severability and Waiver**

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

The below Waiver of Trial by Jury provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any waiver of trial by jury provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Waiver of Trial provision shall state as follows:

**WAIVER OF TRIAL BY JURY**

**THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.**

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written:

Approved as to insurance:

*David Ruiz*  
David Ruiz  
Risk Management Division

AS TO CITY:

*Michael P. Pounds*  
Michael P. Pounds  
Chief Procurement Officer

Approved by Department Director  
or head of negotiations team as to  
the negotiated business terms:

*Kevin Kinney*  
Kevin Kinney  
Parking Director

ATTEST:

*Walter J. Foeman*  
for Walter J. Foeman  
City Clerk

Approved as to compliance with applicable  
procurement requirements:

*Pamela J. Resnick*  
Pamela J. Resnick  
Asst. Chief Procurement Officer

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

*Craig E. Leen*  
for Craig E. Leen  
City Attorney

Approved as to funds appropriation:

*Diana M. Gomez* for D.G. 8/2/15  
Diana M. Gomez  
Finance Director  
460-8380-545-44-50 (KD) 8/3/15

AS TO CONTRACTOR:

*Niamh Pokak*  
General Counsel  
Title

ATTEST:

Name

Corporate Secretary

(SEAL)

(OR) WITNESSES (2):

*Lisa Takeuchi*  
Print Name: Lisa Takeuchi

*Sheila Tofini*  
Print Name: SHEILA TOFINI