

**AGREEMENT BETWEEN THE TREASURER OF THE CITY OF  
ST. LOUIS, MISSOURI, IN HIS CAPACITY AS SUPERVISOR OF  
PARKING METERS, AND  
ACS STATE & LOCAL SOLUTIONS, INC.**

**For Parking Violation Program Management  
and Other Services**

June 30, 2011

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**AGREEMENT BETWEEN THE CITY OF ST. LOUIS AND  
ACS STATE & LOCAL SOLUTIONS, INC.  
For Parking Violation Program Management and Other Services**

**THIS AGREEMENT**, dated June 30, 2011, is between the Parking Supervisor of the City of St. Louis, Missouri, in his capacity as Supervisor of Parking Meters (the "Parking Supervisor"), and ACS State & Local Solutions, Inc., a New York corporation (the "Contractor").

**Recitals**

1. The Parking Supervisor is responsible for the enforcement of parking regulations on public streets, issues parking violation tickets to motorists who violate the regulations, and provides other parking programs and services.

2. The Parking Supervisor desires to engage the Contractor to manage the parking violation program (the "Program") of the City of St. Louis, Missouri (the "City") and process parking violation tickets and related transactions (the "Core Services") and may also engage the Contractor to provide other services that support or are related to the Core Services (the "Optional Services").

3. The Contractor is capable of providing these services in a timely and efficient manner.

THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I. Agreement Scope and Duration**

**1.1. Contractor's Engagement**

(a) The Parking Supervisor hereby engages the Contractor to manage the Program. The Contractor hereby accepts such engagement. In carrying out this engagement the Contractor will provide:

- (i) professional, courteous and prompt customer service;
- (ii) efficient and accurate recording of all transactions; and
- (iii) precise and timely recording, deposit and management of all City revenues handled by the Contractor.

(b) The Contractor agrees to collect all parking fines, levies and other revenues at the earliest possible time and report all collections to the Parking Supervisor promptly. To ensure public accountability, the Contractor will provide a comprehensive report to the Parking Supervisor promptly following the end of each month. These reports will contain information as needed to measure results against targets established in the Standard Operating Procedures (the "Business Rules") for the Parking Supervisor's parking operations as in effect from time to time. The Business Rules will be filed in the Operating Manual described in Section 2.3. The initial targeted performance standards are also filed in the Operating Manual and may be amended from time to time by mutual agreement.

## **1.2. Scope of Agreement**

(a) Core Services. The Contractor agrees to provide all Core Services in accordance with the terms and conditions of this Agreement. Core Services are processing of all parking tickets, from issuance through disposition, as described in detail in the Operating Manual attached to this Agreement as Exhibit A (“Operating Manual”).

The Contractor shall use its fully integrated Parking Ticket Information Management System known as eTIMS<sup>SM</sup> (the “System”). The Contractor shall use the System to process all ticket data and provide all documents required to support the Program and generate the reports necessary to enable the Parking Supervisor to review Program performance. The required hardware, software, equipment and other technology for the System are described in the Operating Manual.

(b) Optional Services. At the request of the Parking Supervisor and with the agreement of the Contractor, the Contractor shall provide such Optional Services as the Parking Supervisor may specify in a written request (a “Project Task Order”). The Optional Services which are available from the Contractor are more fully described in the Operating Manual.

## **1.3. Term and Termination**

(a) The initial term of this Agreement shall begin at 12:01 AM, Central Time on July 1, 2011 and shall terminate at 12:00 PM, Central Time, on June 30, 2021 (“Initial Term”), unless sooner terminated for reasons specified herein. The Parking Supervisor may extend this Agreement for one additional term of five (5) years by written notice to the Contractor given at least ninety (90) days prior to the end of the Initial Term, subject to annual appropriation and price negotiations between the parties.

(b) Either party may terminate this Agreement in its entirety without cause at any time during the term upon written notice to the other party given at least one year in advance of the intended termination date.

(c) If the Parking Supervisor terminates this Agreement without cause, the Parking Supervisor will compensate the Contractor for the Contractor’s reasonable wind down expenses and Contractor’s Unamortized Costs associated with this Agreement. “Unamortized Costs” in this Agreement is defined as the cost of capital equipment purchased, as evidenced by bills of sale, and amortized over three to five years.

## **1.4. Default Termination**

Any one or more of the following events shall constitute a “Default”:

(i) The Contractor’s failure to meet the mutually agreed upon performance targets established from time to time and published in the Operating Manual;

(ii) The Contractor’s failure to provide any services in accordance with the Parking Supervisor’s requirements or in compliance with the Business Rules;

(iii) The Contractor’s failure to account for all parking tickets written by any person properly authorized to issue citations for parking violations which are properly transmitted and/or submitted to the Contractor by the City or its third party handheld provider;

(iv) Any ruling, judgment, penalty, order or other directive by a court, agency or other entity that, in the Parking Supervisor's determination, could materially and adversely affect the ability of the Contractor to meet its obligations under this Agreement;

(v) The sale, lease, transfer (excluding transfers within the ACS or Xerox corporate entities) or other material change in or of the Contractor's parking violation enterprise without the Parking Supervisor's prior written approval;

(vi) Any material change by the Contractor in its methods for services hereunder without the Parking Supervisor's prior written approval;

(vii) The Contractor's failure to meet its obligations to any subcontractors, vendors or other entities providing goods or services in connection with this Agreement within thirty (30) days of the due date thereof; or

(viii) The Contractor's failure to notify the Parking Supervisor in a timely fashion of any decision, event or other change in circumstances that the Parking Supervisor believes could adversely affect the Contractor's ability to satisfy its obligations under this Agreement as soon as such decision, event or change occurs or the Contractor becomes aware that it is likely to occur.

(ix) The Parking Supervisor's breach of any of its obligations to the Contractor under this Agreement.

Upon the occurrence of a Default, the non-defaulting party shall give written notice to the defaulting party describing the Default. The defaulting party shall then have thirty (30) days in which to cure such Default. If the defaulting party remains in default at the end of such thirty (30) day period, the non-defaulting party may terminate this Agreement without further liability to the non-defaulting party, and in the event of Contractor's failure to cure a default the Parking Supervisor may withhold payments to the Contractor and take such other corrective action as the Parking Supervisor deems necessary to ensure the continuous provision of services under this Agreement.

### **1.5. Effect of Termination**

(a) Upon expiration or termination of this Agreement for any reason not dealt with in subsections (b) and (c) below, the Parking Supervisor shall pay the Contractor the amounts due for work satisfactorily completed in accordance with the terms and conditions of this Agreement prior to the expiration or termination date.

(b) If the Parking Supervisor terminates this Agreement without cause, the parties shall negotiate an equitable termination settlement to be paid to Contractor which will include reasonable wind down expenses and Contractor's Unamortized Costs, as defined in Section 1.3, associated with this Agreement. Under no circumstances will the Parking Supervisor have any obligation to pay damages if the Contractor terminates this Agreement. However, if the Contractor terminates this Agreement for default, the Parking Supervisor agrees to pay Contractor's reasonable wind down expenses and Contractor's Unamortized Costs, as defined in Section 1.3, associated with this Agreement.

(c) If the Contractor terminates this Agreement without cause, the Parking Supervisor shall pay the Contractor the amounts due for work satisfactorily completed in accordance with the terms and conditions of this Agreement prior to the termination date and shall have no further or additional obligation to the Contractor whatsoever.

(d) Upon expiration or termination of this Agreement, the Contractor shall provide the Parking Supervisor immediate access to all data, files and records, excluding Contractor's proprietary information, confidential information and internal cost and expense related information in whatever format they may be kept and shall make arrangements to have all such data, files and records promptly transferred to the Parking Supervisor or a successor Contractor designated by the Parking Supervisor. The Contractor shall grant to the Parking Supervisor immediate control of all parking violation data and facilitate the Parking Supervisor's (or successor contractors') ability to assume control of all processing operations. The Parking Supervisor shall retain all rights to all parking violation data compiled and processed by the Contractor. The Contractor shall retain ownership of all equipment and proprietary software purchased by it for use in performing its services hereunder. An Inventory of the Contractor's system components shall be maintained in the Operating Manual and updated regularly as items are placed into or removed from service.

(e) Upon such expiration or termination of this Agreement the Contractor shall continue to provide services hereunder during a reasonable transition period, not to exceed 180 days, and shall be compensated for such services in accordance with the schedule of fees in effect at the time of such expiration or termination. The procedures and obligations described in this Agreement shall remain in effect during such transition period. Any payments received from violators by Contractor following the expiration of the transition period will be immediately forwarded to the Parking Supervisor or as the Parking Supervisor may direct.

#### **1.6. Contract and Service Modifications**

(a) The parties may modify this Agreement only by mutual agreement in writing signed by both parties. No oral changes are permitted. The Parking Supervisor may request a modification to the services provided by the Contractor hereunder by written change order given to the Contractor. Within ten (10) business days after receiving such written change order, the Contractor shall submit an itemized cost proposal for the work to be performed. The Contractor's proposal may be accepted by the Parking Supervisor or modified by negotiations between the Contractor and the Parking Supervisor. Upon mutual agreement regarding the modification, the parties shall execute a formal amendment to this Agreement, in writing.

(b) If any change materially reduces or increases parking revenues or reduces or increases operating costs, either party may request a contract modification. The parties shall meet within twenty (20) business days after such request is made to discuss equitable adjustments for the changed circumstances and agree on an appropriate amendment. Disagreements that cannot be resolved through such negotiations shall be resolved in accordance with the dispute resolution provisions set forth below.

#### **1.7. Disputes**

Except as otherwise provided herein, any dispute arising under this Agreement shall be decided by the Parking Supervisor. The Parking Supervisor shall notify the Contractor of the decision, in writing, and the decision shall be final unless, within thirty (30) days from the receipt of such decision, the Contractor makes a written appeal to the Parking Supervisor. Such appeal shall be heard as soon as is reasonably practicable by the Parking Commission. The Contractor may present evidence and statements of applicable law in support of its appeal. Pending final decision of a dispute, the Contractor shall be bound by the Parking Supervisor's decision.

This paragraph does not limit either party's right to pursue any remedies available at law or in equity. Every action pursuant to this Agreement shall be taken in good faith, in accordance with reasonable commercial practice.

**1.8. Contract Administration and Monitoring**

(a) The Parking Commission shall oversee this Agreement and the Parking Supervisor or his designee shall serve as its primary representative. In addition, the Parking Supervisor may designate a project manager, or one or more committees composed of employees of or advisors to the Parking Supervisor, to monitor the Contractor's performance and to review the services and other activities hereunder, recommend improvements, deal with any problems that might arise and otherwise assist the parties in effecting compliance with this Agreement and improving the operations of the Parking Supervisor's parking violation Program. The Parking Supervisor shall monitor all aspects of the Contractor's performance.

(b) The Parking Division's Finance Director may from time to time conduct performance audits. The Contractor shall cooperate fully in such audits. Within ten (10) business days of receipt of an audit notice from the Parking Supervisor, the Contractor shall provide all documents and information requested by the Parking Supervisor to facilitate the audit, excluding Contractor's proprietary information, confidential information and internal cost and expense related information.

**Article II. Parking Supervisor Obligations**

**2.1. Parking Supervisor Operating Conditions**

The Parking Supervisor has established a Parking Violation Bureau ("PVB") with an administrative adjudication unit and non-judicial hearing officers for parking violations. The Contractor shall refer those contesting their parking tickets to the PVB. The Contractor shall refer those opting not to contest their parking tickets through the PVB to the 22<sup>nd</sup> Judicial Circuit Court. The Contractor shall assist the administrative adjudication support process by providing (a) access to eTIMS® (subject to the licensing terms contained in Section 5.3(d) below) and (b) scheduling services.

**2.2. Special Agreements**

- (a) The Parking Supervisor agrees to the best of his ability:
- (i) to develop and maintain comprehensive parking enforcement laws, regulations and guidelines;
  - (ii) to provide the Contractor with documentation for all relevant parking laws, regulations and policies;
  - (iii) to maintain parking enforcement patrol beats which will include all regulated parking areas;
  - (iv) to hire, train and equip Parking Enforcement Officers ("PEOs") to ensure effective parking enforcement coverage;
  - (v) to maintain enforcement times that ensure acceptable traffic flow and space turnover;

(vi) to deliver to the Contractor all automated tickets issued by PEOs within one business day of issuance, excluding manual tickets from the Police Department which shall be entered within two (2) business days;

(vii) to maintain an effective booting and towing program to boot and tow scofflaw vehicles; and

(viii) to continue to enforce the City's parking laws and regulations diligently in accordance with practices prevailing in similar metropolitan areas and with such staff and facilities as the Parking Supervisor shall require, in his sole judgment, and as the City's economic condition permits.

(b) The Parking Supervisor will consider recommendations offered by the Contractor to improve the on-street parking program, including changes in staffing levels, metered spaces, parking fees, parking violation fines and late payment penalties. The Parking Supervisor shall provide the Contractor with written notice of any change in any fine or penalty sufficiently in advance of the effective date of the change to allow the Contractor to implement the change.

### **2.3. Operating Manual**

The Parking Supervisor has prepared an Operating Manual in which its Business Rules and other information concerning the Program will be published. The material filed in the Operating Manual, as the same may be in effect from time to time, is incorporated into this Agreement by this reference, and both parties agree to be bound by such material. Any change to such material must be agreed to by both parties.

## **Article III. Contractor Assurances and Obligations**

### **3.1. Operating Resources**

(a) The Contractor shall develop and carry out an effective and efficient Operations Plan to deliver the services required by this Agreement. The Operations Plan shall include the following elements:

(i) Organization chart, position descriptions and staff roster for all personnel;

(ii) Continual training program for all employees and subcontractor personnel;

(iii) Plan for walk-in service centers for payment and adjudication of violation citations;

(iv) Detailed equipment inventory; and

(v) Resource maintenance and support plan.

The Operations Plan shall also include strategies for deploying resources required to meet the Parking Supervisor's needs. The Contractor shall maintain an approved Operations Plan throughout the term of this Agreement and a copy of such Operations Plan as in effect from time to time shall be filed in the Operating Manual. The Operations Plan in effect on the date of this Agreement shall continue in effect until changed. The Contractor shall report any changes to the

Operations Plan as part of its Annual Performance Report to the Parking Supervisor, and such changes shall be reflected in the Operations Plan as filed in the Operating Manual.

(b) The Contractor shall designate an Operations Manager who will be available on-site at a location approved by the Parking Supervisor during normal business hours to manage all services, supervise all employees and subcontractors, resolve disputes and serve as liaison to the Parking Supervisor.

(c) The Contractor shall provide an adequate number of qualified staff and non-personnel resources to operate the Program, satisfy actual or projected service demands, and fulfill the requirements of this Agreement. All employees and subcontractors of the Contractor shall possess the requisite skills and capabilities. The Contractor shall employ only personnel and subcontractors approved by the Parking Supervisor in accordance with the Operations Plan (but the Parking Supervisor shall have no approval power with respect to personnel employed by any subcontractor regardless of any provision to the contrary in any subcontract). The Contractor shall provide all employees with adequate training in relevant laws, policies, procedures, technologies and customer service techniques.

(d) The Parking Supervisor shall provide office space to the Contractor for its central service center at half of the standard market rate, which is currently \$6,500 per month, and shall not increase by more than 3% in any given year.

(e) The Contractor shall provide all equipment and other resources required to meet the terms and conditions of this Agreement, including those specified in the Operating Manual. The Contractor shall maintain adequate spare equipment and replacement parts on site to minimize service disruptions and ensure fast repair.

### **3.2. Patents and Trademarks**

The Contractor represents and warrants that it is the sole owner of or is fully authorized to use all system components, products, services, processes or names to be used in connection with this Agreement, and will indemnify and hold harmless the Parking Supervisor, and its officers, employees, agents and representatives, from all loss, liability, expense, costs, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising out of the Contractor's performance hereunder.

### **3.3. Standards and Trademarks**

(a) The Contractor shall furnish all products and services consistent with generally accepted industry standards, including quality, technical accuracy, timeliness and effective coordination of all activities by the Contractor, its subcontractors, employees and agents. The Contractor shall comply with all applicable laws, rules and regulations of any properly-constituted authority, and shall perform all work in conformity with the following standards:

(i) Uniform Building and National Electrical Codes;

(ii) Applicable Electronic Industries Association (EIA) Standards for electronic components, assemblies, interfaces and interconnections;

(iii) National Electrical Manufacturers Association (NEMA) Standards for Industrial Controls and Systems;

(iv) Instrument Society of America (ISA) standards for instruments, transmitters, and other instrumentation, equipment and documentation;

(v) Occupational Safety and Health Act (OSHA); and

(vi) Laws and codes of the United States, State of Missouri, and City of St. Louis.

(b) In the event of conflict among these standards, the most stringent performance standard shall apply. If the Contractor secures compliance certifications for specific components from an independent organization approved by the Parking Supervisor, such certifications shall be the applicable standard. The Contractor is responsible for obtaining all permits and licenses, paying all fees, and giving notices as necessary. The Parking Supervisor may at any reasonable time, and upon written notice, review any work to ascertain whether all laws, rules and standards are followed.

(c) The Parking Supervisor may reject any equipment or software which does not conform to the applicable specifications or which has become obsolete or does not perform as required by the Operating Manual.

### **3.4. Performance Bond and Warranties**

The Contractor shall deliver to the Parking Supervisor and maintain in effect until a Parking Supervisor-approved cancellation, a valid, annually-renewable corporate performance bond in the amount of at least two million dollars (\$2,000,000) from an A- Best rated company licensed to do business in Missouri and approved by the Parking Supervisor. The bond shall be conditioned upon the Contractor fully and faithfully performing all terms of this contract, and cancellable thirty (30) calendar days after the satisfactory completion of the warranty period, as approved by the Parking Supervisor, but shall not exceed the term of the Agreement. Said bond shall provide that it will not be cancelled or altered without first giving prior written notice thereof to the Parking Supervisor pursuant to the notice provisions of this contract. Any increase in bonding required to cover negotiated changes in contract scope will be provided by the Contractor, and approved by the Parking Supervisor, with the incremental cost of such bonding increase borne by the Parking Supervisor.

If the Parking Supervisor acquires automated ticket issuance devices (TIDs) or any other products from the Contractor, the Contractor shall expressly warrant all products and components against defects in materials and workmanship for a period of at least one year from the date of final acceptance by the Parking Supervisor of the products. Final acceptance shall be deemed the date on which the Parking Supervisor takes physical possession of, and starts using, the products. All such products shall be warranted to operate in the environment in which they are intended to be used in conformance with the requirements set forth herein. The Contractor also warrants that, upon the Parking Supervisor's final acceptance and full payment to the Contractor, title to the accepted products shall pass to the Parking Supervisor free and clear of all liens, mortgages, encumbrances, financing and security agreements and any other claims.

If any products acquired by the Parking Supervisor fail to operate in accord with the requirements set forth herein, the Parking Supervisor shall notify the Contractor and request the Contractor to repair or replace any defective parts or components. Within forty-eight (48) hours of receiving written notification from the Parking Supervisor of any defects, the Contractor shall record the Parking Supervisor's request and correct the defect or replace the defective component or part, solely at its own cost during the warranty period. The Contractor shall ship any replacement parts to the Parking Supervisor and bear all shipping and installation costs incurred

under the warranty program. The limited warranties set forth in this Agreement are made to the Parking Supervisor exclusively and are in lieu of all other warranties. Contractor makes no other warranties whatsoever, express or implied, with regard to the products or services hereunder, in whole or in part.

### **3.5. Insurance**

(a) Employee Insurance. The Contractor shall at all times maintain in effect with responsible insurance carriers Workers' Compensation and Employers Liability Insurance as required under applicable laws, covering all of the Contractor's employees engaged in the work under this Agreement. The Workers' Compensation insurance shall provide coverage of at least One Million Dollars (\$1,000,000) unless a higher limit is required by statute, in which case the statutory limit will be maintained, and the Employer's Liability Insurance shall provide limits of at least \$500,000/\$500,000/\$500,000 for claims due to bodily injury or death by accident or disease.

The Contractor also shall maintain fidelity bond insurance coverage on all employees handling cash and other funds in an amount not less than One Million Dollars (\$1,000,000) aggregate coverage. The Contractor will also require its subcontractors to provide certificates of fidelity bonding or equivalent coverage as required by the Parking Supervisor.

(b) Commercial General Liability Insurance. The Contractor shall at all times maintain in effect commercial general liability insurance for bodily injury, including death, property damage and contractual liability assumed under the provisions of this Agreement. Such insurance shall include broad form property damage and independent contractor's liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) for each occurrence, which may be subject to a One Million Dollars (\$1,000,000) general aggregate limit which shall include coverage for completed operations and personal injury. The Parking Supervisor shall be included as an additional insured under this commercial general liability policy.

(c) Business Automotive Liability Insurance. If the Contractor or any of its employees should ever use vehicles in the performance of its services hereunder, the Contractor shall at all times during such use maintain in effect business automobile liability insurance for business use. Such coverage shall cover owned, non-owned and leased vehicles used by the Contractor, with limits of at least One Million Dollars (\$1,000,000) per accident combined single limit for bodily injury and property damage.

(d) Other Insurance Issues. All policies of insurance shall be written by companies duly authorized to write insurance in Missouri which are approved by the Parking Supervisor and rated at least A- by Best's insurance rating service. The Contractor shall deliver to the Parking Supervisor, and keep current at all times, a schedule of insurance carried under this Agreement in the form of a standard Certificate of Insurance attested by the insurance carrier or agent, indicating the type, amount, policy number, effective date and expiration date of all policies. Each policy and each certificate shall contain a valid provision or endorsement stating that the policy will not be cancelled, refused renewal or materially changed without written notice to the Parking Supervisor given at least thirty (30) days prior to any policy cancellation, non-renewal or other material change, or ACS will notify the Parking Supervisor by giving at least thirty (30) days prior written notice regarding any cancellation, non-renewal or other material change to the insurance policy.

### **3.6. Indemnification & Limitation of Liability**

(a) To the fullest extent permitted by law, the Contractor shall release, defend, indemnify and hold harmless the City, the Parking Supervisor, its or his agents, officials and employees (collectively, the "Indemnified Parties"), from all liability, losses, damages, claims, actions or proceedings, including worker's compensation claims, in any way resulting from, or arising out of, the Contractor's negligent acts of omissions under this Agreement, or its negligent use or occupancy of any of the City's or Parking Supervisor's facilities, except to the extent such losses or damages are caused by the negligence or willful misconduct of the applicable Indemnified Party.

(b) This section is applicable to all claims of every kind, including claims for equitable relief or for damages, losses, injuries, fines, penalties and expenses. Expenses shall include all costs incurred by the Indemnified Parties in connection with investigating any claim or defending any action, and reasonable attorney's fees and expenses. The Contractor expressly understands and agrees that any insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to release, indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. Neither party shall be liable to the other for any consequential, indirect, special or punitive damages.

(c) Except for the fees and amounts expressly due and payable to Contractor hereunder, in no event shall either party to this Agreement be liable to the other party hereunder for any claims, penalties or damages, in an aggregate amount exceeding the fees or other amounts paid by Parking Supervisor to Contractor during the thirty-six (36) months preceding the claim. Under no circumstances will either party to this Agreement be liable for any incidental, consequential, indirect, punitive or special damages arising out of or in connection with this Agreement.

(d) The provisions of this Section shall survive expiration or termination of this Agreement.

### **3.7. Annual Performance Report**

(a) The Contractor shall submit an Annual Performance Report to the Parking Supervisor in a format determined by the Parking Supervisor. At a minimum, the Annual Performance Report shall include the following items:

(i) The most recent corporate annual reports for the Contractor and its subcontractors;

(ii) A copy of the most recent Service Organization Control (SOC) 1 Report and/or SOC 2 Report prepared in accordance with *Statement on Standards for Attestation Engagements (SSAE) No. 16* for the Tarrytown Data Center, and any other data centers used in connection with this Agreement, as of the immediately preceding June 30<sup>th</sup>;

(iii) The disclosure of any material changes in the legal status, corporate structure and financial condition of the Contractor or its subcontractors;

(iv) The disclosure of any litigation, events or conditions that could adversely affect the ability of the Contractor or its subcontractors to meet the contract objectives;

(v) The disclosure of any material changes in the Contractor's software, technology platform, processes, management tools (e.g., Interactive Voice Response, Internet payment and imaging technology), techniques (e.g., state motor vehicle department interfacing)

and other resources that would adversely affect the ability of the Contractor or its subcontractors to meet the Parking Supervisor's needs;

(vi) The disclosure of any changes in the Contractor's MBE/WBE participation levels as set forth in the MBE/WBE Utilization Plan;

(vii) The documentation of any scope of service changes or changes in the Operations Plan agreed to by the parties during the previous year;

(viii) A statistical summary of key performance targets and other performance indicators, including financial, customer service, and related operational indicators;

(ix) Recommended changes to the standard performance target definitions, Operations Plan and Standard Operating Procedures (SOP) for this contract;

(x) Other recommendations for improving the Parking Supervisor's public parking program; and

(b) The Contractor shall notify the Parking Supervisor of any conditions that could adversely affect its ability to perform the services hereunder as soon as reasonably possible after such conditions occur.

#### **Article IV. Compensation**

##### **4.1. Core Service Fee – Primary Collection Services**

The Parking Supervisor shall pay the Contractor a unit-based processing fee for Core Primary Collection services in accordance with the table below.

**Core Service Primary Collection Fee by Year**

<b>Service Level</b>	<b>Tickets Processed Per Year</b>	<b>Unit Cost Year 1</b>
Level 1	Up to 360,000	\$3.75
Level 2	360,001 or more	\$3.50

A Ticket Processed is a valid, unduplicated parking ticket received by the Contractor from the City or one of its authorized agents (manually or electronically), entered by the Contractor into its ticket management system and processed in accordance with this Agreement.

The Parking Supervisor will compensate the Contractor for a minimum volume of 380,000 tickets each Fiscal Year. If the Parking Supervisor does not issue more than 380,000 tickets, the Contractor will bill the Parking Supervisor the difference between 380,000 @ \$3.85 and the amount billed.

At the conclusion of each yearly interval of this Agreement, the Contractor's per ticket price will be increased by an amount equal to the Consumer Price Index (CPI), except as modified below. For purposes of calculating the amount payable to the Contractor, CPI means the increase (if any) in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) for the St. Louis area during the 12-month period beginning July 1 of the year before the year for which the Unit Cost is being calculated and ending the following June 30.

Notwithstanding the above, during the first three years of the Agreement, a CPI adjustment to the Contractor's per ticket price will not be applicable if (1) the City initiates a furlough program or the Board of Aldermen does not approve a cost of living increase due to budgetary constraints and/or (2) the annual increase to the CPI is not 1.75 percent or greater. The annual CPI adjustment to the per ticket price shall not exceed three percent during any single year of the Agreement term.

In addition, the Parking Supervisor will reimburse the Contractor for the following costs incurred for the Core Primary Collection services:

(i) Postage at cost (bulk rate whenever practical) for notices issued for Core Primary Collection services; and

(ii) Credit card discount fees at Contractor's cost.

The Contractor will bear all other operating costs incurred in providing the Core Primary Collection services.

#### **4.2. Core Service Fee – Secondary Collection Services**

The Parking Supervisor shall pay the Contractor a percentage fee for collecting delinquent accounts in the amount of 25 percent (25%) of parking violation fines and late payment penalties collected by the Contractor with respect to delinquent accounts assigned to the Contractor for collection. This contingency fee shall not be applied to delinquent amounts fully pledged by law to other funds (e.g., the court administrative costs). For this purpose, a delinquent account is a parking violation ticket which is not paid before the expiration of 90 days after its issue date.

#### **4.3. Optional Service Fees**

The Contractor presently provides the Optional Services listed in the Operating Manual, for the fees stated with respect to each such Optional Service. If the Parking Supervisor desires any additional Optional Service, it shall request the Contractor to submit a proposal of terms and costs for such services. For optional consulting services, the updated proposal shall include a standard professional rate schedule. For satellite service center operations, the proposal shall include an incremental Core Service Primary Collection fee if the provision of such Optional Service demonstrably increases the cost to the Contractor for providing Core Services.

If the Parking Supervisor accepts the Contractor's proposal, the Parking Supervisor shall issue a Project Task Order authorizing the Contractor to proceed. The Parking Supervisor shall pay the Contractor for any Optional Service in accordance with the Project Task Order. The Contractor shall bill, and the Parking Supervisor shall also pay, (i) professional fees for authorized optional consulting services at hourly rates approved by the Parking Supervisor and (ii) reimbursable out-of-pocket expenses at cost, but only for hours and expenses actually incurred. The Contractor shall provide the Parking Supervisor with complete supporting documentation of any fees and expenses.

#### **4.4. Payment Guidelines**

At the end of each month, the Contractor shall calculate the compensation due it and submit a single monthly invoice in the form requested by the Parking Supervisor which includes a summary statement of the Core Service Primary Collection fee, the Core Service Secondary Collection fee and, Optional Service fees (if any). The Contractor shall itemize every fee for

which payment is requested with supporting documentation in the form required by the Parking Supervisor, which shall include the description of services performed, number of units (month and year-to-date), unit costs (by volume) and total amount. The invoice and supporting documentation shall be submitted to the Parking Supervisor in accord with the notice provisions set forth herein. The Parking Supervisor shall verify the accuracy of the invoice and remit payment within thirty (30) days of receipt of the invoice.

The Parking Supervisor may audit, or select an independent auditing firm to audit, any Contractor reports to verify the accuracy of the Contractor's compensation calculations. The Contractor's failure to provide all data for such audit shall constitute a Default. If an audit discloses payment errors, an appropriate adjustment shall be made promptly following delivery of the audit.

#### **4.5. Performance Credits**

Contractor hereby guarantees that certain aspects of its performance under this Agreement will meet the Minimum Standards established for specific services as set out in the applicable section of the Operating Manual, as such standards may be amended from time to time by mutual agreement of the parties. Each of the services which are subject to this guarantee will be tested by the Contractor promptly following the end of each month and the results of such testing shall be certified by the Contractor and delivered to the Parking Supervisor, and shall be subject to audit by or for the Parking Supervisor in his discretion. If the Contractor fails to meet any of the Minimum Standards it shall pay or credit to the Parking Supervisor the appropriate penalty. If for any reason this Agreement is not in effect for a full calendar month, the penalties shall be pro rated on a daily basis for the period this Agreement is in effect. Notwithstanding any provision in this Agreement or incorporated documents to the contrary, Contractor's aggregate monthly credit amounts shall not exceed fifty (50%) of Contractor's monthly invoice for any month.

#### **4.6. Other Fiscal Issues**

(a) For the limited purpose of carrying out its obligations under this Agreement, and only to the extent the Parking Supervisor is exempt from state and local sales and use, property and federal excise taxes for the same services delivered by the Contractor hereunder, the Contractor may seek exemption from such taxes as a limited agent of the Parking Supervisor.

(b) The Contractor will identify potential opportunities for shifting appropriate service costs to scofflaws or other suitable accounts. However, the Contractor shall not impose any convenience fees, royalties or other charges for processing citations for parking violations or other municipal code violations without the Parking Supervisor's prior written approval. If the Contractor identifies opportunities for generating such revenues, it shall estimate the potential amounts and implications of such revenues, and present this information in writing to the Parking Supervisor. If the Parking Supervisor modifies any fines or late payment penalties or imposes any additional charges, the parties shall adjust the payment schedule based on such information, as needed to offset any revenue changes associated with such modification, and the adjusted schedule shall be filed in the Operating Manual in place of the previous schedule.

(c) The Contractor shall account for all revenues collected under this Agreement, including parking violation revenues and associated administrative costs, in compliance with any applicable state and local laws, rules, regulations and policies. This Agreement shall in all respects be subject and subordinate to all Parking Supervisor ordinances and debt obligations related to Parking Supervisor revenues collected or managed under this Agreement and to any other ordinances that amend, supplement or replace such ordinances. All payments due

Contractor from the Parking Supervisor pursuant to this agreement are subject to annual appropriation.

## **Article V. Other Contract Provisions**

### **5.1. Minority/Women Business Enterprise (MBE/WBE) Participation**

It is the policy of the City to ensure the maximum utilization of Minority<sup>1</sup> Business Enterprises (MBEs)<sup>2</sup> and Women's Business Enterprises (WBEs)<sup>3</sup> in contracting services to the City, its departments, agencies and authorized representatives and to all entities receiving City or City-administered government funds while at the same time maintaining the quality of services provided to the Parking Supervisor and its sub-recipients through the competitive procurement process. The provisions of this policy shall apply to all contracts awarded by the City, its departments and agencies and to all recipients of City funds or City-administered government funds and shall be liberally construed for the accomplishments of its policies and purposes.

The City has established a goal of 25 percent MBE and 5 percent WBE utilization in connection with this contract. This goal is based on the negotiated contract amount for Core Primary Collection Services and shall remain in effect throughout the term of the contract, unless otherwise agreed to by the parties. MBE/WBE participation towards the attainment of this goal will be credited on the basis of the total subcontract prices agreed to between the Contractor and subcontractors, as set forth in the Contractor's MBE/WBE Utilization Plan. The MBE/WBE Utilization Plan must be submitted to the City, and the firms fully certified, prior to contract execution to fulfill the participation goals. These goals also apply to any contractor that has been certified as an MBE or WBE.

The Contractor shall conform to the MBE/WBE participation set forth in the MBE/WBE Utilization Plan. When a listed MBE/WBE is unwilling or unable to perform the work or supply the services specified in the MBE/WBE Utilization Plan, the Contractor shall immediately notify the Parking Supervisor and obtain the Parking Supervisor's written approval prior to replacing the firm. MBE/WBE substitutions will be allowed only when the MBE/WBE has failed to perform due to a default (material breach) of its subcontract. The Contractor understands, warrants and agrees that it shall not terminate its agreement with the MBE/WBE without cause and shall timely forward supporting documentation substantiating the cause of the termination to the City for review.

If the MBE/WBE participation is less than the stated goal at the time of contract execution, the Contractor shall continue good faith efforts throughout the term of the contract to maximize MBE/WBE participation. The Contractor shall document and submit justification using the *Contractor's Good Faith Efforts Report* form and provide a statement as to why the goal could not be met. The Contractor agrees to take all reasonable steps to ensure that MBEs and WBEs have maximum opportunity to participate in contracts and subcontracts made possible and financed by the City under this contract. The Contractor shall not discriminate on the basis of

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<sup>1</sup> Minority is defined as Asian American, Black American, Hispanic American or Native American.

<sup>2</sup> A Minority Business Enterprise (MBE) is defined as a small business concern per the Small Business Act (15 USC as amended) that is at least 51 percent owned by a minority (or a corporation that has at least 51 percent of its stock owned by individuals who are minorities), whose management and daily business operations are controlled by one or more individuals who are minorities, and is located in the Metropolitan St. Louis Area.

<sup>3</sup> A Women Business Enterprise (WBE) is defined as a small business concern per the Small Business Act (15 USC as amended) that is at least 51 percent owned by a woman (or a corporation that has at least 51 percent of its stock owned by women), whose management and daily business operations are controlled by one or more individuals who are women, and is located in the Metropolitan St. Louis Area.

race, color, national origin, or sex in the award or in the performance of any contracts financed by the City.

The Contractor shall keep such records as are necessary for the City to determine its compliance with the MBE/WBE contract obligations (e.g., copies of subcontracts, paid invoices, documentation of correspondence). The City reserves the right to investigate, monitor and review actions, payments, statements and documents submitted by any contractor, subcontractor or MBE/WBE. The contractor shall submit quarterly reports on MBE/WBE involvement to the Parking Supervisor. These reports will be required until all MBE/WBE subcontracting activity is complete or the MBE/WBE goal has been achieved. These provisions are applicable to all contractors, including MBE/WBE contractors. If the MBE/WBE contractor intends to sublet any portion of the contract, the MBE/WBE contractor shall comply with provisions regarding contractor and subcontractor relationships.

## **5.2. Nondiscrimination and Other Laws**

In all hiring or employment pursuant to this Agreement, there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, disability, genetic information or national origin, and where applicable, affirmative action will be taken to ensure that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, age, disability, genetic information or national origin. All solicitations for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, age, disability, genetic information or national origin.

The Contractor will take affirmative action not to discriminate against any employee or applicant or otherwise illegally deny any person participation in or the benefits of the programs of this Agreement because of race, color, religion, sex orientation, age, disability, genetic information or national origin. To the extent applicable, the Contractor will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all federal, state and local laws, rules, regulations, orders, instructions, designations and directives promulgated to prohibit discrimination. The Contractor's violation of this provision, after notice, shall be a Default and may result in the termination of this Agreement in whole or in part.

The parties hereto, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, religion, sex, sexual orientation, age, disability, genetic information or national origin with reference to the subject matter of that contract, no matter how remote. This provision is incorporated into the Agreement for the benefit of the Parking Supervisor and its residents and may be enforced in equity by specific performance, injunctive relief, or other remedy. This provision shall be construed in such manner as to prevent and eradicate all discrimination based on age, sex, sexual orientation, handicap, race, color, creed or national origin. The provisions of this Section 5.2 shall be binding on the successors and assigns of the parties.

The Contractor will comply with all applicable federal, state and local laws, regulations and standards, including public health and safety, zoning, land use controls, public and private nuisances and environmental matters, and take all proper or reasonably required safety, preventive and remedial measures in accordance with directives from the federal, state and local enforcement agencies of competent jurisdiction.

## **5.3. Proprietary and Confidentiality Issues**

(a) The parties shall not disclose any details about this Agreement to any other party except as otherwise permitted herein or required by law. Both parties shall take all commercially reasonable measures to protect the security and confidentiality of all information regarding this Agreement which is not considered a matter of public record under Missouri law. Neither party shall release proprietary or confidential information without the written approval of the other party. The Contractor shall use no materials or other information of any kind obtained from the Parking Supervisor other than in the performance of this Agreement, except that the Contractor may publicize its role for marketing purposes. The provisions of this paragraph shall survive the termination of this Agreement. The Contractor shall ensure that each agent and subcontractor agrees to the foregoing confidentiality provisions and also agrees that such provisions shall survive the termination of this Agreement.

(b) The Contractor represents and warrants that it is the sole owner of, and fully authorized to use, all system components, products, services, processes or names to be used in connection with this Agreement. The Contractor agrees to hold harmless and indemnify the Parking Supervisor, and its officers, employees, agents and representatives, from any loss, liability, expense, cost, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright or similar property right arising out of the Contractor's actions in connection with this Agreement. The Contractor shall have the right to obtain a license to use any patents, trademarks or copyrights required hereunder and to modify the work performed in order to avoid the infringement of any patent, trademark, copyright or similar property right. If this is necessary, the Contractor shall notify the Parking Supervisor and request the Parking Supervisor's written approval of any required contract modification or other action.

(c) Notwithstanding any other provision of this Agreement, the Contractor shall retain title to all of its proprietary and confidential information of every kind, including data, studies, documents, software, trade secrets, know how, techniques, and processes and derivatives thereof (collectively the "ACS Proprietary Information") used by the Contractor in the performance of this Agreement. By way of illustration, ACS Proprietary Information includes eTIMS<sup>SM</sup> software, MOVERS<sup>SM</sup> software, and the Contractor's proprietary skip-tracing techniques.

(d) Contractor hereby grants to the Parking Supervisor a limited, non-exclusive, non-transferable, non-assignable, revocable license to use the eTIMS<sup>SM</sup> software solely for the Parking Supervisor's own internal business purposes during the term of this Agreement, and solely for the purpose of managing this Agreement.

#### **5.4. Miscellaneous**

(a) Successors and Assigns. Except as otherwise provided in this Agreement, the Contractor shall not assign this Agreement or any rights hereunder (and any such attempted assignment without the prior written consent of the Parking Supervisor shall be null and void and of no force and effect and shall be a Default) or delegate any obligations hereunder without the prior written consent of the Parking Supervisor. A change in ownership of the Contractor shall not be considered an assignment for purposes of this paragraph, but the Contractor shall promptly notify the Parking Supervisor of any such change in ownership. For purposes hereof a change in ownership means any transaction, regardless of form, by which all or substantially all of the voting securities of the Contractor, or all or substantially all of the Contractor's operating assets, are acquired directly or indirectly by a party (or group of parties, acting together) who or which is not the direct or indirect owner thereof as of the date of this Agreement. For purposes of this provisions, the word "party" means any individual, corporation, trust or other entity of any kind whatsoever, regardless of legal form. The Contractor is authorized to enter into subcontracts with other firms to perform services subject to the Parking Supervisor's prior written approval. For the

avoidance of doubt, Contractor may assign or otherwise transfer this Agreement to any ACS or Xerox corporate affiliate without the consent of the Parking Supervisor.

(b) Governing Law; Jurisdiction. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Missouri, without giving effect to conflicts of laws principles. The Contractor irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the Parking Supervisor of St. Louis in any suit, action or proceeding arising out of or related to this Agreement. The parties irrevocably waive, to the fullest extent permitted by law, any objection either of them may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that such suit, action or proceeding has been brought in an inconvenient forum.

(c) Expenses. Each of the parties shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including, without limitation, any legal and accounting fees.

(d) Severability. If any provision of this Agreement, or the application thereof, is held to be invalid or unenforceable (i) the parties will attempt to substitute a valid and enforceable provision in order to carry out the intent and purpose of the invalid or unenforceable provision; and (ii) the remainder of this Agreement shall not be affected by such invalidity or unenforceability.

(e) Independent Contractor. The Contractor is an independent contractor and not an employee or agent of the Parking Supervisor. The Parking Supervisor shall not be liable to the Contractor or any of its employees or subcontractors for any benefits or coverage under the Worker's Compensation Law of the State of Missouri, and no one employed by the Contractor shall be considered a Parking Supervisor employee for the purpose of Worker's Compensation, unemployment compensation or any other employment benefits provided by the Parking Supervisor to its employees, including, but not limited to, vacation time, sick or other paid leave, health insurance or retirement benefits.

(f) Personal Ethics and Liability; No Third Party Beneficiary. No Parking Supervisor employee shall have any personal or financial interest, direct or indirect, in this Agreement. The Contractor shall decline any offer of work if its services to the Parking Supervisor are likely to be adversely affected by the acceptance of such work. No director, elected official, officer, agent or employee of either party shall be held personally liable on any action arising from the execution of this Agreement. This Agreement does not confer on or grant to any third party any rights whatsoever.

(g) Approval and Recording. This Agreement shall not be effective or binding on the Parking Supervisor until it has been fully executed by all of the signatories of the Parking Supervisor whose names appear on the signature page. Upon its full execution and delivery, this Agreement, or a memorandum hereof, will be recorded at the cost of the Parking Supervisor in the Public Registry of the Parking Supervisor.

(h) Force Majeure. Neither party shall be in default or otherwise in breach of this Agreement as a result of delays in performance or failure or inability to perform for reasons beyond their respective control, including, but not limited to, war, embargo, insurrection, natural disaster, riot, act of God or the public enemy, act of terrorism, strike, labor disturbance, or compliance with federal, state, or local law or regulation, but if any such delay continues for ninety (90) days, then either party shall have the option to terminate this Agreement. Upon the occurrence of any such event, the affected party shall give written notice to the other party as

soon as practicable, specifying the nature and anticipated duration of the event and outlining its recovery plan.

(i) Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given, (ii) on the day of transmission if sent via facsimile transmission or email to the facsimile number or email address, as applicable, given below, and telephonic or electronic confirmation of receipt is obtained promptly after completion of transmission, (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the U.S. Postal Service or (iv) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

<b>For the Parking Supervisor</b>	<b>For the Contractor</b>
City of St. Louis Treasurer's Office Room 220, City Hall St. Louis, Missouri 63103 Attn: Parking Supervisor Fax: Email:	ACS State & Local Solutions, Inc. 12410 Milestone Center Dr. Germantown, MD 20876 Attn: TSG Contractors Fax: 301-820-4250 Email: michael.wood@acs-inc.com

Either party may change its address for notices by giving the other party written notice of its new address in the manner set forth above.

(j) Interpretation. In the case of a conflict between the various terms and conditions herein, the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

(k) Amendments; Waivers. This Agreement may be amended or modified, and any provision hereof, or a breach of any provision, may be waived, only by a written instrument executed by the parties, or in the case of a waiver, by the party waiving compliance. Either party's failure to insist on strict performance of any provision hereof, or to exercise any right based on a breach hereof or a Default, or the acceptance of any performance during such breach or Default, shall not constitute a waiver of any rights such party may have. No waiver in any one instance shall be deemed to be a continuing waiver, and no waiver of any one default shall constitute a waiver of any subsequent or other default.

(l) Public Announcements. Neither party shall issue any press release or public announcement concerning this Agreement without the prior written approval of the other party unless a press release or public announcement is required by law, in which case the disclosing party agrees to give the nondisclosing party prior notice and an opportunity to comment on the proposed disclosure.

(m) Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the transactions contemplated hereby and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. The Operating Manual is an integral part of this Agreement. In case of a conflict or inconsistency between the text of this Agreement and the Operating Manual, the text of this Agreement shall take precedence over the Operating Manual.

(n) Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(o) Execution in Counterparts; Electronic Storage. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes; and all such counterparts shall together constitute but one and the same instrument. The parties agree that transactions under this Agreement may be conducted and related documents may be received or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

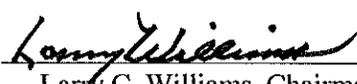
(p) Existing Procedures. This Agreement is a renewal with modifications of a previous agreement between the parties concerning the same subject matter ("Previous Agreement"). In the course of performance under such Previous Agreement, the parties developed operating procedures and techniques for the various services performed by the Contractor and functional requirements for the Contractor's equipment and systems, and modified these from time to time as circumstances required. All of such procedures, techniques and functional requirements in effect immediately before the effective time of this Agreement are incorporated herein by this reference except to the extent changed by this Agreement and shall remain in full force and effect unless and until subsequently modified by mutual agreement of the parties or as otherwise expressly provided herein. For the avoidance of doubt, the parties agree that the terms and conditions of the Previous Agreement will have no effect and will not be binding upon execution of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this contract in duplicate the day and year first above written.

**ACS STATE & LOCAL SOLUTIONS,  
INC.**

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

**PARKING COMMISSION OF THE  
CITY OF ST. LOUIS, MISSOURI**

By:  \_\_\_\_\_  
Larry C. Williams, Chairman