

**PURCHASE AND INSTALLATION AGREEMENT BETWEEN
CITY OF TEMECULA AND FROGPARKING, INC.**

OLD TOWN TEMECULA IN-PAVEMENT PARKING SENSORS

THIS AGREEMENT is made and effective as of **November 12, 2024**, between the City of Temecula , a municipal corporation (hereinafter referred to as "City"), and **Frogparking Inc.**, a Delaware **Corporation** (hereinafter referred to as "Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on **November 12, 2024**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **November 12, 2029**, unless sooner terminated pursuant to the provisions of this Agreement.

The City may, upon mutual agreement with Contractor, extend the contract for **two (2)** additional two (2) year terms. In no event shall the contract be extended beyond **November 12, 2023**.

2. PURCHASE AND SALE OF EQUIPMENT

On and subject to the terms and conditions set forth in this Agreement and the Agreement Documents, Contractor agrees to manufacture, sell and install for the City **In-Pavement Parking Sensors, software and related support equipment** as more particularly described in Exhibit A, Scope of Work, (hereafter "Equipment").

On November 12, 2024 the City and Contractor also entered into a "Software Services and Maintenance Agreement" to provide service and maintenance of the software and hardware required for the Equipment. Contractor's compensation for the services to be provided by the Software Services and Maintenance Agreement are part of the Contractor's compensation described in Exhibit B, Payment Rates and Schedule, to this Agreement.

3. PURCHASE / INSTALLATION PRICE

The Purchase Price which City agrees to pay to Contractor for the Equipment is **five hundred forty-nine thousand two-hundred seventy-six Dollars (\$549,276.00)**. The Purchase Price is final and shall be paid by City to Contractor in accordance with Exhibit B, Payment Rates and Schedule.

Phase I consists of a 3 month pilot where the annual SaaS of \$2,315 has been discounted at 100%. At the end of the 3 month pilot the City agrees to pay the Contractor for the annual SaaS starting annually at this rate.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

4. SCOPE OF WORK

Contractor shall manufacture and install the equipment as described in the Scope of Work. Contractor shall provide and furnish all labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the Work. All of said Work to be performed and materials to be furnished for the Work shall be in strict accordance with the specifications set forth in the Scope of Work. The Work shall be completed within the time set forth in the Scope of Work. Contractor shall not commence the Work until such time as directed by the City.

5. REPRESENTATIONS AND WARRANTIES OF VENDOR

Contractor makes the following representations and warranties to City:

a. Authority and Consents. Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Contractor's execution, delivery, installation and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery, installation and performance of this Agreement by Contractor have been duly authorized by all necessary action on the part of Contractor and constitute the legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with their respective terms.

b. Title and Operating Condition. Contractor has good and marketable title to all of the Equipment manufactured and installed. All of the Equipment are free and clear of any restrictions on or conditions to transfer or assignment, and City will acquire absolute title to all of the Equipment free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions except for such as may be created or granted by City. All of the Equipment are in good operating condition, are free of any defects, and are in conformity with the specifications, descriptions, representations and warranties set forth in the Agreement Documents. Contractor is aware the City is purchasing the Equipment for use as Old Town Parking data collection and that City is relying on Contractor's warranties that the Equipment is fit for this purpose and the ordinary purposes for which the Equipment is normally used.

c. Full Disclosure. None of the representations and warranties made by Contractor in this Agreement contains or will contain any untrue statement of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

6. PERFORMANCE

Contractor shall faithfully and competently exercise the ordinary skill and competence of members of their profession. Contractor shall employ all generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

7. CITY APPROVAL

All labor, materials, tools, equipment, and services shall be furnished and work performed and completed subject to the approval of the City or its authorized representatives, and the quality of the workmanship shall be guaranteed for one year from date of acceptance. City shall inspect the Equipment at the time and place of delivery. Such inspection may include reasonable tests and use of the Equipment by City. If, in the determination of City, the Equipment fails to conform to the Agreement IN ANY MANNER OR RESPECT, City shall so notify Contractor within ten (10)

days of delivery of the Equipment to City. Failing such notice, the Equipment shall be deemed accepted by City as of the date of receipt.

8. TIME OF DELIVERY

The date and time of delivery of the Equipment shall be on or before **February 3, 2025**.

9. PLACE OF DELIVERY

The Equipment shall be delivered to this location: **41000 Main Street, Temecula, CA 92590**.

10. REJECTION

In the event of such notice of non-conformity by City pursuant to the section entitled "City Approval" City may, at its option, (1) reject the whole of the Equipment and Installation, (2) accept the whole of the Equipment and Installation, or (3) accept any commercial unit or units of the Equipment and reject the remainder or the Installation. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of City attendant upon a breach. In the event of such notice and election by City, City agrees to comply with all reasonable instructions of Contractor and, in the event that expenses are incurred by City in following such instructions, Contractor shall indemnify City in full for such expenses.

11. NO REPLACEMENT OF CURE

This Agreement calls for strict compliance. Contractor expressly agrees that both the Equipment and Installation tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the Equipment or any part thereof pursuant to the Section entitled "Rejection" City may, but is not required to, accept any substitute performance from Vendor or engage in subsequent efforts to affect a cure of the original tender by Contractor.

12. INDEMNIFICATION

The Contractor agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Contractor's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

13. AGREEMENT DOCUMENTS

a. This Agreement includes the following documents, which are by this reference incorporated herein and made a part hereof: 1) Exhibit A, Scope of Work; 2) Exhibit B, Payment Rates and Schedule; and 3) Exhibit C, Phase I Map.

b. In the event any term or condition of the Agreement Documents conflicts with or is contradictory to any term or condition of the Agreement, the terms and conditions of this Agreement are controlling.

c. In the event of a conflict in terms between this Agreement, the Request for Proposal (RFP) and/or the Contractor's response to the RFP, this Agreement shall prevail over the RFP and the Contractor's response to the RFP, and the RFP shall prevail over the Contractor's response to the RFP.

14. DEFAULT OF CONTRACTOR

a. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event the Contractor is in default for cause under the terms of this Agreement, the City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

b. If the City Manager or his delegate determines the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall service the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons and/or damages to property, which may arise from or in connection with the performance of the work hereunder and the results of work by the Contractor, its agents, representatives, employees, or subcontractors.

1) Minimum Scope of Insurance. Coverage shall be at least as broad as: Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operation, property damage, bodily injury, and personal & advertising with limits no less than Two Million (\$2,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code8) and non-owned autos (Code 9), with limits no less than One Million (\$1,000,000) per accident for bodily injury, including death, of one or more persons, property damage and personal injury.

3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One million (\$1,000,000) per accident for bodily injury or disease. In accordance with the provisions of Labor

Code Section 3700, every contractor will be required to secure the payment of compensation to its employees. Pursuant to Labor Code Section 1861, Vendor must submit to City the following certification before beginning any work on the Improvements:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

By executing this Agreement, Vendor is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

a. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the Risk Manager.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor's products and completed operations of the Contractor; premises owned, occupied or used by the Vendor. General liability coverage can be provided in the form of an endorsement to the Contractor Insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

2) For any claims related to this project, the Contractor insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies.

3) The Contractor may use Umbrella or Excess Policies to provide the limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability Insurance.

4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect the indemnification provided to the City of Temecula, the Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

5) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) If the Contractor's maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

7) If insurance coverage is canceled or, reduced in coverage or in limits the Contractor shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

8) Unless otherwise approved by City, if any part of the Services and Tasks is subcontracted, the Minimum Insurance Requirements must be provided by, or on behalf of, all subcontractors even if city has approved lesser insurance requirements for Contractor, and all subcontractors must agree in writing to be bound by the provisions of this section.

c. Acceptability of Insurers. Insurance required above, except for workers' compensation insurance, must be placed with insurers with a current A.M. Best rating of A-: VII or better, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.

d. Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

e. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution, delivery, installation and performance of this Agreement.

17. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

18. PROHIBITED INTEREST

No officer, or employee of the City of Temecula shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-contractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Temecula has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Contractor or Contractor's sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

19. INDEPENDENT CONTRACTOR

a. Contractor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

20. ASSIGNMENT

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

21. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

Mailing Address: City of Temecula
Attn: City Manager
41000 Main Street
Temecula, CA 92590

To Consultant: **Frogparking Inc.**
Attn: Jennifer Thomas
9273 Research Drive, Irvine CA 92618

22. GOVERNING LAW

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern

the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

23. ENTIRE AGREEMENT

Except for that certain "Software Services and Maintenance Agreement" between the Parties dated November 12, 2024, this Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement, except for the "Software Services and Maintenance Agreement," and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

24. AUTHORITY TO EXECUTE THIS AGREEMENT


The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA


FROGPARKING, INC., a Delaware corporation.

By: _____
James Stewart, Mayor

By:  _____ 29th October 2024
Matthew Robertson:
Chief Financial Officer:

ATTEST:

By: _____
Randi Johl, City Clerk

By:  _____
Jennifer Thomas, Sales Project Manager

[**NOTE:** Contractor is a corporation, and, therefore it must be represented by two individuals who shall execute this Agreement on behalf of the corporation as follows: (A) one from the corporation's "Operational Group" (Chair of the Board, President, or a Vice-President) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer). As an alternative, a resolution of the Board of Directors designating one individual to sign the agreement on behalf of the corporation will be accepted. See California Corporations Code section 313.]

APPROVED AS TO FORM:

By: _____
Peter M. Thorson, City Attorney

CONTRACTOR

Frogparking, Inc.

Contact Person: Jennifer Thomas

9273 Research Drive, Irvine, CA 92618

714-394-1196

jennifer@frogparking.com

Exhibit A

SCOPE OF WORK

OLD TOWN PARKING SENSORS

The vendor shall provide in-ground parking sensors system designed to collect and analyze parking data in Old Town. The project will be completed in two phases as described below:

- Phase I: The first phase shall consist of a pilot program encompassing the area from the northern arch to Main Street as shown in Exhibit C. This pilot program will allow the vendor to demonstrate the system performance prior to full implementation. The pilot program will:
 - Consist of at least 90 sensors (and related equipment) to be deployed and fully operational for a minimum of three months
 - Demonstrate all features of the system, including real time and historical data access, dashboards, reporting, availability monitors, and all other relevant system features.
- Phase II: Upon successful of the pilot deployment, the vendor will receive written authorization to proceed with the deployment of the remaining sensors (1,571) and any related equipment and required configuration.

The system shall be all-inclusive, including all sensors, all required communication infrastructure, software, hardware, configuration, and training. The system shall not require utilization of the City's IT infrastructure.

Exhibit B

VENDOR NAME:
Frogparking, Inc.
Recessed (In-Ground) Sensors

City of Temecula
 Old Town Temecula In-Pavement Parking Sensors Pricing Form (Exhibit A)

Phase I (Pilot)				
Description	Item	Quantity	Unit Cost	Total Cost
Hardware	Outdoor Guidance - Intellisense - Flush Mount Sensor	90	\$168.30	\$15,147.00
	Solar Gateway	5	\$1,349.80	\$6,749.00
Software	First Year Annual SaaS per Space (This is 100% discounted during the pilot)	90	\$15.00	\$0.00
	First Year Annual SIM Connection (This is 100% discounted during the pilot)	5	\$193.00	\$0.00
Services	Project Management, Installation, Testing and Commissioning	1	\$12,496.00	\$12,496.00
	*Please add lines if necessary			
Phase I Total				\$34,392.00
Phase II				
Description	Item	Quantity	Unit Cost	Total Cost
Hardware	Outdoor Guidance - Intellisense - Flush Mount Sensor	1485	\$168.30	\$249,926.00
	Solar Gateway	28	\$1,349.79	\$37,794.00
Software	See Below Annuals			
	See Below Annuals			
Services	Project Management, Installation, Testing and Commissioning	1	\$170,078.00	\$170,078.00
	*Please add lines if necessary			
Phase II Total				\$457,798.00
Annual Costs				
Description	Item		Year 1 Cost	Year 2+ Cost
Software	Phase 1 - First Year Annual SaaS per Space (This is 100% discounted during the pilot)	90	\$1,350.00	\$1,350.00
	Phase 1 - First Year Annual SIM Connection (This is 100% discounted during the pilot)	5	\$965.00	\$965.00
	Phase 2 - Annual SaaS per Space	1485	\$22,275.00	\$22,275.00
	Phase 2 - Annual SIM Connection	28	\$5,404.00	\$5,404.00
Maintenance	Phase 2 - Platinum Maintenance (Includes warranty when paid annually for years 2-5)			\$21,662.00
	Other	Please Itemize all other annual costs		
	*Please add lines if necessary			
Annual Cost Total			\$29,994.00	\$51,656.00
Totals				
Implementation Cost: Phase I Total + Phase II Total + Annual Cost Year 1 Total				\$522,184.00
Sales Tax (8.75%)				\$27,092.00
Shipping/Delivery				Included in Install
Warranty (5 Years)				Included in Maintenance
Other Costs (Please Itemize)				
Total Project Cost (Amount to Enter Into Planet Bids)				\$549,276.00



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Updated 10/24/2023