FORM B: VARIANCE FORM

The Proposer must provide and state all variances to this solicitation, specifications, the Terms and Conditions on this variance form (provide additional pages if necessary).

After award of Contract through City Commission, via Resolution, the awarded Firm's Variance Form will be reviewed by appropriate City Staff, the City Attorney, and the Risk Manager. If the Variances presented by the Firm are acceptable to the City, a City Agreement will be routed to the awarded Firm for execution by the authorized officer per Sunbiz. The Project Manager will manage the execution of the agreement process.

Variances requested to either the Bid/RFP, Terms and Conditions and Agreement may result in the City rescinding award of Contract.

If Firm has no Variances, Firm must state "None" below. This form must be provided back in the Firm's response.

Please see attached.

RFP Section	Variance	Reason
Scope of Work, Specifications	**Pay-by-Text** The Pay-by-Text parking payment system shall provide a seamless and hassle-free solution for drivers, requiring no account creation or app download. ~~Unique text codes shall be assigned to each parking location where u~~Users can quickly and easily start their parking sessions ~~with~~ by accessing the vendor's mobile payment service through a simple text message. The Pay-by-text ~~payment~~ option shall support fast and secure payments through the vendor's mobile payment service, including Apple Pay, Google Pay, or by manually entering card details. Once the parking session is initiated through the vendor's mobile payment service, users may receive optional confirmation via ~~their phone's browser and a follow-up~~ text message. To enhance convenience, the system shall send an optional reminder before the parking session expires, allowing users to extend their time if the zone permits.	PayByPhone's SMS code service, Text2Pay, does not assign unique text codes per parking location.
Agreement, Article 3. Indemnification	To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the professional negligence, error or omission of the CONTRACTOR, or persons employed or any subcontractors utilized by the CONTRACTOR, in performance of the Agreement. To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the recklessness or intentionally wrongful conduct, of the CONTRACTOR, or persons employed or any subcontractors utilized by the CONTRACTOR, in performance of the Agreement. CONTRACTOR agrees to indemnify, save harmless and, at the City Attorney's option, defend ~~or pay for an attorney selected by the City Attorney to defend~~ CITY, their officers, agents, servants and employees against any and all claims, losses, liabilities and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused by negligent act or omission of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers, ~~or accruing,~~ resulting from~~, or related to the subject matter of~~ in performance of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature, whatsoever, resulting from injuries or damages sustained by any person or property arising from the negligent act or omission of CONTRACTOR, any sub-contractors, their employees, agents, servants, or officers in the performance of this Agreement. In the event that any such action or proceeding is brought against CITY by reason of any such claim or demand, CONTRACTOR,	We request edits to Article 3 for clarity and to permit the Contractor to take sole control of any defense.

RFP Section	Variance	Reason
	upon written notice from CITY, shall defend such action or proceeding pursuant to its obligations set forth in this Article 3. ~~To the extent considered necessary by the City Attorney, any sums due to CONTRACTOR under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.~~ In the event that any action or proceeding is brought by CONTRACTOR against CITY, CONTRACTOR hereby waives the right to a jury trial. Venue shall be Broward County, Florida. The provisions of this Article shall survive the expiration or early termination of this Agreement. CONTRACTOR acknowledges that it has received adequate consideration concerning the monetary limitation on the indemnification provided to City~~, which shall not be less than $1 million per occurrence~~. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes. Notwithstanding anything to the contrary in this Agreement, in no event shall any party be liable for consequential, special, indirect or incidental damages, including but not limited to any damages resulting from loss of use or profits arising out of or in connection with this agreement, whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages. Except as expressly set forth in this Agreement, CONTRACTOR does not make, and hereby specifically disclaims, any representations or warranties, express or implied, regarding the CONTRACTOR mobile payment services, including any implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. CITY acknowledges that the CONTRACTOR mobile payment services and services furnished by CONTRACTOR under this Agreement (including, without limitation, any servers or other hardware, software, applications and any other items used or provided by CONTRACTOR or any third parties in connection with providing access to or hosting any of the foregoing or the performance of any services by CONTRACTOR under this Agreement) are provided by CONTRACTOR "as is".	
Agreement, Article 5. Insurance Requirements	**Commercial General Liability** Contractor agrees to maintain Commercial General Liability at a limit of liability not less than $1,000,000 Each Occurrence, $2,000,000 Annual Aggregate. ~~Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liabilityu~~… **Additional Insured** Contractor agrees to endorse City as an Additional Insured on the Commercial General Liability	We wish to clarify some of the listed insurance requirements.

RFP Section	Variance	Reason
	poicy with a CG 2026 07 04 Additional Insured – Designated Person or Organization endorsement or CG 2010 19 01 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization or CG 2010 07 04 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or organization in combination with CO 2037 07 04 Additional Insured - Owners. Lessees Contractors- Completed Operations, or similar endorsements, to the Commercial General Liability. The Additional Insured shall read "City of Hallandale Beach." **Waiver of Subrogation** Contractor agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent, subject to Contractor's prior approval. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis…. ~~Professional~~ **Errors & Omissions Liability**: Contractor agrees to maintain Professional Error's & Omissions Liability at a limit of liability not less than $1,000,000 Each Occurrence $2,000,000 Annual Aggregate. The Contractor agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective of the Contract, or the performance of services hereunder. ~~The Contractor agrees the Self-Insured-Retention shall not exceed $25,000.~~ This coverage may be provided on a Per-Project Basis	
Agreement, Article 6. Compensation	6.1 CITY agrees to pay CONTRACTOR, in the manner specified in Section 6.2, ~~the total amount of _____ Dollars ($_____)~~ for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount ~~is the maximum payable and constitutes a limitation upon~~reflects CITY's obligation to compensate CONTRACTOR for its services related to this Agreement. This ~~maximum~~ amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. No amount shall be paid to CONTRACTOR to reimburse its expenses.	As services are priced based on usage, PayByPhone invites further discussion on the applicability of a maximum cap to the proposed contract.

RFP Section	Variance	Reason
Agreement, Article 6. Compensation, 6.2 Method of Billing and Payment	6.2.1 Payment shall be due within thirty (30) days of date stipulated on the invoice, provided, invoice is accepted for payment. All amounts payable hereunder are exclusive of any and all taxes, including taxes applicable on fees paid by the consumer, and CITY is responsible for payment of such taxes. Payment shall be made only for approved invoices. The CITY retains the right to delay or withhold payment for services which have not been accepted by the CITY.	We wish to add specific language related to taxes to the contract.
Agreement, Article 6. Compensation, 6.2 Method of Billing and Payment	6.5 (i) CITY agrees to designate CONTRACTOR as the merchant of record with respect to any fees paid by customers to CITY through the CONTRACTOR mobile payment service, including without limitation parking fees and convenience fees (if applicable) and (ii) CITY acknowledges that all funds collected from customers through the CONTRACTOR mobile payment service under this Agreement will be sent by CONTRACTOR's acquirer to CONTRACTOR's licensed service provider, PayPal, Inc. ("PayPal") and that the CITY will be receiving any net funds calculated in accordance with s. 2.2.3 from PayPal. CITY acknowledges that it has reviewed the terms and conditions and privacy policy published by PayPal in connection with disbursement of funds related to this Agreement at https://docs.hyperwallet.com/content/onboarding/v1/require ments/integration-requirements#display-hyperwallet-terms-of-service-and-privacy-policy and https://docs.hyperwallet.com/content/onboarding/v1/require ments/legal-disclosures-requirement respectively, agrees to their terms and further agrees to provide all required information and otherwise cooperate with PayPal to enable PayPal to disburse funds to CITY as described in this section.

6.6 CITY hereby acknowledges and agrees that payment of parking fees and any convenience fees by customers to CONTRACTOR or its service providers pursuant to this Agreement shall be considered payment to CITY, satisfying and extinguishing any payment obligation of the customer to CITY as if the customer had paid to CITY directly. In the event that PayPal does not deliver payments of parking fees and any convenience fees to CITY, CITY's only recourse for payment shall be against CONTRACTOR and PayPal and not against a customer.

6.7 CONTRACTOR will, and will instruct its service providers accordingly, to retain the Transaction Fee and Payment Processing Fee, other agreed upon costs payable to CONTRACTOR and applicable taxes, all as described in [Exhibit], and any applicable fees CONTRACTOR charges to the users, including without limitation PBP SMS Fee, and will remit net parking revenue and any convenience fees to CITY. Payment will be made in accordance with the instructions CITY provides to CONTRACTOR and PayPal (through CONTRACTOR or directly). CONTRACTOR shall provide the CITY with CONTRACTOR's standard monthly statements showing CONTRACTOR parking sessions, | PayByPhone proposes adding terms related to the Contractor acting as merchant of record under this agreement. |

RFP Section	Variance	Reason
	associated fees charged in accordance with [Exhibit], including Payment Processing Fee and Transaction Fee, and any applicable fees CONTRACTOR charges to the users that are specifically described in this Agreement, including without limitation PBP SMS Fee. 6.8 CONTRACTOR retains the right, in its sole and absolute discretion, to discontinue as the merchant of record during the Term upon providing sixty (60) days prior written notice to CITY. In such circumstance, CONTRACTOR will request that CITY supply its own merchant account to CONTRACTOR and CONTRACTOR will, at its sole expense, link one (1) CITY merchant account with CONTRACTOR's gateway provider. Notwithstanding the foregoing, CITY may terminate this Agreement upon providing thirty (30) days' prior notice to CONTRACTOR in the event that CONTRACTOR is no longer able to offer CITY merchant of record services as described in this Section 6.	
Agreement, Article 7. Termination	This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ~~ten~~ thirty (3~~1~~0) days after written notice from the aggrieved party identifying the breach…	PayByPhone requests a longer cure period.
Agreement, Article 8. Miscellaneous, 8.1 Rights in Documents and Work	8.1 Any and all reports, photographs, surveys, and other data and documents provided ~~or created~~by CITY to CONTRACTOR in connection with this Agreement ("CITY Data") are and shall remain the property of CITY, including CITY's parking rates, enforcement equipment and practices, and parking policies; ~~and, if a copyright is claimed, CONTRACTOR grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public~~. During the Term of this Agreement and for such time after as not expressly prohibited, CONTRACTOR may obtain, store and use such CITY Data for any purpose, including without limitation providing and improving services under this Agreement, so long as it complies with applicable data protection laws, contractual obligations and any other applicable requirements with respect to the CITY Data. CONTRACTOR shall retain exclusive ownership of all rights in any derivative data it develops based on CITY Data. In the event of termination of this Agreement, any ~~reports, photographs, surveys, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of~~ CITY Data ~~and~~ shall be delivered by CONTRACTOR to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party, at CITY's written request. Any compensation due to CONTRACTOR shall be withheld until all ~~documents are~~CITY Data is received as provided herein. Notwithstanding the foregoing, CONTRACTOR shall be permitted to retain such copies of, or any computer records or files containing, the CITY Data: (a) that has been archived by CONTRACTOR's automatic electronic archiving and back-up procedures, to the extent created and retained in a manner consistent with	Based on the nature of the services to be provided by the Contractor, we propose adding applicable intellectual property and data provisions.

RFP Section	Variance	Reason
	CONTRACTOR's standard archiving and back-up procedures; and (b) to the extent required by applicable law.	
	The parties will share information and data directly relating to drivers' parking sessions through the CONTRACTOR service at the CITY's parking locations and as may be required by the CITY for parking enforcement, fines, and proceedings ("Transaction Data"). Transaction Data may include vehicle license plate, parking session date, time, duration, zone number and amount paid, details of parking fines/violation notices, and parking session details obtained through customer service center, and does not include User Profile Data (defined below). In using, sharing, or otherwise processing Transaction Data, CITY and CONTRACTOR must comply with applicable data protection laws, contractual obligations and any other applicable requirements. Each party is responsible to the CONTRACTOR service users and other third parties for its respective use, sharing and processing of Transaction Data, whether it performs such use, sharing and processing directly or through third parties. Each party acts as a "data controller" with respect to Transaction Data for the purposes any privacy legislation that uses that concept and is applicable to the party's activities. Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with the applicable data protection laws.	
	Any information about or with respect to CONTRACTOR service users that is not related to parking sessions at the CITY's parking locations, including without limitation, information provided by users upon registration for a CONTRACTOR account and data about the user's activity in the CONTRACTOR account or the CONTRACTOR applications ("User Profile Data") shall be exclusively owned by CONTRACTOR. CONTRACTOR shall retain exclusive ownership of all rights in any derivative data it develops based on Transaction Data and User Profile Data.	
	The parties acknowledge and agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyrights or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively "Intellectual Property") belonging to the other party, given to them under this Agreement is and shall remain the property of that party for the duration of the Term of this Agreement. Except as expressly stated, nothing in this Agreement shall be deemed or interpreted to convey, transfer or assign any Intellectual Property rights to the other party. Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance. Upon termination of this Agreement for any reason the parties will use reasonable endeavors to ensure that all such Intellectual Property and material are removed from display and/or destroyed at the	

RFP Section	Variance	Reason
	request of the other party save where such Intellectual Property is held by the parties in compliance with any statutory obligations and/or the maintenance of proper records.	
Agreement, Article 8. Miscellaneous, 8.2 Audit Right and Retention of Records	CITY shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project upon providing CONTRACTOR fifteen (15) days written notice. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to CITY in written form…	PayByPhone requests advance notice of any audit to prepare and organize requested records.
Optional service terms	**CONTRACTOR INTERACTIVE VOICE RESPONSE** CONTRACTOR will provide the CONTRACTOR interactive voice response solution ("IVR") for use at CITY's managed and/or owned parking facilities, as agreed upon by CONTRACTOR and CITY, to allow for consumers to call and pay for the use of the Parking Location by calling the applicable service number displayed on the parking sign, parking meter, and/or pay station. CITY is responsible for paying IVR setup fees, IVR additional per transaction fees and all Transaction Fees, as outlined in [Exhibit], for each Transaction, including Transactions made through IVR. **CONTRACTOR RIGHTS & RATES** CONTRACTOR will provide CITY with the CONTRACTOR Rights & Rates service ("Rights & Rates") to allow CITY to control eligibility to park at CITY parking facilities and to assign special parking rules and prices to select segments of drivers. In this Agreement, a "Right" is the entitlement to start a parking session at a Parking Location and/or qualify for a specific rate/restriction. CITY is responsible for paying the Rights & Rates implementation and subscription fees, as outlined in [Exhibit], for the number of CITY parking spaces as agreed upon between CONTRACTOR and CITY. **CONTRACTOR VALIDATIONS PORTAL** Subject to the terms and conditions of this Agreement, CONTRACTOR will provide CITY a parking validation subscription service, which allows CITY to access a web-based parking validation and complimentary parking management portal to enter and manage license plate information to validate consumer parking sessions (the "Validations Portal"). CITY is responsible for paying all	We have provided a copy of our service-specific terms related to optional products/services in the event they are included within a final contract.

RFP Section	Variance	Reason
	Validations Portal fees, as set out in [Exhibit], for the Parking Location(s), as agreed upon between CONTRACTOR and CITY. Notwithstanding anything contrary to this Agreement, CITY may not terminate its subscription to the Validations Portal for any reason for six months from the date the Validations Portal is set up for CITY. CITY shall not: (a) reverse engineer, decompile, dissemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, know-how or algorithms relevant to the Validations Portal; (b) create derivative works based on the Validations Portal; or (c) encourage or assist any third party to do the foregoing.	
	CONTRACTOR COUPONS	
	Subject to the terms and conditions of this Agreement, CONTRACTOR will provide CITY with a parking coupons service ("Coupons") for use at CITY's Parking Locations, as agreed upon by CONTRACTOR and CITY, to allow businesses ("Merchants") to pre-purchase a parking balance from CITY that can be redeemed by the Merchant's customers in the form of parking coupons discounting the cost of a CITY parking session. CITY is responsible for paying the Coupons fees set out in [Exhibit].	
	CITY acknowledges and agrees that, in addition to fees payable by CITY for the Coupons under this Agreement, CONTRACTOR may charge Merchants fees in connection with the Coupons, including without limitation administrative or processing fees. All fees collected from Merchants in addition to the parking balance, are payable to CONTRACTOR only and will not be shared with CITY. Nothing in this Agreement shall limit or restrict CONTRACTOR's ability to offer Merchants any add-on services and products, and charge additional fees for such services and products, at CONTRACTOR's sole discretion. Unless under the terms of the Agreement CONTRACTOR is designated as the merchant of record for parking fees paid using CONTRACTOR mobile payment service, CONTRACTOR and CITY agree to designate CITY as the merchant of record for all fees payable by Merchants to CONTRACTOR. In that case, CITY will collect CONTRACTOR's Merchant fees and remit to CONTRACTOR. Remittance will be made via electronic payment or cheque and may be included in the amount that also includes fees payable by CITY to CONTRACTOR under this Agreement.	
	The parties acknowledge and agree that CONTRACTOR's obligations in relation to Coupons are limited to permitting a Merchant to pre-purchase a parking balance from CITY, displaying the Merchant's name in the CONTRACTOR's mobile applications (subject to conditions at the discretion of CITY and CONTRACTOR), providing the Merchant with a discount code to share with its customers, allowing a Merchant to set and modify the coupon value and conditions for redeeming it, and enabling Merchant customers to add a discount code to reduce the amount	

RFP Section	Variance	Reason
	payable for a CITY parking session through the CONTRACTOR's mobile applications. CITY agrees that it shall bear all other responsibilities with respect to Coupons and related parking balances, including, but not limited to, refunding any Merchant its pre-paid parking balance, providing any Merchant support and resolving any disputes related to Coupons and related parking balances, verifying Merchant eligibility and details, and ensuring that transaction amounts enabled through the CONTRACTOR platform are sufficiently high to accommodate amounts payable by Merchants for the Coupons and related parking balances. Upon the termination of this Agreement for any reason, CITY shall continue to administer Merchants' pre-paid parking balances and will either engage another service provider to permit Merchants and their customers to redeem them and/or refund them to Merchants. CITY releases CONTRACTOR from any liability for any claims, actions or losses resulting from or associated with fraudulent Merchant activity or for breach of any obligations to Merchants for which CONTRACTOR is not expressly responsible in this Agreement, including without limitation failure to refund parking balances. For the purposes of Section 6.5, (a) "parking fees" includes parking balances pre-purchased by Merchants from CITY through the Coupons service and (b) "other agreed upon costs payable to CONTRACTOR" includes fees collected by CONTRACTOR from the Merchants as described in this Section. **SMS CODE (TEXT2PAY) SERVICE** At CITY's request, as part of the CONTRACTOR mobile payment service, CONTRACTOR will provide to CITY, and include on the relevant signage at CITY's Parking Locations or in marketing materials, SMS codes which will allow consumers to access the CONTRACTOR mobile payment service through texting the SMS code, at no additional cost (except any charges from users' mobile carriers). This service referred to as "Text2Pay Service" in this Agreement. CITY acknowledges that inclusion of the Text2Pay Service in the payment service is associated with a material risk of fraudulent activity by third parties who may manually replace SMS codes on CITY signage with their own codes and redirect the consumers to their sites for payment, resulting in losses to CITY, CONTRACTOR and consumers. CITY releases CONTRACTOR from any liability for any claims, actions or losses resulting from or associated with such fraudulent activity at CITY's parking facilities and, to the extent permitted by law, agrees to indemnify CONTRACTOR against any and all third party claims, actions, losses resulting from or arising out of such fraudulent activity. CITY will reimburse CONTRACTOR for the cost of removing fraudulent SMS code signage from CITY's parking facilities and for the costs of customer support and call center fees associated with calls related to fraudulent signage at CITY's parking spaces.	

RFP Section	Variance	Reason
	CONTRACTOR will provide evidence supporting determination of the costs, but CONTRACTOR's calculations will be conclusive of the same. CONTRACTOR reserves the right to discontinue the Text2Pay Service with 10 day written notice to CITY if the fraudulent activity at CITY's parking facilities persists for longer than 6 weeks. CITY is responsible for paying SMS code setup fees, SMS code subscription fees, SMS code additional per transaction fees and all Transaction Fees, as outlined in [Exhibit] for each Transaction, including Transactions initiated through Text2Pay Service.	