



SPECIAL PUBLIC WORKS COMMITTEE

TUESDAY, MARCH 19, 2019– 5:00PM

CITY HALL CONFERENCE ROOM 2A

Members: Chairperson Cindy Flower, Selena Proksa, Rich Hedlund, Tim Dunn, and Ken Howell

AGENDA

1. Meeting called to order by Chairperson Flower
2. Roll Call
3. Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda. Comments will be limited to 5 minutes
4. Discussion/Recommendation regarding purchase of sixty-six (66) Cale CWT Touch Screen Parking Meters
5. Adjourn

*This is a meeting of the Public Works Committee.
No official Council action will be taken; however, a quorum of the Council may be present.*

cc: Aldermen, Mayor, Administrator, Attorney

Total Parking Solutions, Inc.

2721 Curtiss Street
Downers Grove, IL 60515

Invoice

Date	Invoice #
2/27/2019	104487

Bill To
City of Lake Geneva 626 Geneva Street Lake Geneva, WI 53147

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	50% down / Bal. due ...		4/10/2019	best way	Lake Geneva	

Quantity	Item Code	Description	Price Each	Amount
66	CWT STLTH	CWT Stealth terminal coin and card w/ 4G communications kit, solar power w/ back up battery	7,495.00	494,670.00T
66	Install labor	Project installation labor	112.00	7,392.00
66	shipping	ground shipping charges	125.00	8,250.00
		50% down with Purchase Order; Balance due upon FOB delivery and/or installation		
		\$255,156.00 due with order; Balance due \$255,156.00		
		Out-of-state sale, exempt from sales tax	0.00%	0.00

Thank you for your business.	Total	\$510,312.00
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Phone #	Fax #
630-241-1984	630-241-1985

CALE PAY STATION TERMS AND CONDITIONS

All sales made pursuant to the attached sales quotation and/or purchase order (collectively, the "Order") are subject in all respects to these Terms & Conditions, which shall be deemed incorporated into and an integrated part of the Order. Cale America Inc. ("Cale") and Customer agree to be bound by these Terms & Conditions. Any provisions in Customer's own purchase order forms, acknowledgment forms or similar documents which are inconsistent with the provisions of this Order shall be of no force or effect. All references herein to the Order shall be inclusive of these Terms & Conditions.

1. **CONTRACT TO PURCHASE PRODUCTS.** By executing and tendering an Order to Cale, Customer is entering into a contract to purchase, and Cale is committing to sell, the pay stations, parts or other products described on the Order (the "Products") in accordance with these Terms & Conditions and the terms set forth on the face of the Order.

2. **PRODUCT WARRANTIES.** During the General Warranty Period (as defined below), Cale shall replace, at no additional cost to Customer, except as otherwise provided under the Order, any part, accessory or modular component of any Products purchased directly from Cale and determined to be defective in material or workmanship under normal use and service (the "General Warranty"). Customer shall cooperate with Cale in any effort to pursue a claim with the manufacturer of a defective part. The "General Warranty Period" for (i) each pay station shall extend for (a) 12 months following the date of installation of the pay station or (b) 13 months following the date of delivery of the pay station to Customer, whichever date occurs first; and (ii) each part or accessory purchased hereunder for 180 days following its delivery to Customer. To the extent that any Products contain pre-installed operating software ("Programs"), Cale warrants that the Programs will conform to Cale's specifications in effect on the date of delivery to Customer. Cale shall make reasonable efforts to maintain the Programs and provide error corrections as necessary to so that the Programs conform to Cale's specifications, but Cale shall not be required to provide new features or new versions of the Programs. In no event shall Cale have any responsibility to correct any database errors or any errors or damage caused by or arising out of hardware defects or input errors or resulting from changes to or modifications of the Programs made by the Customer or any other user. Customer shall be responsible for the operation and maintenance of the Products purchased hereunder and shall promptly notify Cale of any Program bugs, defects or other malfunctions, not easily correctable by Customer, that affect the transmission of data to or from the Products or that otherwise inhibit a key function of the Products. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2, CALE MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PRODUCTS OR THE PROGRAMS. NO ADDITIONAL WARRANTIES MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. CALE'S SOLE RESPONSIBILITY AND LIABILITY UNDER THESE TERMS & CONDITIONS SHALL BE TO REPAIR OR REPLACE, AT CALE'S OPTION, A DEFECTIVE PRODUCT.

3. **WARRANTY LIMITATIONS.** THE GENERAL WARRANTY FOR (i) THE PRINTER COMPONENT OF ANY PAY STATION SHALL BE IMMEDIATELY VOIDED IF CUSTOMER USES RECEIPT PAPER THAT DOES NOT MEET SPECIFICATIONS PROVIDED BY CALE, AND (ii) THE PAY STATION BATTERY SHALL BE 1 YEAR FROM INSTALLATION OF THE PAY STATION. CALE SHALL NOT PROVIDE WARRANTY COVERAGE FOR DAMAGE TO ANY PRODUCT DUE TO ACCIDENT, NEGLIGENCE, MISUSE, ABUSE OR NATURAL DISASTERS. THE GENERAL WARRANTY DOES NOT INCLUDE LABOR OR REPAIR COSTS. THE GENERAL WARRANTY SHALL BE VOIDED BY (i) USE OF NON-CALE REPLACEMENT PARTS; (ii) UNAUTHORIZED ADDITIONS TO THE PRODUCTS; (iii) UNAUTHORIZED ALTERATIONS TO THE PRODUCTS; (iv) SERVICE TO THE PAY STATIONS PERFORMED BY PERSONNEL WHO ARE NOT CERTIFIED BY CALE TO PERFORM SUCH SERVICE; OR (v) FAILURE TO MAINTAIN THE PRODUCTS IN ACCORDANCE WITH THE MAINTENANCE REQUIREMENTS.

4. **PAY STATION INSTALLATION AND DELIVERY.** Cale shall deliver any pay stations set forth on the Order to the

location specified by Customer, and shall install the pay stations on prepared ground. Customer is solely responsible for selecting the site of pay station installation, and shall ensure that the site(s) of installation comply with all applicable laws and third party rights. Customer shall pay for Cale's actual cost to deliver the pay stations to the Customer. Cale shall not be responsible for any ground preparation, unless the Customer otherwise contracts for this service with Cale; Cale shall render an additional charge if it is required to prepare the ground at any of the locations where pay stations are to be installed. Cale is not responsible or liable for any delay in delivery or non-delivery, in whole or in part, due to manufacturer shortages or any other cause beyond Cale's control.

5. **PROGRAM LICENSE.** Cale hereby grants to Customer a non-transferable license to use the Programs, whether proprietary to Cale or a third party, solely to the extent necessary to operate, maintain or repair the pay stations. Cale shall remain the sole owner of all rights with respect to the Programs. Customer agrees (i) not to reverse engineer copy or distribute the Programs, (ii) not to remove any copyright, trade secret or other proprietary protection legends or notices from the Programs, (iii) to notify Cale promptly of any unauthorized possession, use or knowledge of the Programs of which Customer is aware, and (iv) that any and all trademarks, trade names, copyrights and other intellectual property rights embedded or used in connection with the Products or the Programs are and shall remain the sole property of Cale. The provisions of this Section 5 shall inure to the benefit of any third party owner of the Programs.

6. **PAYMENT TERMS.** Cale shall invoice Customer for the Products on or prior to the date the Products are shipped to Customer, and such invoices shall be due and owing in full 15 days from the date of invoice or 5 days after receipt of the Products, whichever is later. Any payment not made when due under this Agreement shall bear interest at a rate equal to the lesser of (i) one and one-half percent (1½%) per month or (ii) the maximum lawful rate of interest for commercial loans under applicable law.

7. **SALES TAX.** Customer shall pay all sales, use, value-added and other similar taxes, however designated, which are levied or imposed by any state, county or other jurisdiction upon the Products or the Programs, or upon the services or payments under the Order (unless Customer can establish to the reasonable satisfaction of Cale that it is exempt from any such taxes). Customer's obligation to pay any tax as provided herein applies to any tax Cale is required to collect under any existing or future law and shall be paid to Cale promptly on demand if not collected by Cale with Customer's initial order.

8. **CANCELLATION.** The Order may not be cancelled without Cale's prior written consent, which it may withhold in its sole discretion. If Customer cancels or attempts to cancel the Order, and Cale permits such cancellation, Cale will charge Customer a cancellation fee as well as any third-party fees to which Cale may be subject as a result of such cancellation.

9. **INSURANCE.** Each of Cale and Customer shall maintain a policy of comprehensive general liability insurance with a limit of not less than \$1,000,000 for each occurrence and a general aggregate limit of not less than \$2,000,000, as well as all other insurance coverages required by applicable law.

10. **INDEMNIFICATION.** Each of Cale and Customer shall defend and indemnify the other and the other's officers, directors, employees and agents, and their respective successors and assigns, from, against and in respect of, any liability, loss, cost, damage, expense or payment, including reasonable attorneys' fees and expenses, incurred or suffered by such indemnified person with respect to any and all claims, controversies, legal actions and proceedings brought by or on behalf of any third party arising out of or in any way related to the indemnifying party's gross negligence, willful misconduct, breach of applicable laws or breach of the Order.

11. **LIABILITY LIMITATIONS.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE ORDER, (i) IN NO EVENT SHALL CALE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR (A) ANY ENVIRONMENTAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DELAY DAMAGES, LOST OPPORTUNITY DAMAGES, LOST DATA OR LOST PROFITS) IN CONNECTION WITH OR ARISING OUT OF

THE ORDER OR THE EXISTENCE, FURNISHING OR CUSTOMER'S USE OF THE PRODUCTS OR THE PROGRAMS, (B) ANY LOSS OF CREDIT CARD DATA OR OTHER LOST REVENUES ATTRIBUTABLE TO A PRODUCT DEFECT OR MALFUNCTION, OR (C) THE SECURITY OF INFORMATION TRANSMITTED BY THE PRODUCTS; AND (ii) IN NO EVENT SHALL CALE'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING UNDER THE ORDER OR WITH RESPECT TO ANY PAY STATIONS OR PROGRAMS FURNISHED UNDER THE ORDER EXCEED THE LESSER OF (Y) THE AGGREGATE AMOUNTS PAID TO CALE BY CUSTOMER UNDER THE ORDER, OR (Z) ONE MILLION DOLLARS (\$1,000,000).

12. **FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure to perform its obligations under the Order to the extent such delay or failure is caused by any event beyond the reasonable control of such party. Notwithstanding the foregoing, in no event shall the provisions of this Section 12 apply to any of Customer's payment obligations under the Order.

13. **SECURITY INTEREST.** Customer hereby grants Cale a security interest in the Products to secure the punctual payment of the purchase price for the Products, and hereby authorizes Cale to file any UCC financing statements and continuation statements necessary to perfect or continue such security interest. The provisions of this Section 13 shall constitute a security agreement under the Uniform Commercial Code, as the same may be enacted in _____ from time to time (the "UCC"). If a breach or default occurs under the Order, Cale, in addition to all other rights and remedies provided by the Order, shall have all the rights and remedies of a secured party under the UCC. If Cale takes possession of any pay stations pursuant to this Section 13, Customer shall pay Cale five hundred dollars (\$500) for each such pay station as the cost of de-installing such pay station, together with the cost of any freight charges incurred by Cale and any attorney's fees and costs incurred by Cale to enforce the Order.

14. **RIGHT OF FIRST REFUSAL.** If Customer seeks to sell or otherwise dispose of any pay stations (or other Cale parking meters) in its possession, it shall promptly notify Cale. Cale

shall have the right and option to purchase any such pay stations from Customer (i) upon the same price and terms as a bonafide third party buyer was willing to pay for the same (as documented in a writing from such proposed purchaser) or (ii) if Customer was planning to dispose of the pay stations in any other manner, for an amount of money closely approximating the benefit that the Customer would have received by disposing of the pay stations through some means other than a third-party sale. The provisions of this Section 14 shall survive the consummation of the Order.

15. **MISCELLANEOUS.** (i) Absent a subsequent, signed contract between Customer and Cale with respect to the purchase and sale of the same Products covered by this Order, the Order contains the final agreement of Cale and Customer with respect to the matters covered therein; (ii) any additional terms and conditions contained on the face of the Order shall supersede any contrary or inconsistent terms or conditions contained in these Terms & Conditions; (iii) no modification of the terms of the Order shall be valid without written authorization of Cale; (iv) no prior course of dealing between the parties hereto nor usage of the trade shall be relevant to supplement or explain any term used in the Order; and (v) should any of the provisions of the Order be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions.

16. **GOVERNING LAW; VENUE.** The Order shall be construed and enforced in accordance with the internal laws of the State of Florida. Except to the extent the laws of another state apply with respect to the enforcement of a security interest under the Order, any party to the Order bringing a legal action or proceeding against any other party arising out of or relating to the Order or the transactions contemplated hereby shall bring the legal action or proceeding in either the United States District Court for the Middle District of Florida or in any court of the State of Florida sitting in Tampa, Florida (the "Designated Courts"). Each party consents to the exclusive jurisdiction of the Designated Courts for the purpose of all legal actions and proceedings arising out of or relating to the Order or the transactions contemplated hereby. Each party agrees that the exclusive choice of forum set forth in this Section does not prohibit the enforcement of any judgment obtained in the Designated Courts or any other appropriate forum.



Total Parking Solutions Inc.

Service & Maintenance Contract for
Multi-Space Parking Terminals
City of Lake Geneva

Commencement Date: May 24, 2019

Customer: City of Lake Geneva
626 Geneva Street
Lake Geneva, WI. 53147

Service Provided By: Total Parking Solutions, Inc.
2721 Curtiss Street
Downers Grove, IL 60515

Principle Objective:

Total Parking Solutions, Inc. is committed to providing the highest quality, professional service and maintenance in a timely manner to allow for minimal inconvenience to our customers.

Contract type:

This contract shall provide for service and maintenance of Pay by Plate terminals throughout the City and defined as *Quarterly Preventative Maintenance including 100% Parts and Labor.*

***Contract does not cover damage to terminals or malfunction caused by vandalism, Acts of God, or owner/operator negligence.**

Preventative Maintenance:

Standard preventative maintenance inspections will be conducted quarterly and will include internal and external cleaning of all terminals covered by this contract. Inspection of all mechanical operations, calibration and lubrication of the terminals as per attached detailed list to insure optimum operating capability.

Price Deviations:

Total Parking Solutions, Inc. will agree to hold the agreed upon contract price for the term of this agreement. If consumer indexes or manufacturer parts pricing dictate Total Parking Solutions will have subsequent ability to increase contract pricing prior to renewal, any such increase will be made known to the customer in advance and will be subject to agreement between both parties.



Execution of Agreement by:

Title: President of Operations

For: Total Parking Solutions, Inc.

and

Execution of Agreement by: _____

Title: _____

For: City of Lake Geneva, WI.

Date of Execution: _____

Rate Schedule

Description of Service: Quarterly preventative maintenance inspections including 100% parts and service. Service is not limited to any number of call outs over any time period that do not include first line maintenance issues as previously described under "Customer Responsibilities".

Number of Terminals: Sixty-six (66) Cale CWT touch screen multi-space parking terminals located throughout the City of Lake Geneva

Annual Rate: Year one – included at no charge

Year two thru five - \$ 560.00 per terminal, \$ 36,960.00 annually (optional)



PREVENTATIVE MAINTENANCE INSPECTION DETAIL

Total Parking Solutions will perform the following maintenance tasks during all preventive service and maintenance visits:

- Clean and inspect tension and connectivity of all cable connections
- Remove and clean coin validator
- Remove and clean bill acceptor and inspect belts and rollers for wear
- Remove and clean printer moving parts and thermal printing head
- Inspect and clean card reader read heads with alcohol impregnated pads
- Inspect receipt paper sensor and armature, adjust if necessary
- Electronic systems diagnostics check
- Conduct sensitivity check of the coin inlet sensor, adjust if necessary
- Check soundness of door gaskets / Check for any evidence of moisture entering the machine
- Conduct a general housekeeping interior housing of machine
- Clean exterior of cabinet and remove any unauthorized stickers or graffiti
- Test the charging voltage being received at the battery
- Inform customer of parts in need of replacement and replace parts