

AGREEMENT FOR COMPREHENSIVE PARKING DEMAND MANAGEMENT SYSTEM

THIS AGREEMENT, made this ____ day of _____ 2018 (the “Effective Date”), is by and between the City of Fort Lauderdale, a Florida municipality, (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and **Passport Labs, Inc., a Delaware corporation**, (“Contractor”) whose address is **128 S. Tryon St., Suite 2200, Charlotte, NC 28202**, Phone: **704-837-8066**, Email: **info@passportinc.com**.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

WITNESSETH:

I. DOCUMENTS

The following documents (collectively “Contract Documents”) are hereby incorporated into and made part of this Agreement (Form P-0001):

(1) **Solicitation No. 12109-885, Comprehensive Parking Demand Management System, including any and all addenda, prepared by the City of Fort Lauderdale, (“Solicitation” or “Exhibit A”).**

(2) The Contractor’s response to the **Solicitation**, dated May 2, 2018 (“**Exhibit B**”).

(3) The **Statements of Work** (as defined below and as contained in “**Exhibit C**”).

(4) Contractor’s pricing (“**Exhibit D**”).

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement (Form P-0001) dated _____, 2018, and any attachments
- B. Second, Exhibit D
- C. Third, Exhibit B
- D. Fourth, Exhibit A
- E. Fifth, specific direction from the City Manager (or designee)
- F. Sixth, Exhibit C

II. SCOPE

The Contractor shall perform the work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all work identified in this Agreement. The parties agree that the scope of services is a description of Contractor’s obligations and responsibilities, and is deemed to include preliminary considerations and

prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the work and the conditions under which the Work is to be performed.

Each product and/or service to be delivered by Contractor to City under this Agreement shall be memorialized in a statement of work (a "Statement of Work") that will include, to the extent applicable: (i) the tasks to be performed for and the items to be delivered to City by Contractor, (ii) the targeted delivery schedule, including any milestones; (iii) the operational elements, features and functional design specifications; and (iv) any additional provisions specific to the nature of the services to be provided, as applicable. The initial of work is attached to this Agreement as Exhibit C. Subsequent Statements of Work shall be sequentially numbered (e.g., Exhibit C-1, Exhibit C-2, and so on and so forth). Amendments or additions to subsequent statements of work are contingent upon the approval from the City and Passport Labs, Inc.

III. TERM OF AGREEMENT

The initial contract period shall commence on **the Effective Date and shall end on the third anniversary thereof. The City reserves the right to extend the contract for one (1), additional one (1) year term**, providing all terms, conditions, and specifications remain the same, both parties agree to the extension, and such extension is approved by the City. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Exhibit B. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's 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. Except as otherwise provided in the solicitation, no amount shall be paid to Contractor to reimburse Contractor's expenses.

V. METHOD OF BILLING AND PAYMENT

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's reasonable approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due 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.

B. Intellectual Property

Contractor at its own expense shall completely and entirely defend and hold harmless City from any claim or suit brought against the City arising from claims of violation of United States patents or copyrights resulting from Contractor or City use of the Contractor's software (collectively, the "Licensed Program(s)"). Provided City ceases use of the infringing Contractor software product immediately upon receipt of notice from Contractor, in the event that City is required to pay monies, in defending such claims, resulting from Contractor failure to completely and entirely defend City from such claims, or in the event that City is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Contractor agrees to fully reimburse City for all monies expended in connection with these matters. City retains the right to offset against any amounts owed Contractor any such monies expended by City in defending itself against such claims.

This Agreement will be interpreted in accordance with the Intellectual Property Bankruptcy Protection Act of 1988, including, but not limited to 11 U.S.C. § 365(n). The parties expressly agree and acknowledge that the Licensed Program(s) are "intellectual property" as defined by § 101(35A) of the United States Bankruptcy Code.

Should a court order be issued against City restricting City's use of any product of a claim, and should Contractor determine not to further appeal the claim issue, at Contractor's sole option Contractor shall, at Contractor's sole expense with no additional cost to the City and without interruption of service:

- a) Purchase for City the rights to continue using the contested product(s), or
- b) Provide substitute products to City which are of equal or greater quality

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel any Statement of Work under this Agreement for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event any Statement of Work is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination or Contractor's expected revenue under the applicable Statement of Work for a minimum of twelve months of operations of the services and/or products delivered or to be delivered under the applicable Statement of Work, whichever is greater. The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation, which shall serve as a termination for convenience of every Statement of Work under this Agreement to which Contractor shall be entitled to payment as set forth in the preceding sentence. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

Effect of Termination for Cause or Convenience: Following termination of this Agreement for cause or for convenience, any data belonging to the City (as set forth in Section DD ("Rights in Data" below) shall be transferred to the City, at City's request, at no additional charge for up to five data transfers. If more than five data transfers are required, an additional fee of \$225.00 per hour may be charged to the City for the Contractor's expense.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Professional Liability and/or Errors and Omissions

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each claim and \$2,000,000 aggregate.

Contractor must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the City.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect or as soon as reasonably practicable thereafter. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form,

- the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
 - g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
 - h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
Procurement Services
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

G. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that he/she/it is qualified to perform the work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

I. Rights in Documents and Work

Subject to Section DD (Rights in Data), any and all reports, photographs, surveys, and other data and documents provided by City or created by Contractor in connection with this Agreement for the exclusive benefit of the City (collectively, "Documents and Works") are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any Documents and Works, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party, or as soon as reasonably practicable thereafter. Any compensation due to Contractor shall be withheld until Contractor delivers all Documents and Works to the City as provided herein.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's 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 Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable,

or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the prevailing local and national standards applicable to Contractor's industry.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's reasonable approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any third-party claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of reasonable attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which shall be deemed given in the case of subcontractors that Contractor specified as actual or potential subcontractors in its response to the Solicitation.

O. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

Q. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance With Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

S. Entirety of Agreement

This Agreement and incorporated exhibits embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superceded hereby. The Services, exhibits and proposal documents are hereby incorporated by reference into this Agreement.

T. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

U. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

V. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

W. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

X. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

Y. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Z. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

AA. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

1. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
4. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

BB. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), that it is not engaged in a boycott of Israel, and

that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2018), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2018), as may be amended or revised.

CC. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

Notwithstanding any other provision of this Agreement Contractor shall:

1. Keep and maintain public records required by the public agency to perform the services procured under this Agreement.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the services procured under this Agreement. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

DD. Rights in Data

This Section DD shall govern the rights of Contractor and City, as the case may be, with respect to the data that is subject to this Agreement. Contractor will, by provisions in its Privacy Policy or otherwise, procure from such individual users who are using Contractor's software applications to avail themselves of the services provided to City pursuant to this Agreement, defined as individuals who download and use Contractor's mobile application or utilize Contractor's websites or other interfaces to pay for and manage transactions, including parking sessions, permits, citations, and mobile tickets, as applicable (collectively, "End Users" or each an "End User") all such lawful consents and rights necessary to grant to City the rights in such data as stated in this Section. Contractor's Privacy Policy, as it may be amended from time to time in Contractor's sole discretion, can be viewed at <https://www.passportinc.com/privacy-policy>.

1. Operational data is data specific to the City's operation that is provided by City to Contractor to be used in the providing of services. Operational data is specific to the City's operation, which is not available to Contractor publicly or by other means. Operational data may include, but is not limited to, zone information, rate information, operational schedules, business metrics, relevant details of partner agreements. In each case, Operational data may refer to past, present, or future states of such items.

Operational data is the sole and exclusive property of the City. The City grants Contractor a perpetual, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Operational data, provided that, Contractor, upon City approval, may assign or transfer such license to a successor in connection with the transfer or sale of all or substantially all of its assets or business related to this agreement, or in the event of its merger, consolidation, change in control or similar transaction. Such license shall be irrevocable for the term of the Agreement and for as long as reasonably necessary thereafter for Contractor to maintain such data for record retention, audit, reconciliation, and dispute resolution purposes.

2. Payment Card Industry-Data Security Standard Information ("PCI-DSS Information") consists of the following items, each as defined by the then-current Payment Card Industry Data Security Standards ("PCI-DSS"): Account Data; Cardholder Data; Primary Account Number; and Sensitive Authentication Data.

Contractor acquires a license or sublicense to the PCI-DSS Information from End Users who share such data with Contractor in connection with their use of the services. Contractor must secure such data in accordance with PCI-DSS. As such, Contractor may not grant City derivative rights to such PCI-DSS Information and Contractor shall not be required to disclose such PCI-DSS Information to City, unless compelled by a court of competent jurisdiction or other legal authority.

3. Personal identifiable information ("PII") is any representation of information that permits the identity of an individual to whom the information applies to be reasonably determined or inferred by either direct or indirect means. Name, address, social security number or other identifying number or code, telephone number, or email address directly identify individuals. Certain data elements—including gender, race, birth date, geographic indicator (such as zip code or postal code), and other descriptors—can be used in conjunction or with other data elements to indirectly identify individuals. Information

permitting the physical or online contacting of a specific individual (e.g., IP address) is also personally identifiable information.

End Users of Contractor's services own PII and license it to Contractor pursuant to Contractor's Privacy Policy, as it may be amended from time to time in Contractor's sole discretion. Contractor may sublicense PII to the City under certain conditions (including but not limited to the City's compliance with information security controls and applicable regulations) that shall be memorialized separately if and when applicable.

4. Activity data is any data generated in the providing of services under this agreement by Contractor to City and by end users' interactions with the services or with Contractor directly that is not otherwise PCI-DSS information or PII as defined above. Activity data may include, but is not limited to, user interaction data, geolocation data, opt-in/opt-out status (including compliance logs), purchase and session data, application diagnostic data, service performance data, and support data. Data that is derived from Activity data is also Activity data.

Activity data is the sole and exclusive property of City. City grants Contractor an irrevocable, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Activity data for the duration of the term of this Agreement and for a period of three years following the expiration of the Agreement, or such longer period if necessary for purposes of audit, compliance, or litigation purposes.

EE. Privacy Policy

End Users' use of the services shall at all times be governed by (a) Contractor's Privacy Policy, as it may be amended from time to time in Contractor's sole discretion, which can be viewed at <https://Passportinc.com/privacy-policy/>, and (b) Contractor's Terms and Conditions, as they may be amended from time to time in Contractor's sole discretion, which can be viewed at <https://Passportinc.com/terms-and-conditions/>.

FF. Confidentiality

1. City and Contractor agree to treat information that is confidential pursuant to Florida law ("Confidential Information") in accordance with the provisions of this section and to take, or abstain from taking, all actions set forth herein. Each party, as a receiving party, will do the following things with regard to the Confidential Information of the other party except as otherwise provided by Florida law:

- i. Prevent the disclosure of the Confidential Information by the receiving party and each of the receiving party's employees, agents, and/or professionals to any third party other than as permitted under this Agreement;
- ii. Use, and permit the use of, the Confidential Information only for the purposes of providing, or enjoying the benefit of, the goods, services, and/or software provided for in this Agreement (the "Purpose");
- iii. Disclose the Confidential Information only to such of the receiving party's employees, agents, and professionals as have a bona fide need to possess or know the Confidential Information in the course of accomplishing, or advising the disclosing party with regard to, the Purpose; and
- iv. Return or destroy all written or other tangible copies of Confidential Information in the receiving party's possession or direct or indirect control, including all extracts and copies thereof, within a reasonable time after, and in accordance

with, the disclosing party's request.

2. Nothing in this Agreement will prevent the receiving party from disclosing or using Confidential Information to the extent that:
 - i. It is or becomes readily ascertainable by proper means by the public without any breach of a confidentiality obligation of the receiving party;
 - ii. It is received from a third party that is not under an obligation of confidentiality of which the receiving party knew or had reason to know;
 - iii. It was independently developed by the receiving party without use of the Confidential Information; or
 - iv. It is required by law to be disclosed, provided that the receiving party provides to the disclosing party as much notice as is practicable under the circumstances of such requirement prior to disclosure and provides to the disclosing party, at the disclosing party's expense, such reasonable assistance as the disclosing party requests in seeking confidential treatment, protective orders, nondisclosure, and/or similar measures.

For the avoidance of doubt, nothing in this Section or otherwise in this Agreement shall prohibit, or shall be deemed to prohibit, City from disclosing Confidential Information to the extent that such information is required to be disclosed pursuant to any open records law, open meetings law, or any other local public disclosure law applicable to City.

GG. Limitation of Liability

In no event will Contractor be liable to City for any lost profits, lost savings, or punitive, incidental, indirect, special, or consequential damages, even if Contractor has been advised of the possibility of such damages.

HH. Intellectual Property

1. Contractor grants City a revocable, non-exclusive, non-assignable, non-transferrable, and non-subleaseable right and license to use and access Contractor's software only for its internal business purposes for the duration of the term of this Agreement. All intellectual property rights including, without limitation, trade names, source code, trademarks, copyrights, patents, and trade secrets (pursuant to Sections 815.045 and 812.081 (1)(c), Florida Statutes (2018), as may be amended or revised, or otherwise exempt pursuant to Florida law) not explicitly granted to City in this agreement are reserved to Contractor.
2. City will not, directly, indirectly, alone, or with another party, (i) copy, to the extent it is a trade secret pursuant to Sections 815.045 and 812.081(1)(c), Florida Statutes (2018), as may be amended or revised, or is otherwise exempt or confidential pursuant to Florida law, or disassemble, reverse engineer, or decompile the software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the software or source code; (iii) transfer or otherwise grant any rights in the software or source code in any form to any other party; (iv) attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

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IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Lee R. Feldman, City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

Signature

Print Name

Signature

Print Name

By: _____
Bob Youakim, Chief Executive Officer

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by **Bob Youakim as Chief Executive Officer for Passport Labs, Inc., a Delaware corporation.**

(SEAL)

(Signature of Notary Public)
Notary Public, State of _____

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ____ OR Produced Identification ____
Type of Identification Produced _____

Exhibit A
Solicitation No. 12109-885, Comprehensive Parking Demand Management System

Exhibit B
Contractor's Response to the Solicitation

Exhibit C

Statement of Work

Below is a general overview of the work to be conducted for the implementation of the Comprehensive Demand Parking Management System for the City of Fort Lauderdale.

The tasks and timelines below listed, which are to run consecutively and not concurrently, are estimated based on best available information at the signing of the Agreement, may be amended or added to and contingent upon approval from both the City of Fort Lauderdale and Passport Labs, Inc., and are subject to timely cooperation from the City of Fort Lauderdale's other vendors and legacy systems providers as needed.

- A. Discovery: Project Discovery (1-2 months)
 - Passport Team will analyze and map all processes conducted by the Transportation and Mobility Department and the functions utilized in the current legacy system T2 Flex. These processes include but are not limited to system reports and data exports, citation refunds and dismissals, permit purchases, scofflaw management, etc.
 - The City of Fort Lauderdale will provide examples of all reports and any written procedures that are relevant to the project.
- B. Setup: Initial System Development (4-6 months)
 - Passport project team will begin to develop the custom Comprehensive Demand Parking Management System and related technologies using the information collected in the project discovery phase.
 - The City of Fort Lauderdale team will provide input on the system development and test features as needed.
- C. Testing: System Testing Data Integrations (1 month)
 - The Passport project team will conduct all necessary data integrations from the City's current parking systems which include but are not limited to T2 Flex, IPS meters, POM meters, Pay By Phone, etc.
 - The City will provide contacts to these systems, serve as the liaison between Passport and the appropriate City vendors for these parking systems, and conduct any necessary testing of the system and data.
- D. Launch Prep: Marketing and System Branding (1-2 months)
 - The Passport project team will create marketing collateral in collaboration with the City of Fort Lauderdale for the promotion the system and corresponding mobile application and website.
- E. Training: Employee Training (1-2 months)
 - The Passport project team will conduct training on the new parking system prior to project launch. This will include in person and virtual trainings.

Passport will not launch a product without the City's express approval. Passport will hold weekly calls with City stakeholders, providing updates, asking questions, and/or generally pushing the project to the finish line.

Exhibit D
Contractor's Pricing

Item or Task	Description	Pricing
Continuous Real-time Availability Data Aggregation & Dynamic Pricing Systems Implementation Fee	Discovery; Systems Assessment; System Deployment; Integrations with all current providers for data aggregation; integrations with proposed occupancy sensor and camera companies; dashboard; dynamic pricing rate engine development; data migration for legacy citations and historical payment data	\$405,000
Continuous Real-time Availability Data Aggregation & Dynamic Pricing System License Fee	Unlimited access to client portal for data visualization, reporting, and system management; dynamic pricing rate engine maintenance; ongoing aggregation of availability data from hardware to inform rate engine and display to parkers in apps, signage, and other end-user applications;	5% of all revenue generated above 2019 fiscal year parking meter revenue
Rate Engine Access for 3rd Parties	Standardized set of APIs to enable non-Passport payment providers (OEMs, meters, 3rd party apps, etc.) to reference the City's single source of truth for rates & restrictions	\$0.05 per transaction (includes gateway services)
System Deployment	Includes Data Conversion of all legacy data and transition services; System Configuration, Remote and Onsite Training for all relevant stakeholders; Post-launch Support; LPR integration set up and testing	Waived
CMP Annual License Fee	Unlimited Seat Licenses, Unlimited Ongoing Support, and Ongoing Upgrades and Enhancements. This also includes the option to 'turn on' features, such as Online Appeals, that are not implemented at the onset of the implementation.	\$137,500/year for up to 275,000 citations issued per year. Unlimited warnings and voids. \$1 per citation issued for each citation in excess of 275,000 citations issued per year.
Cost Per Automated Collection Letter Sent in Florida:	Includes FL lookups; postage; printed materials	\$0.79 per letter* *based on current postage rates; this may vary if postage rates change +/- 5%

		In-state registration holds are possible and any associated costs will be passed along to the City, as applicable.
Cost Per Automated Collection Letter Sent in other 49 states:	Includes 50 state lookups; postage; printed materials	<p>\$0.95 per letter*</p> <p>*based on current postage rates; this may vary if postage rates change +/- 5%</p>
Cost Per Automated Collection Letter Sent to Canada:	Includes lookups; postage; printed materials	<p>\$1.15 per letter*</p> <p>*based on current postage rates and assumes Passport's ability to use existing look-up methodologies; this may vary if postage rates change +/- 5% and/or new partners must be utilized to support this service</p>
Mobile Payment for Parking	Parking by Passport, including private label parking application and backend analytics portal	<p>\$0.25/transaction</p> <p>(if and when Passport becomes the City's exclusive mobile payments for parking provider and the transaction fee is absorbed by the City, the transaction fee shall be reduced to \$0.15/transaction)</p>
Digital Permitting Platform	Passport's Digital Permitting platform, including customized payment portal and backend analytics portal	<p>\$1000/mo*</p> <p>*Assumes a mutually agreed upon Statement of Work; includes up to 7500 active permits per month. Each active permit per month in</p>

		excess of 7500 shall be billed at \$0.20/active permit/month
Merchant Processing	Fees associated with processing credit and debit card transactions. Set by credit card companies.	2.9% + \$0.25/transaction (the City does not elect to use Passport for merchant processing as of the Effective Date; if the City chooses to use Passport for merchant processing after the Effective Date, it may do so in its discretion and the parties shall sign an amendment to that effect)
Gateway Services	Fees associated with authorizing credit and debit card transactions; includes ability to batch payments if gateway is offline	\$0.05/transaction
Percentage of Revenue Collected	This fee is triggered 90 days following issuance of a citation and after Passport has already sent three citation notices to a citation recipient: the day 1 courtesy notice, the first escalated citation letter 30 days post-issuance, and the second escalated citation letter sent 45 days post-issuance. This fee is assessed to the citation recipient in addition to City's fee.	initial fee will be 22% of the escalated citation amount (to include the City's fee), but can be up to 30% of the escalated citation amount, as mutually agreed upon by the City and Passport
All in 1 handheld	N5 Print all in one device	\$2000/device
IVR Services	Cost per transaction	\$0 for citation payments \$0.25/transaction for parking session (if and when Passport becomes the City's exclusive mobile payments for parking provider and the transaction fee is absorbed by the City, the transaction fee shall be reduced to \$0.15/transaction)

Ruggedized Zebra-made Android device	Zebra TC56 Android device	\$1600/device
Paper & cellular/wireless data		Responsibility of the City to separately procure; City must use Passport approved paper supplier

Bluetooth Printers	Zebra ZQ320 (or substantial equivalent)	\$600 per unit (if purchased through Passport)
Android Devices	Samsung Galaxy S7 (or substantial equivalent)	Responsibility of City to separately procure

Dixon Resources Unlimited shall provide City the following consulting services related to demand-based pricing at a monthly fee of \$5,980.00.

Parking Technology and Operations Support:

- Operational assessment;
- Definition of best practices and operational business rules for technology integrations;
- Development of a dynamic pricing policy; and
- Management of parking technology pilots and stakeholder participation.

Parking Enforcement

- Operational Assessment;
- Manage implementation of new technology; and
- Quarterly enforcement refresh training.

Project Management

- Bi-weekly status meetings;
- Creation and Management of a master project schedule; and
- Oversight of technology implementations.

Additional Services

- 1 on-site visit (3 days) per quarter for two Dixon employees

Passport's hourly rate for consulting services, should the City choose in its discretion to engage Passport for consulting services, shall be \$225.00/hour.

With City's reasonable approval, Passport may experiment with cameras, sensors, and other hardware or software solutions in support of innovation for City's parking and transit operations at Passport's own expense.