



## PARKING AND TRANSPORTATION SERVICES AGREEMENT

May 7, 2015

This Mobile Pay Services Agreement (the "Agreement") constitutes the legally binding and enforceable agreement of the parties, PassportParking, Inc. ("Passport") and The City of Peoria, Illinois ("Provider" and with Passport, the "Parties"). The Parties agree and intend to be bound by the terms found in the following numbered sections.

### 1. Mobile Pay Platform.

Passport will provide the Provider with software, documentation, and equipment for the purpose of operating a mobile payment program for parking (the "MPP"). This solution offers parking customers in any and all parking spaces owned or managed by the Provider (the "Premises") a number of pay-to-park services, including mobile applications, voice, SMS, and a web portal. Provider will be integrated into the PassportParking platform operated by Passport.

### 2. Citation Management Platform.

Passport will provide the Provider with services for the purpose of operating a citation management platform (the "CMP"). This solution offers parking enforcement services for any and all parking spaces owned or managed by the Provider (the "Premises"), including ticket management, ticket generation, monitoring, ticket payment, and collections and enforcement services (together with the MPP services, "the "Services"). The terms of the collection services offered by Passport are found in Schedules I and III of this Agreement.

**3. Term.**

The operation of the MPP and CMP will begin on a date mutually agreeable to the Parties. The MPP will continue for a ninety (90) day pilot period and continue thereafter for an twenty one month period (together with the pilot period, the "Initial Term"). The CMP will continue for a period of two (2) years from the date on which the MPP and CMP begin.

**4. Equipment.**

- (a) Passport will provide a mutually agreed number of initial signs and decals. to Provider. Passport has created standard marketing materials for Provider. Provider will be required to pay a custom design fee of one thousand five hundred dollars (\$1,500.00) for changes to the design or content of such materials.
- (b) In order to operate the CMP, Provider will purchase the following items either through Passport or through an independent supplier:
  - 1) a sufficient number of Android-powered handheld tablets or other devices with Internet connectivity to effectively operate the CMP, and
  - 2) a recommended Bluetooth printer.

**5. Payment Processing and Wallet Services.**

Provider may elect to provide parking customers with a virtual wallet feature ("Wallet Program"). With a Wallet Program, parking customers will have the option to prepay funds into a wallet account for future use for the payment of parking fees for the MPP program. If Provider chooses to provide a Wallet Program, parking customers' transactions will be funded using the wallet account, rather than a pay-as-you-go system. Provider will reimburse Passport for all set-up, maintenance, and transaction cost expenses associated with providing the Wallet Program.

**6. Pricing.**

- (a) Passport will charge the Provider twenty cents (\$0.20) per MPP transaction. The Provider retains the right to implement a convenience fee or minimum parking charge of any amount not exceeding thirty-five cents (\$0.35) that will be passed

on to the customer for each transaction.

- (b) The Net Receipts, defined for the purposes of this Agreement as all sums collected by Provider for the parking and storage of motor vehicles, whether on an hourly, daily, weekly, or monthly basis, less all refunds and discounts, transaction fees payable to Passport, and merchant processing fees, and for the payment of parking citations issued to parking violators in the premises, minus fees payable to Passport and merchant processing fees, will be transferred monthly to the Provider.
- (c) Passport will charge the Provider for access to the CMP according to Schedule II of this Agreement.
- (d) Provider will reimburse Passport for any and all reasonable travel, lodging, and food expenses incurred by Passport employees while traveling at Provider's request.
- (e) Other Fees
  - Zone setup fees **have been waived.**
  - Signage and Sticker fees **have been waived.**
  - Cost per signage replacement: \$30.00.
  - Cost per sticker replacement: \$3.00

## **7. Service Levels.**

Passport will provide hosting for the MPP and CMP software. Passport provides the software on an as-is basis, and Passport's sole and exclusive obligation in the event of an error or interruption of the MPP or CMP is to use Passport's best efforts to restore or repair the MPP or CMP, as applicable, as quickly as practicable.

## **8. Piggyback Procurements.**

Provider will allow any public agency located in the United States to purchase, and Passport to offer to those public agencies, a substantially similar mobile pay program at the same price and under the same conditions agreed upon in this Agreement between the Parties, without any further competitive bidding, to the extent permitted by law.

## **9. Data Ownership.**

Passport will own and store all data collected during the operation of the MPP, except where such ownership violates any agreement with any third party data or software provider. Provider will acquire a non-exclusive license to use the data during the operation of the MPP pursuant to this Agreement. For the purposes of this section (Section 9. Data Ownership), data means any information, documents, or electronic files provided to Passport by a parking customer or enforcement officer in the course of their use of any component of the MPP or CMP and any information, documents, or electronic files created as a result of a parking customer or parking enforcement officer's use of the MPP or CMP.

## **10. Intellectual Property**

- (a) Provider will acquire a revocable, non-exclusive, non-assignable, non-transferrable, and non-subleaseable right and license to use and access the MPP and CMP for its internal business purposes. All intellectual property rights including, without limitation, source code, trade names, trademarks, copyrights, patents, and trade secrets, not explicitly granted to Provider in this Agreement are reserved to Passport.
- (b) Provider will not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the MPP or CMP software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the MPP or CMP software or source code or any subpart thereof; (iii) transfer or otherwise grant any rights in the MPP or CMP software in any form to any other party or (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.

## **11. Customer Support.**

Passport will field all technical customer questions related to the MPP and CMP in English and Spanish.

**12. Scheduled Maintenance.**

If Passport plans to perform any scheduled maintenance during business hours, Passport will provide notice to Provider at least twenty-four (24) hours in advance of the commencement of such scheduled maintenance. For the purpose of this section (Section 11. Scheduled Maintenance), "business hours" means Monday through Friday between 9 AM Eastern Time and 5 PM Eastern Time.

**13. Product Updates.**

Any improvements or modifications made by Passport to the MPP or CMP platform will be promptly provided to Provider and will automatically be subject to the terms of this Agreement. Provider may request that Passport create new features or functionality, and may pay to expedite the development of such features and functionality. Provider will gain no intellectual property rights in any requested or expedited features or functionality or any subpart thereof, other than as granted in Section 10 of this Agreement.

**14. Capacity**

Provider represents and warrants that it has obtained or will obtain all licenses and permits necessary for the purchase of the MPP and CMP and operation of the Premises as a parking facility (excepting such licenses, police permits and other applicable governmental approvals required for Passport to perform the services required of it under this Agreement). Provider further represents and warrants that they have the authority to enter into this Agreement.

**15. Confidentiality.**

Provider and Passport agree to treat all information furnished, or to be furnished, by or on behalf of the other party and information analyses, summaries and other work product derived from such information (collectively, the "Information") in accordance with the provisions of this section (Section 15. Confidentiality) and to take, or abstain from taking, all actions set forth herein. The Information will be used solely in connection with the

consummation of this Agreement between Passport and Provider and the operation of the MPP and/or CMP, and will be kept confidential by the Provider and Passport and each party's officers, directors, employees, representatives, agents and advisors; provided, however, that

- (a) any of such Information may be disclosed to officers, directors, employees, representatives, agents and advisors who need to know such information to execute this Agreement or ensure the proper operation and functioning of the MPP (so long as such persons only use or disclose such Information in the manner permitted in this section (Section 13. Confidentiality)), and
- (b) such information may be disclosed to the extent required by law, and
- (c) upon the request of Provider or Passport, the other party will destroy or return to Passport all material containing or reflecting the Information.

**16. Choice of Law.**

The Agreement will be governed and interpreted based on the laws of the State of Delaware.

**17. Termination.**

Either party may terminate this Agreement with thirty (30) days written notice to the other party.

**18. Additional Services.**

To the extent permitted by law, Provider may elect to purchase a private label version of the MPP or a mobile ticketing for transit platform from Passport without additional competitive bidding. If Provider elects to provide either of these services, all material terms including pricing and implementation will be established in an addendum to this Agreement.

**19. Survivability.**

Sections 15 and 16 this Agreement and this section (Survivability) will survive the termination of this Agreement.

**20. Force Majeure.**

Neither Passport nor Provider will be held liable for any delay or omission in performance of their duties under this Agreement caused by causes beyond their reasonable control, including without limitation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, or riots (each a "Force Majeure Event").

**21. Expiration.**

If not executed by Provider, this Agreement expires on 06/01/2015.

**22. Disclaimer.**

The MPP is provided to Provider by Passport "as is" and with all faults. Provider acknowledges and agrees that Passport bears no liability for any error, omission, defect, deficiency, or nonconformity within the MPP. Other than as specifically set forth herein, neither of the parties makes any representations, warranties, or guarantees, express or implied, directly or indirectly, including, without limitation, any warranty of condition, merchantability, or fitness for a particular purpose or use, with respect to, arising out of, or in connection with the MPP and related services to be performed pursuant to this Agreement.

**23. Severability.**

Whenever possible, each provision of this Agreement will be interpreted and construed to be valid under applicable law, but if any provision of the Agreement is found to violate applicable law, the violating provision will be ineffective only to the extent that it

violates the law, without invalidating the remainder of the section containing the violating provision or any other provisions or sections of this Agreement.

**24. Assignment.**

This Agreement and all of its provisions will be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Passport nor Provider may assign any rights, interests, or obligations hereunder without prior written consent of the other party, provided, however, that Passport may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder 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.

**25. Contractual Silence.**

If this Agreement fails to address a condition, obligation, benefit, or other term necessary to sufficiently define the relationship between the Parties or resolve a disagreement or conflict regarding the interpretation or construction of this Agreement, the Parties agree to reasonably cooperate to draft a mutually agreeable Amendment that clarifies the duties, rights, and obligations of the parties under this Agreement.

**26. Amendments.**

The Parties may not amend or modify this Agreement except by a written instrument executed by the Parties (an "Amendment").

**27. Dispute Resolution.**

If either Provider or Passport has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties must first attempt to resolve the matter through this dispute resolution process. The disputing party must notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice must state the nature of the dispute and



list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties must commence the resolution process and make a good faith effort, either through email, mail, phone conference, in person meetings, or other reasonable means to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with this Agreement. If after sixty (60) days the dispute remains unresolved, the parties may pursue other forms of dispute resolution including mediation, arbitration, or any other judicial or non-judicial form of dispute resolution.

**28. Independent Contractor.**

Passport is an independent contractor and not an agent or employee of Provider. No agency, partnership, franchise, joint venture, or employment relationship exists between Passport and Provider. Passport's employees and agents will not be employees or agents of Provider. Passport shall be fully and solely responsible for the supervision, control, performance, compensation, benefits (including, without limitation, all forms of insurance) withholdings, health and safety of all of its employees and agents. Provider will not be responsible or liable for any withholding taxes or contributions to state worker's compensation, unemployment or other funds or programs.

**29. Limitation of Liability.**

In no event will Passport be liable to Provider for any lost profits, lost savings, or incidental, indirect, special, or consequential damages arising out of Provider's use or inability to use the product or the breach of this Agreement, even if Passport has been advised of the possibility of such damages.

**30. Notices.**

All notices, consents, and communications hereunder shall be given in writing and delivered via electronic mail or mail, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses below:

**If to Passport:**

Passport  
Attn: Chris Watt  
1300 S. Mint Street  
Suite 200  
Charlotte, NC 28203  
--OR--  
[chris.watt@gopassport.com](mailto:chris.watt@gopassport.com)

**If to PROVIDER:**

City of Peoria

Attn: Nicholas A. Stoffer  
3505 N. Dries Lane  
Peoria, IL 61604  
309-494-8823  
--OR--  
nstoffer@peoriagov.org

**31. Billing Contact.**

For all billing inquiries to Provider, Passport will contact:

City of Peoria

Attn: Chris Switzer  
419 Fulton, Room 108  
Peoria, IL 61602  
309-494-8507  
--OR--  
cswitzer@peoriagov.org

**32. Entire Agreement.**

This Agreement represents the full and complete understanding of the Parties and supersedes any and all prior agreements.

**\*\*\*REMAINDER OF PAGE INTENTIONALLY BLANK\*\*\***

The undersigned, intending to be bound to the terms, conditions and obligations found herein, have executed this Agreement this [ \_\_\_\_ DAY] day of May, 2015.

On behalf of PassportParking, Inc.

\_\_\_\_\_

Name:

Title:

On behalf of The City of Peoria, Illinois

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE I**

### **COLLECTIONS**

Upon Provider's election, Passport will perform the following actions to collect amounts due to Provider pursuant to parking citations issued using the CMP:

- (a) Passport will provide an online portal where parking violators can pay any citations issued by Provider's parking enforcement officers.
- (b) For citations unpaid 30 days after issuance, Passport will use all reasonable effort to obtain the parking violator's name and contact information from the appropriate state licensure bureau. Upon receipt of this information, Passport will send a letter requesting payment of the parking citation. This request constitutes the beginning of the "Letter Generation Phase."
- (c) [If the citation remains unpaid 30 days after the first letter requesting payment, Passport will send a second letter requesting payment.]
- (d) If authorized by the relevant driver licensure bureau, where a citation remains unpaid after 90 days after the beginning of the Letter Generation Phase, Passport will submit the relevant information to a collections agency to initiate a formal hard collections process.

## SCHEDULE II

### CMP PRICING

a. **Pricing Prior to Letter Generation Phase.**

For each ticket paid prior to the Letter Generation Phase of the collections process, Passport will receive a three dollar (\$3.00) fee, which will be paid by the parking violator.

b. **Pricing After Letter Generation Phase.**

If Provider elects to engage Passport for the purposes of performing the collection activities found in Schedule I of this Agreement, for each ticket paid after the beginning of the Letter Generation Phase of the collections process, Passport will charge a fee equal to fifty percent (50%) of the escalated citation amount.

c. **Monthly Minimum.**

If the total fees paid to Passport pursuant to subsections a) and b) of this Schedule II during a month are less than five hundred dollars (\$500.00), then the Provider will pay the difference between the amount actually collected ("Paid") and five hundred dollars (\$500.00) ("Minimum") as follows:

$$\text{Additional Amount Payable to Passport} = \text{Minimum} - \text{Paid}$$

d. **Provider Citation Schedule.**

Provider agrees not to make any change in the Provider's parking citation fee schedule that would have a materially adverse effect on Passport without prior written approval from Passport.

## SCHEDULE III

### STATE DMV LOOKUPS

<b>Country</b>	<b>State</b>	<b>Coverage</b>
US	Alaska	1995 - 2004
US	Colorado	1995 - Current
US	District of Columbia	1996 - Current
US	Florida	1996 - Current
US	Idaho	1996 - Current
US	Illinois	1996 - Current
US	Iowa	Current
US	Kentucky	1996 - Current
US	Louisiana	1992 - Current
US	Maine	1996 - Current
US	Maryland	1996 - Current
US	Massachusetts	1996 - Current
US	Michigan	1996 - Current
US	Minnesota	1996 - Current
US	Mississippi	1996 - Current
US	Missouri	1996 - Current
US	Montana	1996 - Current
US	Nebraska	1996 - Current
US	Nevada	1996 - Current
US	New Mexico	1996 - Current
US	New York	1996 - 2011
US	North Carolina	Current
US	North Dakota	1996 - Current
US	Ohio	1996 - Current
US	Puerto Rico	1996 - Current
US	South Dakota	1996 - Current
US	Tennessee	1996 - Current
US	Texas	1996 - Current
US	Wisconsin	1996 - Current

US

Wyoming

1996 - Current