

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)**  
**and**  
**Passport Labs, Inc. (“Contractor”)**  
**for**  
**Pay By Phone Parking System and Digital Permits for Parking System**

The City accepts the Contractor’s Offer for the above requirement and enters into the following Contract. This Contract is between Passport Labs, Inc. having offices at 128 South Tryon Street, Suite 2200, Charlotte, NC 28202 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

**1.1 This Contract is composed of the following documents in order of precedence:**

- 1.1.1 This Document
- 1.1.2 Negotiated Terms and Conditions
- 1.1.3 Contractor’s Offer, dated January 27, 2021, incorporated herein and attached as Exhibit A hereto

**1.2 Compensation.**

Contractor shall be paid a total Not-to-Exceed amount of \$150,000 (the “NTE”). The NTE does not apply to any MPP Per Wallet Transaction Service and License Fees, MPP Per Transaction Service and License Fees, and/or Per Transaction Digital Permit for Parking Fees, each of which is excluded from any calculation of the NTE.

**1.3 Term of Contract.**

This Contract shall commence upon execution (the “Effective Date”), and shall remain in effect for an initial term of 60 months or the City terminates the Contract.

- 1.4 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor’s and City’s key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Tydus Mana	(704) 909-7302	tydus.mana@passportinc.com
City Contract Manager	Ken Bragdon	(512) 974-7050	Ken.Bragdon@austintexas.gov
City Procurement Specialist	Gil Zilkha	(512) 974-2696	Gil.Zilkha@austintexas.gov

- 1.5 Invoices.** The City’s preference is to have invoices emailed to ATDAccountsPayable@austintexas.gov or mailed to the below address:

	City of Austin
Department	Austin Transportation
Attn	Accounts Payable
Email Address	ATDAccountsPayable@austintexas.gov
Address	901 S. MoPac Expressway, Bldg. 5, Suite #300
City, State, Zip Code	Austin, TX 78746

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

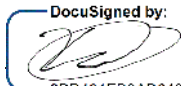
In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**Passport Labs, Inc.**

**CITY OF AUSTIN**

Khristian Gutierrez

Printed Name of Authorized Person

DocuSigned by:  
  
8DB491EB9AD042A...

Printed Name of Authorized Person

Gil Zilkha

Digitally signed by Gil Zilkha  
DN: cn=Gil Zilkha o=City of Austin ou=Purchasing  
Office email=Gil.Zilkha@cityofaustin.tx.us c=US  
Date: 2021.08.13 10:27:47 -0500

Signature

CRO

Title:

8/9/2021

Date:

Title:

Date:

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

## **1. GENERAL**

### **1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing. Contractor will be compensated for any holdover period under the payment terms contained herein.

### **1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

### **1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

### **1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.
- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. Delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
  - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;

- v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
  - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

#### **1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### **1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

#### **1.7 AUDITS AND RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.9 RIGHT TO ASSURANCE:**

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**1.10 STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**1.11 DEFAULT:**

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective thirty 30 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 30 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 90 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

**1.15 FRAUD:**

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**1.16 DELAYS:**

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an

amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

### 1.17 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

### 1.18 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, THIRD PARTY CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
  - ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
  - iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
  - iv. ANY NEGLIGENT ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
  - v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
  - vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. ***THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.***

C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:

- i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
- ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.

E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR,



- WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.
- G. IN NO EVENT SHALL CONSULTANT'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF ALL FEES ACTUALLY PAID BY CITY TO CONTRACTOR PURSUANT TO THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD ENDING ON THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COST OF COVER, PUNITIVE, OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, LOSS OF REVENUE, OR LOSS OF ANTICIPATED PROFITS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (A) TO CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT; (B) IN THE EVENT OF A BREACH OF THE PARTIES' CONFIDENTIALITY OBLIGATIONS CONTAINED IN THIS AGREEMENT; (C) TO CONTRACTOR'S INDEMNITY OBLIGATIONS; OR (D) CLAIMS MADE UPON AN INSURANCE POLICY REQUIRED BY THE TERMS OF THIS CONTRACT.

#### 1.19 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

#### 1.20 CONFIDENTIALITY:

Either party may be granted access to certain of the City's or licensor's or Contractor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. Each party acknowledges and agrees that the Confidential Information is the valuable property of the disclosing party and any unauthorized use, disclosure, dissemination, or other release of the disclosing party's Confidential Information will substantially injure the disclosing party. Each receiving party (including their employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of the disclosing party (subject to applicable public records laws), or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving party agrees to promptly notify the disclosing party before disclosing Confidential Information to permit the disclosing party reasonable time to seek an appropriate protective Order. The receiving party agrees to use protective measures no less stringent than the receiving party uses in its business to protect its own most valuable information. In all circumstances, the receiving party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the receiving party in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The receiving party agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify disclosing party of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing party reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are no less stringent than the receiving party uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the receiving party shall promptly return to disclosing party all tangible items of Confidential Information furnished by disclosing party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.  
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.
- F. Trade Secrets. City hereby acknowledges that the Passport System and its components, whether provided by Contractor or its third-party vendors or licensors, constitute trade secrets of Contractor and/or its third party-vendors or licensors, and as such are protected by civil and criminal law, are very valuable to Contractor and/or its third-party vendors or licensors, and that their use must be carefully and continuously controlled. City agrees to notify Contractor immediately of the unauthorized possession, use, or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use, or knowledge. City will promptly furnish Contractor full details of such possession, use, or knowledge and will cooperate fully with Contractor in any litigation against third parties reasonably deemed necessary by Contractor to protect its proprietary rights.

#### **1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

#### **1.22 PUBLICATIONS:**

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

#### **1.23 ADVERTISING:**

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law or in an illustrative list of clients.

#### **1.24 NO CONTINGENT FEES:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.



**1.25 GRATUITIES:**

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**1.27 INDEPENDENT CONTRACTOR:**

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**1.28 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City, 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. Any permitted assignee shall assume all assigned obligations of its assignor under this agreement. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

**1.29 WAIVER:**

The claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**1.30 MODIFICATIONS:**

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**1.31 INTERPRETATION:**

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**1.32 DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by

the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

### 1.33 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

### 1.34 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

### 1.35 HOLIDAYS:

The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving

Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

### 1.36 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

### 1.37 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

### 1.38 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. The Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

### 1.39 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

### 1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
  - i. does not "boycott Israel"; and

ii. will not “boycott Israel” during the term of this Contract.

C. The Contractor’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

#### **1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:**

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

#### **1.42 INSURANCE:**

##### **A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:  
 City of Austin Purchasing Office  
 P.O. Box 1088  
 Austin, Texas 78767  
 OR  
[PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor’s and all Subcontractors’ insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.

- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
    - (1) The policy shall contain the following provisions:
      - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
      - b. Independent Contractors coverage (Contractor/Subcontracted work);
      - c. Products/Completed Operations Liability for the duration of the warranty period;
      - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
    - (2) The policy shall also include these endorsements in favor of the City of Austin:
      - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
      - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
      - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
  - ii. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
  - iii. **Cyber Liability Insurance:** Coverage of not less than \$1,000,000 providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 1.43 OWNERSHIP AND USE OF DELIVERABLES:

City acknowledges and agrees that the Intellectual Property is exclusively owned by and reserved to Contractor, or to Contractor's Third Party Software or Third Party Hardware providers, as the case may be, and Contractor or such Third Party Software or Third Party Hardware providers will retain all right, title, and interest in the Intellectual Property. City will neither acquire nor assert any ownership or other proprietary rights in the Intellectual Property or in any derivation, adaptation, or variation thereof (regardless of who creates the derivation, adaptation, or variation) except as otherwise explicitly set forth in this Agreement, unless the work was specifically made solely for the City upon agreement by both parties.

## 2. SERVICES

### 2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming



Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

## 2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
  - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
  - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

## 2.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## 2.4 DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:  
 "Authorized Persons" means (i) the Contractor's employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

"Personal Information" means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance

data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City’s systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

**B. Standard of Care**

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
  - a. Not create, collect, receive, access, or use Personal Information in violation of law;
  - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the City, in each case, without the City’s prior written consent; and
  - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City’s prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vii. Without limiting the Contractor’s obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.
- viii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor’s sole cost and expense.
- ix. At a minimum, the Contractor’s safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the

Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.

- x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request. Upon the City's written request, the Contractor shall provide the City with a network diagram that outlines the Contractor's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Contract, including, without limitation: (i) connectivity to the City and all third parties who may access the Contractor's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

C. Security Breach Procedures:

- i. The Contractor shall:
  - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;
  - b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
  - c. Notify the City of any Security Breaches by telephone at 512-974-4357 and email at [cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov)
- ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and operations affected; (iii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.
- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- iv. The Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent, other than to inform a complainant that the matter has been forwarded to the City's Attorney. Further, the Contractor agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be Offered to affected persons, and the nature and extent of any such remediation.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

D. Oversight of Security Compliance

Upon the City's written request to confirm the Contractor's compliance with this Contract, as well as any applicable laws, regulations, and industry standards, the Contractor grants the City or, upon the City's election, a third party on the City's behalf, permission to perform an assessment, audit, examination, or review of all controls in the

Contractor's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to the City under this Contract. The Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Personal Information for the City pursuant to this Contract.

In addition, upon the City's written request, the Contractor shall provide the City with the results of any audit performed by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- i. **Return or Destruction of Personal Information.** At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the City all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor shall comply with all directions provided by the City with respect to the return or disposal of Personal Information.
- ii. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.
- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.
- iv. **INDEMNIFICATION.** THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH, A "CITY INDEMNITEE") FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, ACTIONS, JUDGMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER, AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, ARISING OUT OF OR RESULTING FROM ANY THIRD-PARTY CLAIM AGAINST ANY CUSTOMER INDEMNITEE ARISING OUT OF OR RESULTING FROM SERVICE PROVIDER'S OR AUTHORIZED PERSON'S FAILURE TO COMPLY WITH ANY OF THE OBLIGATIONS OF THIS SECTION.

## **2.5 TRAVEL EXPENSES:**

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

## **2.6 PLACE AND CONDITION OF WORK:**

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.



### 3. ADDITIONAL TERMS

#### 3.1

Passport Labs, Inc. is a full-service Merchant Services Provider, meaning a service provider certified by the major card networks (Visa, Mastercard, Discover, and American Express) to process credit and debit card transactions. Passport maintains itself as the merchant of record and Merchant Services Provider in connection with the provision of the Passport system. City will be responsible for paying all transaction and processing fees as defined in the fee schedule. Passport may change or add fees and/or charges following a major network update that significantly impacts the merchant costs assumed by Passport and will communicate applicable updates through Passport's Service Delivery Process. Upon notice of changes, such fees and/or charges shall be immediately payable by City when assessed by Passport. Should additional fees or charges be deemed commercially unreasonable, City has the option to terminate this Agreement within fifteen (15) days of notice of change in fees by providing written notice to Passport.

**3.2** By requirement of the Comptroller, deposits must be made every three business days.

**3.3** There will be a \$0.30 per mobile payment for parking ("MPP") transaction fee assessed to the end user using wallet funds ("MPP Per Wallet Transaction Service and License Fee"). The MPP Per Wallet Transaction Service and License Fee includes merchant processing costs. Passport shall receive \$0.25 of each MPP Per Wallet Transaction Service and License Fee and shall remit \$0.05 of each MPP Per Wallet Transaction Service and License Fee to the City.

There will be a \$0.40 per mobile payment for parking ("MPP") transaction fee assessed to the end user using non wallet funds ("MPP Per Transaction Service and License Fee"). The MPP Per Transaction Service and License Fee includes merchant processing costs.

There will be a "Per Transaction Digital Permit for Parking ("DPP") Fee" of \$3.00 assessed to the end user per DPP Transaction. \$2.90 is received by Passport and includes Merchant Processing Fees. Passport shall remit \$0.10 of each Per Transaction Digital Permit for Parking Fee to the City.

#### 3.4 Data rights

This Section shall govern the rights of Passport and Customer, as the case may be, with respect to the data that is subject to this Agreement. Passport will, by provisions in its Privacy Policy or otherwise, procure from such end users all such lawful consents and rights necessary to grant to Customer the rights in such data as stated in this Section. Passport's Privacy Policy, as it may be amended from time to time in Passport's sole discretion, can be viewed at <https://www.passportinc.com/privacy-policy>. Should Passport's Privacy Policy be amended and reasonably determined to be adversarial to City, City has the option to terminate this Agreement within thirty (30) days of notice of the change in terms by providing written notice to Passport.

**3.4.1** Operational Data. Operational Data is data specific to Customer's operation that is provided by Customer to Passport to be used in the configuration and provision of the Passport System for Customer's use. Operational Data is specific to Customer's operation, which is not available to Passport publicly or by other means. Operational Data may include, but is not limited to, zone information, rate information, operational schedules, business metrics, business rules, parking and other inventory and assets, and 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 Customer. Customer grants Passport a perpetual, irrevocable, royalty-free, and non-exclusive license to Operational Data.

**3.4.2** PCI-DSS Information. 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. Passport acquires a license or sublicense to the PCI-DSS Information from end users who share such data with Passport in connection with their use of the Software. In providing the services under this Agreement, Passport will maintain Payment Card Industry – Data Security Standard certification and secure PCI-DSS Information in accordance with PCI-DSS. As such, Passport may not grant Customer derivative rights to such PCI-DSS Information and Passport shall not be required to disclose such PCI-DSS Information to Customer.

**3.4.3** Personal Identifiable Information. 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, 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.

**3.4.4 Activity Data.** Activity Data is any data generated in the providing of services under this Agreement by Passport to Customer and by end users' interactions with the services or with Passport 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 Passport. Passport grants Customer an irrevocable, royalty-free, non-exclusive, non-assignable, and nontransferable license to Activity Data for the Term to the extent and in the format that Passport chooses in its sole discretion to expose such Activity Data through its administrative portal or as otherwise agreed upon with Customer and only for Customer's internal use in connection with the services provided under this agreement.

### 3.5 Publicity

Subject to the provisions of Section 21 (Confidentiality; Trade Secrets), the parties will have the right to publicly disclose that Passport is Customer's provider of the Passport System as set forth herein by means of, by way of illustration and not limitation, news releases, public announcements, or other forms of publicity. Passport may reference the fact that Customer is a client of Passport, for business development purposes, as part of a portfolio or work, or in an illustrative list of clients.

### 3.6 Third Party Provider

Passport may, at its option, allow parkers to use a third-party provider's (each a "Third Party Provider") end-user-facing interfaces for purposes of initiating parking transactions, including any and all possible methods available to parkers to request the right to access and occupy a parking space or otherwise-denominated curb space for any period of time (in accordance with City's applicable rates, rules, ordinances, and regulations). Such interfaces will include, but not be limited to, in-dash vehicle systems, navigation systems (whether in-dash or smartphone-based), and mobile payments for parking applications other than Passport's mobile payments for parking platform (each an "Interface").

Should Passport exercise this option, such Third Party Provider(s) shall contract directly with Passport to establish the integrations necessary for Passport to facilitate all mobile payments for parking sessions and transactions for the Third Party Provider(s) and its end users. The term "facilitate" includes, but is not limited to: providing software that performs (a) all tasks related to parking rights management, including the calculation of parking session prices, (b) the management of rates, rules, and restrictions and zones, spaces, or other units of parking or curbside inventory; (c) transactional reporting; (d) tasks related to transmission of parking rights data to parking enforcement systems and any data processing systems; (e) tasks related to refund issuance, parking rule management, reconciliation of funds, invoicing, and other administrative functions; and (f) all back-office management interfacing necessary to manage the foregoing and all other tasks necessary or desirable for Passport to effectively manage the issuance and processing of parking rights on behalf of City (the "Shared Services"). For parking transactions initiated via a Third Party Provider's Interface, payment processing must be conducted by Passport. A fee of \$0.40 will be assessed for each parking transaction initiated via a Third Party Provider's Interface.

The Parties acknowledge and agree that a Third Party Provider may configure and control the feature set of its own Interface so long as it is capable of performing the minimum functions required to interact with Passport's platform and execute parking transactions. The City further acknowledges and agrees that certain data received from Third Party Providers may be more limited than what Passport can provide to City as City's MPP provider and may need to be provided, if at all, in an aggregated and/or anonymized basis; Passport shall, however, use commercially reasonable efforts to supply such data as may be reasonably requested by City for its internal purposes.

To utilize the Shared Services, each Third Party Provider will be required to integrate with application programming interface endpoints provided by Passport, which cannot be accessed or utilized by such Third Party Provider prior to the execution of a standalone contract with Passport governing the access, use, pricing, disclosure, and governance of the Shared Services consistent with the foregoing paragraphs and as otherwise determined by Passport in its sole discretion.

All on-street pay by phone parking system providers must utilize Passport's payments platform pursuant to the foregoing paragraphs. This Exhibit does not prohibit the City from utilizing other payment providers for services and Interfaces other than those defined herein.

### 3.7 Custom Branded Mobile Payment for Parking

Passport shall deliver to Customer in connection with the Agreement a custom-branded MPP application (“Private Label App”) pursuant to the terms and conditions below.

#### **Customer Obligations:**

Customer shall:

- a) Serve as the account holder of record for Google Play and Apple App Store developer accounts (the “Accounts”).
- b) Add Passport as an additional user for its developer account, authorizing Passport to take all necessary actions related to the Accounts on Customer’s behalf including, but not limited to, activation, set-up, management, maintenance, and support of the Private Label App in the Accounts. Customer shall comply with all necessary conditions, requirements, and obligations to serve as the holder of the Accounts including, but not limited to, obtaining a Dun & Bradstreet, Inc. number in Customer’s name. Customer must cooperate with Passport to ensure that all Accounts credentials (e.g., username and password) are received by Passport a minimum of fifteen (15) business days prior the launch date of the Private Label App.
- c) Not hold Passport liable for delays of any kind caused by the failure of Customer, Google, Apple, or any other third party to provide any necessary or required information to Passport or to take any necessary or required action in connection with the Accounts.
- d) Not access or use the Accounts in any manner that could cause error or interruption. Passport is not liable for any errors, delays, or problems caused by Customer’s access or use of the Accounts.
- e) Not access the Accounts for the purposes of responding to Private Label App reviews in the Google Play and Apple App Stores.
- f) Cooperate with Passport by providing, in a timely manner such that Passport can meet its obligations hereunder, any information and/or taking any action, as necessary or required, including, but not limited to, the execution of any documents related to the Accounts.
- g) Be responsible for all fees associated with the Accounts (currently, \$99.00/year for Apple and a one-time fee of \$25.00 for Google).

#### **Passport Obligations:**

Passport shall:

- a) Create the Private Label App.
- b) Assist Customer or otherwise act on Customer’s behalf related to the Accounts including, but not limited to, activation, set-up, management, maintenance, support and, with Customer’s assistance as may be required, obtain read-only Accounts and full-access Accounts on behalf of Customer.
- c) Have the exclusive right, on behalf of Customer and in Passport’s sole discretion, to respond to Private Label App reviews in the Google Play and Apple App Stores.

Passport reserves the right to include elements indicating Passport as the provider of the Private Label App, such as word elements (e.g. “Powered by Passport”) and/or design elements (e.g., a Passport logo), in conjunction with such Private Label Assets wherever they may appear, as discussed with the City.

**EXHIBIT A**  
**Contractor's Offer, dated January 27, 2021**

## Statement of Work

City of Austin, TX  
January 27th, 2021



[Disclaimer](#)

[Project Overview](#)

[Statement of Work](#)

[Configurations](#)

[Gateway and Merchant Processing](#)

[Parking Meters](#)

[Parking Payment Facilitators](#)

[Integrated Parking Payment Facilitators](#)

[Park ATX Application Functionality](#)

[Back-Office Portal](#)

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[Proprietary Information](#)



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## Passport Operating System

### Per Year Cost Estimate

Description	Unit Price	Qty	Amount
Mobile Pay Platform ( Park ATX APP )	\$0.25/transaction * (fee not paid by City of Austin )	1	\$0.25/transaction
Third Party Facilitator	\$0.40/transaction * (fee not paid by City of Austin )	1	\$0.40/transaction
Digital Permit System Platform	\$30,000.00/annual	1	\$30,000.00/annual
Resident and Employee Digital Permitting	included	1	
Document Verification for Digital Permitting	included	1	
Digital Permitting Waitlist Management	included	1	
Digital Permitting Payment Portal	included	1	







## City of Austin Purchasing Office

### Sole Source Certificate of Exemption

DATE: August 17, 2020  
TO: Purchasing Officer or Designee  
PURCHASING POC: Gil Zilkha

DEPT: Austin Transportation Department  
FROM: Joseph Al-hajeri, Mobility Services Supervisor  
PHONE: (512) 974-7015

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- **Prices were determined to be reasonable based on the following (select all that apply):**

- ☒ Prices are the same or similar to current City contract.  
Notes: MA 5600 NA160000042 – Pay by Phone Software Application
- ☐ Prices are the same or similar to current contract with another government.  
Notes: **At a minimum, note the contract number, title and government that created the contract.**
- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.  
Notes: **At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).**
- ☐ Prices are established by law or regulation.  
Notes: **At a minimum, note the legal or regulatory reference that established the prices.**
- ☐ Other means of determining Price Reasonableness.  
Notes: **Describe any other source that was used to establish Price Reasonableness.**

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

**Purpose/ Need:**

The city of Austin, Texas, population of 930,000, is the 11th largest city in the country. This vibrant and dynamic city tops numerous “Best” lists for business, entertainment, cost of living and quality of life. Austin was selected as the “Best City for the Next Decade” (Kiplinger), the “Top Creative Center” in the US (Entrepreneur.com) and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community forum. Austin continues to lead the country with its vision of being the “Most Livable City in the Country”, emerging as a player on the international scene with such events as SXSW, Formula 1 and Austin City Limits festival. Since 1900, Austin’s population has doubled every 20 years. Austin Transportation Department is responsible for improving multi-modal transit in the city. ATD handles sidewalks, bike lanes, many forms of parking, mobility as a service licensing and permitting, and is responsible for improving safety for Austin residents and visitors using the city right of way.

The Austin Transportation Department ATD operates and enforces over 8,000 metered parking spaces and approx. 4,000 off-street spaces at 7 different garage facilities; An additional 1000+ spaces in flat service parking lots at various city parks and city facilities; 6,000+ parking spaces for residential permit parking that 15,000 permits are processed annually; 500+ permits issued for a commercial vehicle loading program; Manages and issues over 1,000+ COA employee parking hang tags.

The City of Austin currently uses Passport Labs Inc. to provide on-street mobile payments through a white labeled mobile app called Park ATX. The Park ATX mobile payment solution accounts for over 1.3 million transactions annually and is roughly 30% of all on-street parking transactions.

The Austin City Council recently approved an increase in the parking meter base rate and granted the Austin Transportation Department authority to flex parking rates to mitigate congestive parking. This modernization of the current parking system forces the need to provide new technology that will adapt to progressive pricing curb management strategies, while giving insight into data that will provide a snapshot into curb occupancy to make future pricing changes.

Parking management technology is continually evolving, providing more efficient solutions for customers and allowing for more accessible data, which in turn can lead to better management decisions that benefits the city and its constituents. New technology solutions have created the opportunity for the City to update administrative processes and with that, the challenge to integrate various solutions into a single solutions platform back office to host all data and to perform cross program data analytics. By providing an integrated parking system for all parking payments and permit services, this allows the customers to deal with a single vendor for all services, reducing the confusing and clutter of multiple access points into the parking management system, thus creating a convenient and more customer friendly parking experience.

ATD seeks to enter a 5 year sole source master agreement in the amount of \$150,000 at a maximum of \$30,000 a year with Passport Labs Inc. to continue the white labeled mobile payment application, Park ATX, for the City of Austin which can only be administrated with a partnership between ATD and Passport Lab Inc. Additionally, ATD expects to expand to a fully integrated parking management system that includes a suite of digital/ web-based parking program solutions that will utilize data and technology to provide improved utilization of parking assets, improve customer service, and help to develop innovated solutions for future parking management needs.

**Sole Source Criteria:**

The partnership with Passport Labs Inc. is unique and cannot be replicated for the following reasons:

- City of Austin, ATD has full ownership of the white label application including Apple and Google developer accounts, with full right into the data. If Passport Labs is not selected, this data access would be jeopardized.
- Major partnerships with third partner payment providers that are propriety. If Passport Labs is not selected, these partnerships, with their proprietary functions, would cease to continue.
- Under the current contract with the vendor, Passport Labs Inc. is the merchant of record and pays all credit card processing fees. If another vendor is selected, this may not be the case and the City would likely need to encumber additional funding for these fees.

**Municipal Purpose:**

Austin City Council recently passed the Austin Strategic Mobility Plan (ASMP) in the spring of 2019, which has a goal to reduce single occupant vehicles (SOV) usages to 50% by year 2039. The contents of this request support ASMP goals by providing digital integrated solutions that would traditionally require physical interactions with city staff. The integrated parking management system will reduce administrative strain and create an automated parking management system to reduce the cities use of paper and administrative processes that cause increases to the Cities carbon footprint.

**Past Procurement:**

The contract for this service ends on April 16, 2021. The procurement was originally completed in 2015 with ParkX LLC, who was bought by Passport Lab Inc. in December 2016. The current contract is a revenue-based contract with no cost to the City of Austin. The City of Austin owns and maintains the brand Park ATX and the app developer accounts for Apple and Google Play. The desired solution must maintain this setup.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☒ Scope of Work or Statement of Work or Vendor Proposal
- ☒ Vendor's Quote
- ☒ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): Passport Labs, Inc.

(Description of Procurement): Digital Parking Management System

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- ☐ This is a one-time request for \$ \_\_\_\_\_
- ☒ This is a multi-term contract request for 1 12-month base term in the amount of \$30,000.00 with 4 12-month renewal options) for \$ 30,000.00 each for a total contract amount of \$ 150,000.00.

Recommended  
Certification

Originator

Date

2/5/2021

Approved  
Certification

Department Director or designee  
(For Austin Energy, Deputy General Manager or designee)

Date

2/8/21

Assistant City Manager or designee\*

Date

(For Austin Energy, General Manager or designee\*)

\* Only needed for procurements requiring Council approval)

Purchasing Office  
Review

Gil Zilkha  
Authorized Purchasing Office Staff

Date

Digitally signed by Gil Zilkha  
DN: cn = Gil Zilkha o = City of Austin  
ou = Purchasing Office  
email = G.Zilkha@austintexas.gov c = US  
Date: 2021.09.10 11:29:36 -0500

Purchasing Office  
Management Review  
(If required due to signature authority level)

Purchasing Officer or designee

Date





128 S. Tryon St #2200  
Charlotte NC 28202

September 1, 2020

**RE: JUSTIFICATION FOR THE SELECTION OF PASSPORT LABS, INC. TO PROVIDE A PARKING RIGHTS MANAGEMENT SYSTEM**

To Whom It May Concern:

Passport Labs, Inc. ("Passport") is the sole provider and sole source of the Passport Operating System. The Passport Operating System is the only product capable of securely, reliably, neutrally, and flexibly coordinating the issuance of parking rights across multiple applications, including traditional parking applications, parking payment hardware, and any other city-approved applications.

The City of Austin, TX ("the City") desires to provide citizens with greater choice and encourage competition and innovation by allowing multiple on-street parking payment applications. The Netherlands successfully implemented a similar system, providing a global model for coordinating multiple parking payment apps. Critically to the success of that model, the architects of the Dutch system determined that a software platform that calculates fees and rules, aggregates data across applications for enforcement and analysis, and coordinates the issuance and storage of mobility rights is necessary to manage multi-application environments.

Because the system utilized in the Netherlands is not available for purchase or use by third parties, Passport is uniquely capable of providing this critical enabling technology platform to the City. The Passport Operating System is the only commercially available software that has demonstrated that it can successfully enable rate adjustment and calculation and parking rights issuance at the City's required scale across an ecosystem of distinct applications with different user interfaces and feature sets.

Passport is also North America's only provider of true municipally-controlled white-label parking applications with the necessary experience to provide a viable and robust option among the applications available to the City's parking customers. Continuing to provide the City's white-label parking application, "ParkATX", will allow the City to control inventory listed in the application, integrate related municipal services, determine pricing to end-users, and ensure the limited use of data provided by end-users. This control allows the City to ensure that one application in the multi-application ecosystem serves to provide options to the City's parking customers, guaranteeing that the provision of government services is not fully outsourced to profit-driven application providers and allowing the City to continue to effectively serve its role as a guardian of public trust.

Therefore, the combination of the Passport Operating System and Passport's white-label parking application represents the only commercially available product suite that can effectively coordinate the City's planned multi-application parking payment ecosystem. Passport is also the only party that provides setup, maintenance, hosting, and customer support services related to these products.

## **PASSPORT LABS, INC. IS A SOLE SOURCE PROVIDER OF THE PASSPORT OPERATING SYSTEM**

### **EXECUTIVE SUMMARY:**

At the outset, Passport notes that Chapter 252 of the Local Government Code requires that municipalities comply with procedures for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in section 252.022. A sole source purchase includes items that are only available from one source. It also includes items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies. Because Passport, as the sole provider and creator of the Passport Operating System and the parking industry's only municipally-controlled white-label applications, is the only organization capable of providing the products and services necessary to support the City's desired multi-application parking rights issuance environment, an exemption under Local Government Code 252.022 applies.

Furthermore, the City has an exigent need to purchase a parking rights issuance platform prior to the scheduled procurement for approved parking payment applications. The purchase and deployment of the Passport Operating System must precede the City's procurement for parking payment applications, because the system architecture and integration requirements of the city's parking rights management infrastructure will materially affect the scope of work for parking payment application providers.

### **KEY QUALIFICATIONS AND FEATURES**

- The Passport Operating System's parking rights issuance system coordinates over 50 million parking transactions per year
- The Passport Operating System's rate engine calculates the price of parking rights in thousands of locations at an accuracy rate of over 99.9%
- The Passport Operating System's rate engine calculates prices for thousands of rate structures and configurations, including, progressive, fixed, variable, minimum and maximum duration, calendar day fixed, time-based fixed, variable with max price, event fixed, event variable, no-parking, free parking, and long-term parking rates
- The Passport Operating System supports "stop parking," "repark lockout," "prepayment," and "fractional parking" features
- The Passport Operating System, which provides common infrastructure for over 90 distinct mobile applications, is the only parking rights issuance software in North America used across multiple citizen-facing applications with different user interfaces and feature sets
- The Passport Operating System enables non-parking related applications to facilitate transactions on the Passport Operating System
- The Passport Operating System is supported by a web-based back-office system that allows authorized users to perform customer service tasks and access and report on parking session data
- The Passport Operating System's web-based back-office allows clients to self-serve rate adjustments, inventory management, and event rates
- The Passport Operating System is supported by infrastructure and processes that have been certified as PCI-DSS and SSAE-18 compliant after rigorous professional audits
- Passport's white-label parking payment application, "ParkATX", allows the City to control end-user fees and additional city services available in the application (e.g., payment of parking citations)
- Passport's white-label parking payment application allows the City to control what parking inventory is available to end-users in the application, in contrast to other payment applications providers who enable transactions with owners/operators of non-City-approved parking inventory that can diminish the user experience by having subpar facilities (for example)
- Guaranteed 99.999% software uptime with service level fee rebates

**WEB-BASED PLATFORM:**

The Passport Operating System is delivered under a Software as a Service (SaaS) model: application providers and authorized administrators at the City receive access to an easy-to-use online platform without any requirement to maintain, host, or update any software (a consumer-facing application in case of end users and a robust, back-office management system in the case of City administrators). The City's authorized administrators will access Passport's systems via a combination of username/password, and are not required to download desktop or server software programs. Passport bears sole responsibility for ensuring the proper maintenance, hosting, and continued development of the Passport Operating System, Passport mobile applications, and ancillary software.

**MERCHANT PROCESSING:**

The Passport Operating System's Merchant Processing service ("Passport Payments") is a unique offering compared to that of competitors or other providers. Benefits of Passport's Merchant Processing include:

- **Competitive.** Passport has discounted credit and debit card rates with all four card brands that apply to Mobile Pay parking payments. Oftentimes, even large cities that have negotiated rates with merchant processors do not have access to the discounted rates that we secured, which allows Passport to price competitively in the market
- **Targeted:** Passport Payments provides a targeted payments service, optimized for the Passport web-based platform and mobile applications that is focused on your parking payments. This targeted approach increases usability while limiting risk
- **Simple:** Passport's All-In-One Integrated mobile platform, gateway, and payments processing service highlighted by a 1-step process for an end-user to enter their card details and use immediately. All integrated partners will utilize the same payment configuration for processing transactions.
- **Trust:** Passport's payments service is a Level 1, PCI DSS certified merchant processor leveraging an advanced tokenization system that removes sensitive user and card details from the payments process providing the highest level of payments security possible

**CONCLUSION:**

To proceed in a timely manner with its scheduled procurement of parking applications to support a multi-tenancy environment where Austin residents and visitors have personal choice, an essential first step is for the City to procure a parking rights issuance and management platform that can support such an environment. The Passport Operating System is the only product that has proven capabilities to reliably support the issuance and management of parking rights at the City's required scale across multiple parking payment applications. The Passport Operating System is solely capable of performing the following functions:

- **Flexible rate management, including:**
  - Self-Servable or not Rate Builder - Includes custom names, descriptions, activate, modify and delete rates, conditions and scheduling
  - Rate characteristics for enforcement Relevant time period including max/min parameters
  - Event rates including time periods and advance scheduling
  - Shortcuts - Ability to activate, copy and delete Space and Vehicle conditions
- **Single location to manage rate publication, calculation, and rule regulation. Currently serving over 100 applications**
- **Ability to facilitate session creation and real-time enforcement data collection across multiple, distinct citizen-facing applications**
- **Support, configuration, maintenance, and hosting of the Passport Operating System**
- **Tools and systems to support the issuance and revocation of security credentials and API keys to access Passport Operating System**

Additionally, the Passport-provided white-label parking application will ensure that the City will retain control over the user experience, fees, and features of its branded application, "ParkATX", in the multi-application ecosystem, ensuring the availability of a true "public option" for privacy and urban commercialization-conscious residents.

Passport would be pleased to provide any further information or documentation desired by the City. We are excited about the possibility of partnering with the City on such an innovative and precedent-setting model and are prepared to move quickly to support this project.

Sincerely,

DocuSigned by:  
  
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