

# **SOFTWARE LICENSE AND SERVICE AGREEMENT BETWEEN PASSPORTPARKING, INC., AND THE CITY OF DULUTH**

THIS SOFTWARE LICENSE AND SERVICE AGREEMENT ("Agreement") is made by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("the City"), and PassportParking, Inc., a foreign corporation organized under the laws of the State of Delaware and headquartered in Charlotte, North Carolina ("Passport") (referred to collectively hereinafter as "the Parties"). The effective date of this Agreement shall be that date on which all Parties have executed this Agreement, as set forth on the latest date of the signatures below.

WHEREAS, the City desires to use Passport's software, services and technical support to launch a mobile payment for parking (MPP) program for users of City parking facilities; and

WHEREAS, Passport has represented that it is qualified to assist and provide the City with its MPP software and related technical services and is willing to perform these services under the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. App or Application shall mean Passport's MPP Application, accessible by any form of smartphone, web platform or other mobile device.
- B. Block face shall mean, in accordance with the City's Uniform Development Code ("UDC") Section 50-41.2.B, as may be amended, all lots abutting both sides of a street (street A) between the nearest two streets that intersect street A.

- C. Business Hours shall mean Monday through Friday between the hours of 8 a.m. and 5 p.m. Central Standard Time (CST).
- D. City shall mean the City of Duluth, Minnesota, and all of its officers, agents and employees.
- E. Commercially reasonable levels of customer service shall mean that Passport will respond to third-party MPP-user communications, service problems or concerns within 24 hours of receipt of the communication, and shall make best efforts to resolve such communications, service problems or concerns within one week of the initial communication.
- F. Council shall mean the Duluth City Council.
- G. Data Practices Act shall mean the provisions of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01, *et seq.*
- H. Decals shall mean decals complying with any applicable city code requirements, designed and provided by Passport for affixing to City parking meters and pay stations, which bear Passport's logo and provide guidance to City parking customers in the use of Passport's MPP application.
- I. Government Data shall mean all data as defined in Minn. Stat. § 13.02, subd. 7, as may be amended.
- J. Manager shall mean the Manager of the City of Duluth Parking Division.
- K. Marketing Services shall mean all those services set forth and described in greater detail in **Exhibit A** attached hereto.
- L. MPP shall mean Passport's mobile payment for parking software and associated applications, files and documentation.
- M. Passport shall mean PassportParking, Inc., a foreign corporation organized under the laws of the State of Delaware headquartered in Charlotte, North Carolina.

- N. Payment Gateway shall mean a third-party e-commerce application and service provider that facilitates credit card transactions between MPP App users and associated banks.
- O. Services shall mean all MPP-related software, services, payment gateways, training and technical support necessary for the City to launch, operate and maintain, for the duration of this Agreement, a mobile payment for parking program allowing customers of City parking facilities to pay for parking using a smartphone or other mobile or web-based application or device.
- P. Signs shall mean signs complying with any applicable city code requirements, designed and provided by Passport for installation on or near City parking meters and pay stations, which bear Passport's logo and provide guidance to City parking customers in the use of Passport's MPP application.
- Q. Software shall Passport's MPP software platform and all associated applications, files and documentation.
- R. Training, Technical Services and Support shall mean any and all training, technical services or support recommended by Passport, requested by the City, or otherwise necessary to (a) launch Passport's MPP application in Duluth; (b) integrate Passport's MPP Software with existing City parking operations and IT systems; (c) satisfy Passport's System Uptime Guarantee, as defined herein; (d) perform any scheduled maintenance, system-wide improvements, modifications and upgrades; and (e) resolve Software issues or interruptions. Technical Services and Support shall include, but not be limited to, diagnosis and resolution of problems or performance deficiencies with Passport's Software during regular Business Hours as defined herein.
- S. Term shall mean the effective Term of this Agreement as defined herein, and as may be mutually modified, amended or extended by the Parties in writing as provided herein.
- T. Uptime shall mean all time during which Passport's Software is fully operational and available for use by customers of City parking facilities.

## ARTICLE II

### Scope of Services Provided by Passport

Passport shall provide the Services set forth below:

- A. Passport shall provide the City with all Services and Software, including Training, Technical Services and Support, necessary for the City to launch, offer, operate and maintain Passport's MPP App for customers of City parking facilities during the Term of this Agreement.
- B. Passport shall provide the City with sufficient Signs and Decals to advise and guide customers regarding the availability and appropriate use of Passport's MPP App in accordance with Articles VI below.
- C. Passport shall offer a "Merchant Validation Program" in conjunction with the City's launch of MPP in accordance with Article V below.
- D. Passport shall provide Training, Technical Services and Support to the City, and shall use best efforts to resolve Software problems or interruptions in accordance with Article IX below.
- E. Passport shall provide commercially reasonable levels of customer service to third-party users of MPP.
- F. Passport shall provide Marketing Services as described and defined in the schedule attached hereto as **Exhibit A**.
- G. Except where expressly authorized by the City in writing or agreed to herein, the City shall not be responsible for reimbursing any costs or expenses, including travel expenses, incurred by Passport in fulfillment of its obligations under this Agreement.

## ARTICLE III

### Term

This Agreement shall be effective upon the date on which all Parties have executed the Agreement, as set forth on the latest date of the signatures below ("the Effective Date"), and

shall remain in effect for a Term of one (1) year following the Effective Date, unless terminated earlier as provided for herein, subject to renewal for successive Terms upon mutual written agreement between the Parties and approval by Council.

#### ARTICLE IV

##### Passport Service, License and Gateway Fees/Monthly Remission of Profits to City/Refunds

###### A. Payment Gateway, Credit Card and S&L Fees

Passport shall supply a payment gateway and merchant banking account for collection and payment of all City parking fees, per-transaction Passport service and licensing (“S&L”) fees, and any related credit card transaction processing fees. At least thirty (30) days prior to launch of MPP, the City will provide Passport its schedule of parking rates and fees for integration into Passport’s Software. During the Term of this Agreement, Passport agrees that its per-transaction S&L fees will remain fixed as follows:

MPP PER-PARKING TRANSACTION S&L FEES	
Base Per-Transaction MPP S&L Fee:	\$0.25
Per-Transaction MPP S&L Fee if University of Minnesota, Duluth also Launches the MPP:	\$0.20
Maximum Convenience Fee Passed through to Parking Customers:	\$0.35
Per Transaction Merchant Processing Fee:	2.9% + \$0.30
Per Transaction Payment Gateway Fee:	\$0.05
Cost Per Chargeback Request:	\$15.00

###### B. Monthly Accounting/Remission of Profits to City

On or before the tenth day of each month, Passport shall provide the City with (1) a statement detailing:

- Total parking transactions completed;
- City parking fees collected;
- Passport S&L fees collected;

- Per-transaction payment gateway and credit card processing fees set forth above; and
- Remaining profits due and owing to the City after deducting Passport S&L fees, per-transaction payment gateway and credit card fees, and any other fees contained herein incurred during such month from the total amount collected by Passport during such month; along with

(2) payment of remaining profits due and owing to the City.

#### C. Refunds

Passport agrees to forego or return, as applicable, its per-transaction S&L fees for any refund granted by the City. The City shall be responsible for reimbursing Passport for all payment gateway, credit card transaction or other merchant processing fees, if any, incurred by Passport for all refunded transactions.

### ARTICLE V

#### Merchant Validation Program

Passport shall offer a Merchant Validation Program in conjunction with the launch of MPP in Duluth, to wit, an option for local businesses and merchants to create pre-paid parking validation accounts directly with Passport, thus allowing businesses to issue parking payment validation codes as an additional service to customers. Passport shall serve as merchant-of-record for any such parking validation accounts created.

On or before the tenth day of each month, Passport shall provide the City with (1) a statement detailing:

- Total Merchant Validation Program transactions completed;
- City parking fees collected;
- Passport S&L fees collected;

- Per-transaction payment gateway or credit card processing fees collected and remitted to third-parties; and
- Remaining profits due and owing to the City; along with

(2) payment of remaining profits due and owing to the City in the form of bill credits.

## ARTICLE VI

### A. Signs

Passport shall provide the City with a minimum of two (2) Signs per block face (one per side), for an initial total of \_\_\_\_350\_\_\_\_, to be installed and affixed by the City in a manner and location deemed most appropriate by the Manager or his designee.

Within six (6) months following the launch of MPP, the Parties agree to confer (in person or by phone) regarding the objective effectiveness of initial signage in notifying and guiding parking customers in the appropriate use of Passport's Software. At the City's request, Passport shall provide the City with up to \_\_\_\_35\_\_\_\_ additional Signs to boost notification and guidance to MPP end users during the remaining Term of the Agreement, at no cost to the City.

Any replacement Signs needed or requested shall be purchased by the City at a rate of twenty dollars (\$20.00) per Sign, not including shipping or transport fees.

### B. Decals

Passport shall provide the City with a minimum of 1,900 Decals to be affixed to city parking meters and pay stations in the manner deemed most appropriate by the Manager or his designee.

Any additional replacement Decals needed or requested shall be purchased by the City at a rate of three dollars (\$3.00) per Decal, not including shipping or transport fees.

#### ARTICLE VII

##### Standard of Performance

Passport agrees to provide all Software, Services and Technical Support identified in this Agreement in accordance with the highest standards of Passport's industry.

#### ARTICLE VIII

##### System Uptime

Passport shall provide its Software with uptime of at least ninety-nine percent (99%) calculated over a rolling six-month period ("Uptime Guarantee"). For any month during which system uptime drops below the Uptime Guarantee, Passport will provide a billing credit in an amount equal to: the percentage difference between (a) the lowest uptime reached at any point during the month (calculated on a rolling six-month period) and (b) the Uptime Guarantee. Such difference will be multiplied by the total fees payable to Passport for such month. For example, if during a given month the Software uptime fell as low as ninety-five percent (95%) and during that month, the fees payable to Passport were one hundred dollars (\$100.00), Passport would issue a billing credit of four dollars (\$4.00).

#### ARTICLE IX

##### TRAINING, TECHNICAL SERVICES & SUPPORT; SERVICE INTERRUPTIONS

###### A. Training

Upon recommendation by Passport or request by the City, Passport agrees to provide City staff with any technical training necessary to achieve the successful (a) launch of Passport's MPP App in Duluth; (b) integration of Passport's MPP Software with existing City parking operations and IT systems; and (c) ongoing provision and maintenance of Passport's MPP App to City parking customers throughout the Term of this Agreement. Training may be provided in person, by phone, or by other remote connection upon mutual agreement between the Parties.



## B. Technical Services & Support

During regular Business Hours, Passport shall provide Technical Services & Support to City Parking and IT staff, as defined in Article I.R above, in accordance with the highest standards of Passport's industry. Passport shall use its best efforts to cure, as described below, reported and reproducible errors in its Software using the following four (4) severity levels to categorize reported problems:

### SEVERITY 1: CRITICAL BUSINESS IMPACT

The impact of the reported deficiency is such that the City or its parking customers are unable to use the Software or reasonably continue work using the Software. Passport shall commence work on resolving the deficiency within one (1) hour of notification and will engage staff during Business Hours until an acceptable resolution is achieved. With respect to Critical Business Impact reported deficiencies, Passport may, with the concurrence of the City, elect to send senior support or development staff to the City to accelerate problem resolution. Passport will be responsible for travel costs or expenses associated with any such escalated problem resolution.

### SEVERITY 2: SIGNIFICANT BUSINESS IMPACT

Important features of the Software are not working properly and there are no acceptable alternative solutions. While other areas of the Software are not impacted, the reported deficiency has created a significant, negative impact on the productivity or service level afforded to the City or its parking customers. Passport will commence work on resolving the deficiency within two (2) hours of notification and will engage staff during Business Hours until an acceptable resolution is achieved.

### SEVERITY 3: SOME BUSINESS IMPACT

Important features of the Software are unavailable, but an alternative solution is available or non-essential features of the Software are unavailable with no alternative solution. The City or its parking customer impact, regardless of product usage, is minimal loss of operational functionality or implementation resources. Passport will commence work on resolving the deficiency within one (1) business day of notification and will engage staff during Business Hours until an acceptable resolution is achieved.

#### SEVERITY 4: MINIMAL BUSINESS IMPACT

The City submits a Software information or enhancement request which has no operational impact. The implementation or use of the Software by the City and its parking customers is continuing and there is no negative impact on productivity. Passport will provide an initial response regarding the request within one (1) business week. This agreement is not intended as a consulting agreement for customer services.

#### C. Scheduled Maintenance

If Passport plans to perform any scheduled maintenance during Business Hours, Passport will provide notice to the City at least twenty-four (24) hours in advance of the commencement of such scheduled maintenance.

#### D. Product Updates

Any system-wide improvements, updates or modifications made by Passport to the Software platform will be promptly provided to the City at no cost and will be automatically subject to the terms of this Agreement. The City may also request any other addition or modification to the software or services provided hereunder, and in the event that Passport agrees to make such requested modification or addition, any associated additional terms to this Agreement will be contained in a signed amendment hereto in accordance with this Agreement.

The parties agree that the City may request a change to the Services that involves the addition of functionality already available as a component of another product within Passport's

general technology, including citation management technology, and in the event that Passport receives such a request from provider, Passport will provide an addendum hereto including the increase in fees attributable to the addition of such additional functionality and any applicable service or legal terms, all in accordance with Article XXII herein.

## ARTICLE X

### PCI DSS Information Security

A. For the purposes of Article X, the following terms shall have the meaning ascribed to them herein.

1. “Cardholder Data” shall mean any personally identifiable data associated with a Passport user’s credit card account, including, by way of example and without limitation, a Passport user’s card account number, expiration date, name, address, social security number, or telephone number;

2. “Network Components” includes, but is not limited to, Passport’s firewalls, switches, routers, wireless access points, network appliances, and other security appliances;

3. “Servers” includes, but is not limited to, all of Passport’s web, database, authentication, DNS, mail, proxy and NTP servers;

4. “Subcontractors” means any and all payment gateway providers or other entities, if any, with which Passport contracts, directly or indirectly, in order to perform its obligations under this Agreement.

B. Passport agrees, on behalf of itself and each of its Subcontractors, that it shall be responsible for the security of all Cardholder Data in its possession and shall use Cardholder Data only for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law.

C. Passport represents and warrants that all of its Network Components, Applications, Servers, and Subcontractors comply with the Payment Card Industry Data Security Standard (“PCI DSS”), Visa’s Cardholder Information Security Program (“CISP”), and any successors thereto. Passport will immediately notify the City’s designated contact in Article XXV below if Passport learns that it or any service provider is no longer PCI DSS compliant, and will immediately provide the City the steps being taken to remediate the non-compliant status. In no event shall Passport’s notification to the City be later than seven (7) calendar days after Passport learns of the non-compliant condition. Failure to maintain PCI DSS compliance shall be a breach of contract and the City may, at its sole discretion, terminate this Agreement if Passport does not become compliant within thirty (30) days.

D. Passport shall have a business continuity program which conforms to PCI DSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to Passport’s operations.

E. Passport, for itself and all subcontractors, agrees (i) to provide the City a copy of a mutually acceptable PCI DSS compliance document containing information about which PCI DSS requirements are managed by the provider; and (ii) that the documentation will be updated and a copy provided to the City annually.

F. In the event of a breach or intrusion, or otherwise unauthorized access to Cardholder Data stored at or for Passport, Passport shall immediately notify the City’s designated contact in Article XXV below stating that the incident involves Cardholder Data. Passport shall provide appropriate payment card companies, acquiring financial institutions, and their respective designees access to the Passport’s facilities and all pertinent records to conduct a review of Passport’s compliance with PCI DSS requirements following any breach. Passport will cooperate with representatives or agents of the payment card industry in conducting a thorough security review of Passport’s operations, systems, records, procedures, rules and practices in order to validate Passport’s compliance with PCI DSS. Passport acknowledges any/all costs

related to breach or intrusion or unauthorized access to Cardholder Data entrusted to Passport deemed to be the fault of Passport shall be the liability of Passport. Passport agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, damages or other harm related to such breach, which damages shall be limited to the applicable policy limits under Passport's Professional Errors and Omissions Insurance Policy, which policy limit shall not be less than five million dollars (\$5,000,000.00). Passport will also add the City as an "additional insured" party on such policy.

G. Passport shall respond in a timely manner and fully to those portions of the PCI DSS Annual Self-Assessment Questionnaire or any other documentation demonstrating compliance sent to it by the City.

H. Passport shall continue to safeguard Cardholder Data in the event this Agreement terminates or expires.

I. Passport shall indemnify, defend and hold the City and its officers, employees and agents harmless from actions, suits, claims, losses, costs, judgments, fines, penalties (including any fines or penalties imposed on the City by Payment Card Companies or their acquiring banks), and expenses (including reasonable attorneys' and investigative fees), arising out of Passport's failure to comply with the representations and warranties in this Article and Agreement.

## ARTICLE XI

### Government Data

#### A. Data Practices Act

All government data collected, created, received, maintained or disseminated for any purpose by the Parties pursuant to this Agreement shall be governed by the provisions of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq. ("the Data Practices Act"). Passport agrees to comply with the Data Practices Act as it applies to any government

data provided to it by the City or third parties, and further agrees to cooperate and assist City staff in complying with any data practices requests arising out of, or related to, information generated or submitted via Passport's Software.

B. Trade Secret Information

"Trade secret information" means all data defined under Minn. Stat. § 13.37 (General Nonpublic Data), as may be amended. It shall be the responsibility of Passport to clearly mark any trade secret materials supplied to the City in performance of this Agreement, including a statement with the submission of such information justifying the trade secret designation for each item. Passport agrees to defend any action seeking release of materials it believes to be trade secret, and indemnify and hold harmless the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with such defense. Passport agrees that this indemnification survives as long as the trade secret materials are in the possession of the City.

C. Ownership, Security and Retention of Government Data

The City retains the right to disclose any government data collected, created, received, maintained or disseminated for any purpose by the Parties pursuant to this Agreement as required by Minn. Stat. ch. 13. Without affecting the foregoing right, Passport retains ownership over all data provided by end users or otherwise collected, created, received, maintained, or disseminated by Passport or Passport's mobile application or software, provided, however, that such ownership rights shall not release Passport from any obligation arising under Minn. Stat. ch. 13 or any other applicable law, regulation or court order. Passport shall maintain the highest industry-appropriate administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of government data. Passport agrees to backup and retain government data for not less than five (5) years from the date of receipt or submission, except as may otherwise be required by law.

ARTICLE XII

## Intellectual Property

### A. Passport Warranty

Passport represents and warrants to the City that it holds all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, Passport's Software, MPP, and related applications, and that Passport is duly authorized to enter into this Agreement and provide its Software to the City pursuant to this Agreement. Passport agrees to defend, indemnify and hold harmless the City, its executives, officers, directors, employees, and agents from any and all patent, copyright, trademark, service mark or other intellectual property claims arising out of, or relating to, the City's authorized use of Passport's Software, MPP and related applications.

### B. Revocable, Non-Exclusive License

The City hereby acquires a revocable, non-exclusive, non-assignable, non-transferrable, and non-subleaseable right and license to use and access Passport's Software for its internal business purposes during the Term. All intellectual property rights including, without limitation, trade names, source code, trademarks, copyrights, patents, and trade secrets, not explicitly granted to the City in this Agreement are reserved to Passport.

### C. Restrictions on Use

The City agrees not to (i) copy, disassemble, reverse engineer, or decompile Passport's Software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the Software or source code; (iii) transfer or otherwise grant any rights in the Software or source code in any form to any other party; (iv) attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly or impliedly authorized by Passport for use of its Software and MPP system in accordance with their designed or intended purposes under this Agreement.

## ARTICLE XIII

### Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto or of constituting Passport as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Passport and any officers or employees thereof shall not be considered an employee of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Passport arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors and employees, shall in no way be the responsibility of the City. Passport and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the City shall not, in any way, be responsible to defend, indemnify or save harmless Passport from liability or judgments arising out of the intentional or negligent acts or omissions of Passport or any of its officers, agents, contractors and employees while performing the services specified in this Agreement.

## ARTICLE XIV

### Indemnity and Insurance

#### A. Indemnity

Passport agrees that it shall defend, indemnify, and save harmless the City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of the City or of Passport, by reason of claims or complaints arising under the Minnesota Government Data Practices Act, the death or injury to person or persons, or the loss of or damage to property arising out of Passport's negligence, recklessness, or intentionally



wrongful conduct. On ten (10) days written notice issued by the City, Passport will appear and defend all lawsuits against the City arising out of such injuries or damage.

B. Insurance

During the term of this Agreement, Passport shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

City of Duluth shall be named as Additional Insured under the General Liability, Excess Umbrella Liability (an Umbrella policy with a “following form” provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured) and Automobile Liability, or as an alternate, Passport may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Passport shall also provide evidence of Statutory Minnesota Worker’s Compensation Insurance or any applicable exemptions therefrom. Passport is to provide certificate of insurance evidencing such coverage with 30-days’ notice of cancellation, non-renewal or material change provocations included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect Passport’s interests and liabilities.

If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.

ARTICLE XV

Taxes and Fees

Passport shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Passport’s operations under this Agreement, including but

not limited to any applicable sales, income or real estate taxes. Passport shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date. It is further agreed that the City may pay the same on behalf of Passport and immediately collect the same from Passport to avoid any fees, fines or penalties any governmental entity may be imposing or seeking to impose upon the City.

#### ARTICLE XVI

##### Assignability

Passport shall not in any way assign or transfer any of its rights or interests under this Agreement in the absence of the City's written consent, subject to approval by Council, provided however that such consent shall not be unreasonably withheld in the event that an assignee agrees to perform all Passport obligations set forth in this Agreement.

#### ARTICLE XVII

##### Use of the City's Intellectual Property (trademarks/logos)

During the Term of this Agreement, Passport is permitted to use the City's logo[s] in support of its launch, operation, maintenance and marketing of its Software within the City. The Parties agree that the use of the City's names or logos shall not grant Passport or any other third party any right, title or interest in the City's names or logos, and all such uses shall inure to the benefit of the City.

#### ARTICLE XVIII

##### Termination of Services

The City may, by giving thirty (30) days written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. The City reserves the right to terminate this Agreement immediately upon receipt of a notice of claim or commencement of any civil action against the City arising out of, or related to, its use of Passport's Software and Services.

## ARTICLE XIX

### Civil Rights Assurances

Passport, for itself and its officers, agents, servants and employees, as part of the consideration of this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the services to be performed pursuant to this Agreement.
- B. All activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the United States Code, and any regulations and executive orders which may be affected with regard thereto.

## ARTICLE XX

### Rules and Regulations

Passport agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City, and their respective agencies which are applicable to its activities under this Agreement.

## ARTICLE XXI

### Limitation of Damages

In no event will Passport be liable to the City for lost profits, lost savings, or incidental, indirect, special, or consequential damages arising out of Software service interruptions, even if the City has been advised of the possibility of such damages. Passport agrees that it shall use best efforts to restore or repair its Software in accordance with Article IX.B above.

## ARTICLE XXII

### Amendments

The Parties may not amend or modify this Agreement except by written instrument executed by the Parties, subject to approval by Council as deemed appropriate or required by the City.

#### ARTICLE XXIII

##### Beneficiaries

There are no third-party beneficiaries to this Agreement.

#### ARTICLE XXIV

##### Force Majeure

Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond the Parties' reasonable control, including, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, earthquakes, blackouts, accidents, or strikes. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay.

#### ARTICLE XXV

##### Notices

Notice to the City or Passport provided for herein shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the Parties at the addresses hereinafter set forth or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time, with courtesy copies sent via email at the addresses provided below.

City of Duluth: Deputy Chief of Police  
411 W. 1<sup>st</sup> Street  
Duluth, MN 55802  
Email: lmarquardt@duluthmn.gov

Passport: Passport  
1300 S. Mint Street  
Suite 200  
Charlotte, NC 28203  
Email: ben.winokur@gopassport.com

#### ARTICLE XXVI

##### Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

#### ARTICLE XXVII

##### Applicable Law, Jurisdiction and Venue

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation arising in relation to this Agreement shall be those courts located within the State of Minnesota, County of St. Louis.

#### ARTICLE XXVIII

##### Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the Parties to this Agreement.

#### ARTICLE XXIX

##### Entire Agreement

It is understood and agreed that the entire agreement of the Parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

*[Remainder of page left intentionally blank, signature page to follow.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed  
intending to be bound thereby.

CITY OF DULUTH

Passport Parking, Inc.

By \_\_\_\_\_  
Its Mayor  
Dated \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated \_\_\_\_\_

Attest \_\_\_\_\_  
City Clerk  
Dated \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor  
Dated \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney  
Dated \_\_\_\_\_

EXHIBIT A

## Marketing Packages

Passport offers various marketing packages to augment the launch of your mobile app. Please review carefully and choose the option that best fits your needs.

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- **Standard** **\$0**
  - Media press release
  - Social media posts from Passport accounts
  - Market subscription to our "The Latest from Passport" newsletter to stay up-to-date on industry news and best practices from others in the industry
    - Includes a feature in Passport client newsletter
  - Transition services from alternative mobile payment provider (if applicable)
    - E-mail blast to 10,000 users included (additional bands of 10,000 users: \$250)
    - 1,000 transition fliers for on-site distribution
- **Bronze** **\$1,000**
  - *Includes Standard Package plus:*
    - 2,000 Marketing handout flyers (5x3) (additional 500 flyers: \$250)
    - 2,000 Marketing flyer (8.5x11) (additional 500 flyers: \$250)
    - 2 Social media image ad concepts
    - National Press distribution
    - 1,000 promotional code handouts (promotional budget not included)
- **Silver** **\$2,500**
  - *Includes Bronze Package plus:*
    - Promotional landing web page
    - 1 specialty item design (ex: coaster, koozies, t-shirt, etc)
      - Order cost not included
    - 2 Email image concepts + body text
    - Design of (1) print ad (placement not included)
- **Gold** **\$5,000**
  - *Includes Silver Package plus:*
    - Street team coordination (festivals, concerts, etc)
    - Geo targeted digital advertising coordination
    - Podcast with city official (to be chosen / selected by the city)
    - Additional specialty item design
      - Order cost not included
    - How-to video
- **Platinum** **\$7,500**
  - *Includes Gold Package plus:*
    - Promotional video

- Multi-page website
- Ongoing local media and blogger outreach (max 12 months)
- Any out of home design (billboards, sandwich boards, etc)

All materials and services provided hereunder are subject to the terms, limitations, and costs found in the Custom Design Revision Fees section of Exhibit A. For any additional services requested beyond the services provided under the Provider's chosen marketing package, Passport will charge a marketing services fee of one hundred and twenty-five dollars (\$125.00) per hour necessary to fulfill such Provider request. The minimum number of hours for the purpose of calculating the marketing services fee for any request is one hour.