

## **AGREEMENT**

**THIS AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, is by and between the **CITY OF STAMFORD**, a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut (hereinafter “The City”), acting herein by David R. Martin, its duly authorized Mayor, and **PASSPORT LABS, INC.**, a foreign (DE) corporation with a principal place of business located at 128 S. Tryon Street, Charlotte, North Carolina (hereinafter “The Consultant”), acting herein by Khristian Gutierrez, its duly authorized Chief Revenue Officer.

## **WITNESSETH**

**WHEREAS**, The City solicited Request for Proposals No. 746 for Parking Ticket, Permit and Civil Citation Management Services;

**WHEREAS**, The Consultant submitted a proposal in response to said Request for Proposals; and

**WHEREAS**, The City has accepted The Consultant’s proposal for said work pursuant to the terms hereinafter set forth;

### **NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. INCORPORATION OF RECITALS.** The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

**2. SCOPE OF SERVICES.** The Scope of Services shall consist of those duties, functions, obligations, responsibilities, and tasks set forth in:

**Exhibit A –** The following Statements of Work when agreed upon by The Consultant and The City in the following order:

1. Parking Ticket Management Services, which shall be completed on or before the date of full execution of this Agreement;
2. Permit Management Services; and
3. Civil Citation Management Services.

Notwithstanding the foregoing, the parties hereto hereby agree that under no circumstances shall the preparation of these Statements of Work or the work that is the subject thereof result in additional fees to The City other than those set forth in Section 3, below.

**Exhibit B –** The City’s Request for Proposals No. 746, issued July, 2018;

**Exhibit B-1** – The City’s Addendum No. 1, dated August 2, 2018, to its Request for Proposals No. 746;

**Exhibit B-2** – The City’s Addendum No. 2, dated August 16, 2018, to its Request for Proposals No. 746;

**Exhibit B-3** – The City’s Addendum No. 3, dated August 20, 2018, to its Request for Proposals No. 746;

**Exhibit B-4** – The City’s Addendum No. 4, dated August 23, 2018, to its Request for Proposals No. 746;

**Exhibit C** – The Consultant’s Proposal, dated August 30, 2018;

**Exhibit C-1** – The Consultant’s February 12, 2019, email to The City re: Genetee LPR; and

**Exhibit C-2** – The Consultant’s February 13, 2019, email to The City re: Best and Final Offer;

all attached hereto and hereby made a part hereof as if fully set forth herein. This Agreement and the Exhibits listed above constitute the entire agreement between The Consultant and The City. In the event of any conflict or inconsistency between this Agreement and the Exhibits, or between the Exhibits themselves, the order of precedence for interpretation shall be this Agreement first, followed by the Exhibits in the order listed above. Any conflict or inconsistency within this Agreement or within particular Exhibit shall be resolved by having the more specific reference to the matter prevail;

**3. COMPENSATION.** The Consultant shall be compensated for the services set forth in Section 2, above, pursuant to the schedule of flat fees and unit prices set forth in The Consultant’s February 15, 2019, Best and Final Offer, included in its February 23, 2019, email attached hereto as Exhibit B-2;

**4. TERM.** The Term of this Agreement shall commence on the date last signed below and terminate three (3) years thereafter. The parties may, by mutual agreement, extend the Term of this Agreement for two (2), additional years pursuant to all the same terms contained herein. No such extension shall be for greater than one (1) year and, under no circumstance, shall the entire Term of this Agreement, including any extension years, exceed five (5) years;

Consultant’s sole remedy for City delays shall be an extension of time to complete the work and Consultant hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit.

**5. REVIEW OF WORK.** The Consultant shall permit The City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

**6. INDEMNIFICATION.** The Consultant shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees (the "Indemnified Parties"), from third party claims for loss, cost, damage, liability, and/or injury to or death of a person or loss of or damage to property, resulting directly from the Consultant's negligent performance pursuant to this Agreement, or by any omission to perform some duty imposed by this Agreement upon the Consultant, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement. This paragraph shall not require The Consultant to indemnify, hold harmless and defend the Indemnified Parties against claims arising out of their own negligent or intentional acts or omissions.

In no event will the Consultant be liable to the City for any lost profits, lost savings, or punitive, incidental, indirect, special, or consequential damages arising out of the City's use or inability to use the Software or the breach of this agreement, even if the Consultant has been advised of the possibility of such damages;

**7. ASSIGNMENT.** The Consultant shall not assign or transfer any portion of the work set forth herein without the prior written approval of The City, provided, however, that The Consultant may, without such written consent from The City, assign this Agreement and its right 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 purported assignment in violation of this section shall be void and of no effect;

**8. BOOKS AND RECORDS.** The Consultant shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to The Consultant's demand for compensation by The City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement;

**9. INSURANCE.** The Consultant shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Provision for Required Insurance included in The City's Request for Proposals No. 746 attached hereto as Exhibit A;

**10. REPRESENTATIONS.** The Consultant represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. The

Consultant hereby acknowledges that The City has relied upon said representations in entering into this Agreement;

**11. INTERPRETATION.** The Consultant agrees that, in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits, the City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence, except for those terms relating to the scope of the work or pricing, to which such terms this section shall not apply;

**12. SUBCONTRACTING.** Aside from those subconsultants disclosed in The Consultant's Proposal, attached hereto as Exhibit B, the Consultant is prohibited from further subcontracting the work of this Agreement or any part of it unless The City first approves such subcontracting in writing and approves, in writing, of the specific subconsultant(s) The Consultant proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should The City approve of a proposed subconsultant, The Consultant agrees to comply with The City's Code of Ordinances § 103.4;

**13. CONTRACT EXTRAS.** Pursuant to The City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by The Consultant that all contract extras regarding this Agreement shall be governed by The City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of The City's Charter and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at [www.municode.com](http://www.municode.com);

**14. NON-APPROPRIATION.** The Consultant acknowledges that The City is a municipal corporation, that The City's obligation to make payments under this Agreement is contingent upon the appropriation by The City's Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that The City may terminate this Agreement by way of written notice to The Consultant if sufficient funds to prove for the payment(s) hereunder are not so appropriated;

**15. COMPLIANCE WITH CITY CODE PROVISIONS.** The Consultant hereby agrees to fully comply with the applicable requirements of The City's Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which The City may unilaterally terminate this Agreement by way of written notice to The Consultant, which notice shall include a reasonable time to cure such failure. The provisions of the City Code can be found at [www.municode.com](http://www.municode.com) ;

**16. TERMINATION.**

- A. **TERMINATION FOR CAUSE.** If The Consultant shall fail to fulfill, in a timely and proper manner, its material obligations under this Agreement, or if The Consultant shall violate any laws or any of the material covenants, agreements, or stipulations of this Agreement, The City shall thereupon have the right to terminate this Agreement for cause by giving written notice to The Consultant of

such termination and specifying the effective date thereof, which notice shall contain a reasonable time for The Consultant to cure such failure. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by The Consultant exclusively for the City pursuant to its performance under this Agreement shall, at the option of The City, become The City's property, subject to Section 23. Data Privacy, which shall control and prevail with respect to those items. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Consultant shall not be responsible for any claims resulting from The City's use of the documents on another project or changes made to the documents without The Consultant's express written permission;

The term "cause" includes, without limitation the following:

- 1) If The Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If The Consultant fails to perform to The City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If The City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should The City terminate this Agreement for cause, The Consultant shall not be relieved of liability to The City for any damages sustained by The City by virtue of any breach of this Agreement by The Consultant and The City may withhold any payment to The Consultant for the purposes of setoff until such time as the exact amount of damages due The City from The Consultant is determined.

**B. TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time The City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to The Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of The City, become property of The City, subject to the same limitations set out in Paragraph A herein. If the Agreement is terminated by The City as provided herein, The Consultant shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of The

Consultant pursuant to the terms of the Agreement, less payments of compensation previously made;

## **17. DISPUTE RESOLUTION.**

- A. EXECUTIVE MEETING. The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”).

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. MEDIATION. Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of The City, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by The City, The Consultant shall continue performance under this Agreement while matters in dispute are being resolved.
- E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**18. GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein;

**19. GIFTS.** During the term of this Agreement, including any extensions, The Consultant shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of The City or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to The Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in The Consultant. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated; and

**20. CODE OF ETHICS.** The Consultant shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an “employee”, as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to The City to derive any interest(s) or benefit(s) from other individuals or organizations.

**21. MORALS CLAUSE.** Neither Consultant, Consultant’s Representatives nor Consultant’s key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If Consultant, Consultant’s Representative or Consultant’s key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or Consultant is accused of performing or committing any act which could adversely impact Consultant’s events, programs, services, or reputation, The City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within which period Consultant may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion.

**22. DATA PRIVACY.** This Section shall govern the rights of Consultant and the City, as the case may be, with respect to the data that is subject to this Agreement. Consultant will, by provisions in its Privacy Policy or otherwise, procure from such end users all such lawful consents and rights necessary to grant to the City the rights in such data as stated in this Section. Consultant’s Privacy Policy, as it may be amended from time to time in Consultant’s sole discretion, can be viewed at <https://www.passportinc.com/privacy-policy>.

- A. Operational data is data specific to the City’s operation that is provided by the City to Consultant to be used in the providing of services. Operational data is specific to the City’s operation, which is not available to Consultant publicly or by other means. Operational data may include, but is not limited to, zone information, rate information, operational schedules, business metrics, relevant details of partner agreements, [parking violation information, name and addresses of vehicle owners and/or information regarding violation records](#). In each case, Operational data may refer to past, present, or future states of such items.

Operational data is the sole and exclusive property of the City. The City grants Consultant a [perpetualtemporary](#), ~~ir~~revocable, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Operational data, provided that, Consultant may assign or transfer such license to a successor in connection with the transfer or sale of all or substantially all of its assets or business related to this agreement, or in the event of its merger, consolidation, change in control or similar transaction.

Within thirty (30) days of the expiration or termination of this Agreement or within thirty (30) days of written request by the City, the Consultant shall return all Operational Data to the City in such format as the City may specify and at no cost to the City.

- B. 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.

Consultant acquires a license or sublicense to the PCI-DSS Information from end users who share such data with Consultant in connection with their use of the Software. Consultant must secure such data in accordance with PCI-DSS. As such, Consultant may not grant the City derivative rights to such PCI-DSS Information and Consultant shall not be required to disclose such PCI-DSS Information to the City.

- C. Personal identifiable information (“PII”) is any representation of information that permits the identity of an individual to whom the information applies to be reasonably determined or inferred by either direct or indirect means. Name, address, social security number or other identifying number or code, telephone number, or email address directly identify individuals. Certain data elements—including gender, race, birth date, geographic indicator (such as zip code or postal code), and other descriptors—can be used in conjunction or with other data elements to indirectly identify individuals. Information permitting the physical or online contacting of a specific individual (e.g., IP address) is also personally identifiable information. End users of Consultant’s Software own PII and license it to Consultant pursuant to Consultant’s Privacy Policy, as it may be amended from time to time in Consultant’s sole discretion. Consultant ~~may shall~~ sublicense PII to the City within thirty (30) days of the City’s written request for such PII, in such format as the City may specify and at no cost to the City, provided that the ~~under certain conditions (including but not limited to the City’s: (a) compliance~~ees with information security controls and applicable regulations) ~~that shall be memorialized separately if and when applicable~~and (b) agrees to hold harmless and indemnify Consultant from any third-party claims that arise out of the City’s possession and/or use of such PII.

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

**23. PRIVACY POLICY; TERMS OF USE.** End users' use of the Services shall at all times be governed by (a) Consultant's Privacy Policy, as it may be amended from time to time in Consultant's sole discretion, which can be viewed at <https://passportinc.com/privacy-policy/>, and (b) Consultant's Terms and Conditions, as they may be amended from time to time in Consultant's sole discretion, which can be viewed at <https://passportinc.com/terms-and-conditions/>.

**24. INTELLECTUAL PROPERTY.**

- A. Consultant grants the City a revocable, non-exclusive, non-assignable, non-transferrable, and non-subleaseable right and license to use and access the Software only for its internal business purposes for the duration of 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 Consultant.
- B. The City will not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the software or source code; (iii) transfer or otherwise grant any rights in the software or source code in any form to any other party; (iv) attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

**25. CONFIDENTIALITY.**

- A. The City and Consultant agree to treat this Agreement and all information furnished, or to be furnished, by or on behalf of the other party and information analyses, summaries and other work product derived from such information (collectively, the "Confidential Information") in accordance with the provisions of this section and to take, or abstain from taking, all actions set forth herein. Each party, as a receiving party, will do the following things with regard to the Confidential Information of the other party:

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

B. Nothing in this Agreement will prevent the receiving party from disclosing or using Confidential Information to the extent that:

- i. It is or becomes readily ascertainable by proper means by the public without any breach of a confidentiality obligation of the receiving party;
- ii. It is received from a third party that is not under an obligation of confidentiality of which the receiving party knew or had reason to know;
- iii. It was independently developed by the receiving party without use of the Confidential Information; or
- iv. It is required by law to be disclosed, provided that the receiving party provides to the disclosing party as much notice as is practicable under the circumstances of such requirement prior to disclosure and provides to the disclosing party, at the disclosing party's expense, such reasonable assistance as the disclosing party requests in seeking confidential treatment, protective orders, nondisclosure, and/or similar measures.

For the avoidance of doubt, none of the requirements of this Section shall prohibit the City from disclosing Confidential Information to the extent that such information is required to be disclosed pursuant to any open records law,

open meetings law, or any other local public disclosure law applicable to the City.

**26. FORCE MAJEURE.** Neither Consultant nor the City will be held liable for any delay or omission in performance of their duties under this Agreement resulting from causes beyond their reasonable control, including, for the sake of illustration and not limitation, delays or omissions attributable to third-party vendors, suppliers, or integration partners, labor strikes, acts of god, acts of the public enemy, fires, natural disasters, wars, or riots.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

**CITY OF STAMFORD**

\_\_\_\_\_  
Print:  
Witness

By: \_\_\_\_\_  
David R. Martin, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Print:  
Witness

**PASSPORT LABS, INC.**

\_\_\_\_\_  
Print:  
Witness

By: \_\_\_\_\_  
Khristian Gutierrez, CRO

Date: \_\_\_\_\_

\_\_\_\_\_  
Print:  
Witness

Approved as to Form:

Approved as to Insurance:

\_\_\_\_\_  
Chris Dellaselva  
Asst. Corp. Counsel

\_\_\_\_\_  
David Villalva  
Risk Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_