



City of Lake Geneva, 626 Geneva St, Lake Geneva, WI 53147- 262.248.3673- [www.cityoflakegeneva.com](http://www.cityoflakegeneva.com)

**CITY OF LAKE GENEVA PUBLIC WORKS COMMITTEE**  
**TUESDAY, JULY 9, 2019 4:30 P.M.**  
**LAKE GENEVA CITY HALL; CONFERENCE ROOM 2A (UPPER LEVEL)**

**Members:** Chairperson Cindy Flower, Selena Proksa, Rich Hedlund, Tim Dunn, and Ken Howell

**AGENDA**

1. Meeting called to order by Chairperson Flower
2. Roll Call
3. Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda. Comments will be limited to 5 minutes
4. Approve the regular Public Works Committee meeting minutes from June 11, 2019 as prepared and distributed
5. Director of Public Works Report
  - a. Storm Damage
  - b. Mosquito Spraying
  - c. Vandalism
  - d. Lake Level Information
  - e. Beach Water Testing
6. Parking Manager Report
7. Discussion/Recommendation regarding 2020 Streets Capital Spending Plan and Three Year Plan to include alleys; Task order for assessment
8. Discussion regarding mowing of roundabouts
9. Discussion/recommendation regarding parking payment option; Adding customer payment option with “Passport” App
10. Discussion/Recommendation regarding Park-N-Walk Day Initiative for August 2019
11. Future Agenda Items
12. Adjourn

*This is a meeting of the Public Works Committee.  
No official Council action will be taken; however, a quorum of the Council may be present.*

**PUBLIC WORKS COMMITTEE MINUTES  
TUESDAY, JUNE 11, 2019– 4:30PM  
CITY HALL CONFERENCE ROOM 2A**

**Members:** Chairperson Cindy Flower, Selena Proksa, Rich Hedlund, Tim Dunn, and Ken Howell

The June 11, 2019 meeting of the Public Works Committee was called to order by Chairperson Flower at 4:30 p.m.

**Roll Call**

Director of Public Works Earle called the roll and noted that were present.

Present: Flower, Proksa, Howell, Hedlund, and Dunn

Also present: Director of Public Works Earle, Parking Manager Mullay, Asst. Clerk Elder, City Admin Nord, Ald. Skates, & Halverson

**Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda. Comments will be limited to 5 minutes**

None

**Approve the regular Public Works Committee meeting minutes from May 14, 2019 as prepared and distributed**

Motion by Proksa to approve the May 14, 2019 minutes, second by Hedlund. No discussion. Motion carried 5-0.

**Director of Public Works Report**

**Riviera Fountain Lighting**

Director Earle noted that the lighting has been installed and will be working with the programmer to make the lights operational. He added that the light shows will be customizable for shows.

**Brush Collection**

Earle stated that the brush collection has been completed. He also indicated that a broken pipe at LaGrange and could cause some delays.

**Parking Manager Report**

**Year to Date Meter Collections**

Mullally reported that the Paring Department is stable and has approximately 7,000 less in transactions from last year.

**Maintenance on Meters/Technology Issues**

Mullally indicated that the meters are slower this year due to spotty coverage. She did add more staff to handle maintenance in the morning hours.

**Discussion/Recommendation regarding awarding the bid for the 2019 Street Improvement Project to Payne & Dolan in an amount not to exceed \$814,966.12**

Earle stated that the bids came in for the Street Improvement project. He noted that while the bid amount was \$814,966.12 and budget amount for the project is only \$750,000. The whole project will not exceed \$750,000 by choosing which roads

are in desperate need of help and have those repaired first. This cost will also include all of the engineering costs for the project.

Howell motion to approve \$750,000 to Payne & Dolan for the 2019 Street Improvement project to include the engineering costs, second by Hedlund. Motion carried 5-0.

Discussion/Recommendation regarding 2020 Streets Capital Spending Plan and Three Year Plan including alleys

Director Earle said this is on target, but we should try to get bids earlier, and he's given the plan to Ald. Flower making the suggestion to take Main St. off, but he would need approval for the task order for an Engineer to assess the roads.

The committee directed DPW Director Earle to obtain the task order from the engineer. No action taken.

Discussion/Recommendation regarding Department of Public Works Fencing to be paid from Capital Borrowing

Director Earle stated that he received two quotes for this project. This fencing would go around the brush dumping area. He noted that this is necessary as this area is where the staff are running large pieces of equipment and they would be able to close off the area to maintain safety.

Motion by Hedlund to approve the purchase and installation of the fence by Century Fence in an amount not to exceed \$26,955, second by Howell. Motion carried 5-0.

Discussion/Recommendation regarding sidewalk/bike trails needs on Sheridan Springs Drive, Edwards Boulevard, and Highway 120 South

Alderson Flower stated that she had shared this at the Committee of the Whole and that she wanted to have a conversation with the committee. She noted that she would like to work this plan into the upcoming street improvement projects. She would like to see these funded through Special Assessments. Earle noted that they need to not only look into where the sidewalks may be placed, but also the maintenance of the sidewalks as well. They also need to be placed in a way that makes sense to avoid "sidewalks to nowhere". Flower noted that the Park Board has been looking into this as well. Director Earle stated we need to start including capital outlay as we go forward. No action taken.

Discussion regarding Parking Kiosk RFP

Flower noted that this had been brought up months ago and it hadn't moved forward. She wanted to discuss the need to the equipment and if there is a possibility to have a meeting to discuss it further. Parking Manager Mullally has tested the machines and working with vendor to look at various models. Mullally asked the committee what direction they would like her to move in – what's the goal i.e. revenue, new parking meter features, and customer interface. Ald. Dunn stated he went out and it wasn't very user friendly. Ald. Howell said he tested the system and it was fine. Hedlund stated to nickel and dime the parking revenue source is a mistake and would like to direct Sylvia to do the research obtain the RFP to have enough time in November. Ald. Howell stated there needs to be a separate meeting dedicated just to parking analysis and RFP to make an educated decision. Ald. Skates stated to have various vendors submit bids/proposals for a special Parking workshop.

No action taken.

Discussion/Recommendation regarding amending current snow removal and weed/grass control ordinances

Flower noted that the Attorney is reviewing the grass mowing policy so that will be carried over to the next meeting once his revisions have been received. Flower cited several amendments for the snow removal policy that needed clarification specific to adding language relating to removing snow to the curblines and from the ADA ramps

Motion by Hedlund for amending the current snow removal policy and to refer to Finance, Licensing, and Regulation Committee, second by Howell. Motion carried 5-0.

### Discussion regarding roundabout mowing

Hedlund points how if someone owns the property could we see if we can get them to mow the lawn. Flower possibility to have State/County cut more often, suggested approaching the other township, proposed a company that would sponsor. Earle noted that the DPW will continue to mow the roundabout on the south side and the medians. No action taken.

### Discussion regarding bike path issues on South Street

Ald. Hedlund motion to suspend the rules to let Ald. Skates to speak, second by Howell. Motion carried unanimously.

Skates noted that there is a fair amount of bike and pedestrian traffic on that street. The committee noted that this should be discussed at the Park Board. Main thorough fair for various locations and Director Earle stated we only own the west bound lane up to the High School parking lot. Earle noted that this would be a job to be done and researched by Vandewalle. No action taken.

### Future Agenda Items

Weed/Grass Control

Roundabout mowing

Items Streets Capital Spending

Restroom Cleaning

Parking Kiosk RFP

### Adjourn

Motion by Howell to adjourn the meeting, second by Hedlund. Motion carried 5-0. The meeting adjourned at 6:00 p.m.



## Memorandum

**To:** Chairman Flower and Public Works Committee

**CC:** Dave Nord, City Administrator

**From:** Sylvia Mullally, Parking Manager

**Re:** Agenda Item #9  
Discussion/Recommendation Parking Payment Option  
Adding Customer Payment Option with Passport App

**Date:** July 3, 2019

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### Request:

Staff is requesting the parking app company, Passport, be allowed to integrate with the parking system. Passport is a mobile app company with customers near the City of Lake Geneva market.

Cities include: Chicago (Park Chicago), Evanston (IL), Oak Park (IL), Harvard (IL), Racine (WI) Appleton (WI) and Green Bay (WI).

### Background:

The intent of this item is to give the public another easy and convenient payment option for parking. As paying for parking on smart phones continue to trend, it may be in the best interest of the City to add another popular app option with markets in close proximity to the City. This would give Passport customers the opportunity and convenience to pay in the City with their existing Passport accounts.

### Recommended Terms: (Contingent on City Attorney review)

- 1 year license & service agreement-automatically renewed- unless canceled (writing) 30 days prior (No charges)
- All user fees paid by customers
- Passport (MOR) (Passport pays all merchant processing fees, gateway fees, and/or any associated fees, settlement fees, etc.)
- Integration costs waived
- Initial signage and stickers paid by Passport
- Payments for parking sent monthly in check form to City

## SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement (the “Agreement”) is entered into as of the Effective Date set forth below by and between Passport Labs, Inc. (“Passport”) and the party named below (“Provider”). This Agreement includes and incorporates the terms and conditions found in this document, the Terms and Conditions found in Exhibit A, and the terms and conditions found in all other Exhibits hereto, which represent the full and complete understanding and agreement of Passport and Provider with respect to the subject matter hereof. In exchange for the mutual covenants herein and other good and valuable consideration, the Parties agree and intend to be bound as follows:

### I. GENERAL TERMS

<b>Provider Legal Name:</b> City of Lake Geneva, WI		<b>Contact:</b> Sylvia Mullally	
<b>Email:</b> smullally@cityoflakegeneva.com		<b>Phone:</b> (262) 248-3673 ext. 1	
<b>Provider Contact Address</b>		<b>Provider Billing Contact Address</b>	
626 Geneva Street Lake Geneva, WI 53147		626 Geneva Street Lake Geneva, WI 53147	
<b>Effective Date:</b>			
<b>Services:</b> Passport will provide services (the “Services”) and license all software, including all web and mobile applications and related documentation, (the “Software”) necessary for Provider to operate a mobile payment for parking program (“MPP”) which allows all parking customers in any parking facilities owned or managed by Provider (the “Premises”) the ability to pay for parking using a smartphone application or mobile web application.			
<b>Governing State Law</b>		Wisconsin	
<b>Term:</b> This Agreement shall commence on the Effective Date and continue for a period of one (1) year (the “Initial Term”). Thereafter, the Agreement shall automatically renew for additional one (1) year periods (each a “Renewal Term”) unless either Party notifies the other in writing of its intent not to renew no less than thirty (30) days before the expiration of Initial Term or Renewal Term, as applicable. Following the Initial Term, either party may terminate the agreement upon thirty (30) days written notice to the non-terminating party.			

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## II. MOBILE PAYMENT FOR PARKING TERMS

<b>Equipment Provided by Passport:</b>	<p style="text-align: center;">Initial Signs</p> <p>On-Street Parking: 1 sign per 5 parking spaces or 2 signs per block space for LPR environments; Off-Street Parking: 1 sign per 10 parking spaces</p>	<p style="text-align: center;">Initial Decals</p> <p style="text-align: center;">1 decal per hardware unit</p>
<p><b>Installation:</b> Provider will be solely responsible for installing all signs and decals in the Premises. This obligation includes the responsibility to provide all hardware necessary to affix and display signs and decals, including without limitation, all hooks, poles, posts, brackets, screws, bolts, and nuts</p>		
<p><b>Ancillary Fees:</b></p> <ul style="list-style-type: none"> <li>a) Zone setup fees of three dollars (\$3.00) per space - WAIVED</li> <li>b) Initial Signs and Stickers – WAIVED (unit prices of twenty dollars (\$20.00) per sign and three dollars (\$3.00) per decal will apply to additional or replacement orders)</li> <li>c) Provider will pay a ten dollar (\$10.00) administrative fee in addition to sign and shipping costs per sign for any additional or replacement signs purchased through Passport</li> <li>d) Provider will pay a one dollar (\$1.00) administrative fee in addition to decal and shipping costs per decal for any additional or replacement decals purchased through Passport</li> <li>e) Passport will provide a design file to allow Provider to print replacement signs and decals</li> <li>f) Provider will reimburse Passport for any and all reasonable travel, lodging, and food expenses incurred by Passport employees while traveling at Provider’s request</li> </ul>		

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### III. FEES

<b>Per Transaction MPP Service and License Fee*</b>		\$0.37
<b>Maximum Convenience Fee Passed through to Parking Customers</b>		\$0.37
<b>Merchant Processing Costs:</b> Provider will be responsible for paying all merchant processing costs, including, without limitation, settlement fees, payment gateway fees, chargeback fees, and interchange reimbursement fees.		
<b>Merchant of Record for Transactions:</b>	X      Passport	Provider
<b>Passport Merchant Processing Rate Per Transaction:</b>		Included in Per Transaction MPP Service and License Fee
<b>Payment Gateway Provider:</b>	X      Passport	Other
<b>Passport Gateway Fee Per Transaction:</b>	Included in Per Transaction MPP Service and License Fee	

\*An MPP “transaction” is a single session lasting less than twenty-four (24) hours in duration.

Passport Labs, Inc:

Provider:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Khristian Gutierrez

Name: Tom Hartz

Title: Chief Revenue Officer

Title: Mayor

Exhibit A  
Terms and Conditions

1. Services

Passport shall perform the services in a competent, professional, and workmanlike manner consistent with industry practices. Passport will maintain all permits, certificates and licenses required by applicable law and Passport's employees performing the services will be fully qualified, licensed as required, and skilled to perform the services. Passport warrants that it has the power to enter into and perform this Agreement and that it will at all times during the term of this Agreement be, duly organized, validly existing and in good standing under the laws of the state of Delaware.

2. Compliance with Laws and Codes

In providing the services under this Agreement, Passport will comply at its sole cost and expense with all applicable federal, state, county, and municipal laws, statutes, rules, regulations and ordinances. If requested by Provider while performing services at Provider's place of business, Passport will comply with Provider's dress and conduct codes and security protocols.

3. PCI Certification

For the duration of the term of this Agreement, Passport will maintain Payment Card Industry – Data Security Standard certification.

4. Product Updates

Any system-wide improvements or modifications made by Passport to the Software will, when available, be provided to Provider at no charge to Provider and will automatically be subject to the terms of this Agreement.

Provider may request new features or functionality to be built into the system, and, to the extent that Passport plans to incorporate such requested new features or functionality into the Software, Passport will develop such features and functionality at no cost to the Provider pursuant to Passport's development timeline. If the Provider desires to expedite such development, Passport may, in its sole discretion, charge Provider an expedite fee of two hundred dollars (\$200.00) per development hour necessary to develop the requested features or functionality, provided, however, that Passport shall first notify Provider and receive written approval from Provider to proceed. If the Provider's requested features or functionality are created for the Provider's use and Passport does not plan to incorporate such requested features into the Software, Passport may, in its sole discretion, charge Provider a custom development fee of two hundred and fifty dollars (\$250.00) per hour for the development of such features or functionality, provided, however, that Passport shall first notify Provider and receive written approval from Provider to proceed.

In addition to or in lieu of the fees set forth in this section, the parties may establish a monthly software license or maintenance fee that will be mutually agreed between the parties in a separate written addendum to this Agreement.

5. Changes

Any changes to the scope of services provided under this Agreement shall be set forth in a written change order or amendment signed by both parties setting forth the scope of the change(s) and any applicable fees.

## 6. Additional Passport Services

Passport provides all of the following software platforms as part of its overall technology portfolio: mobile payments for parking, citation management, digital permits, and mobile payments for transit. Provider may request the addition of any of these platforms to the extent not provided by Passport to Provider as of the Effective Date, and any additional platforms developed by Passport from and after the Effective Date, which shall be memorialized in an addendum to this Agreement including the fees applicable to such platform(s) and any additional applicable service or legal terms.

## 7. Scheduled Maintenance

If Passport plans to perform any scheduled maintenance during business hours, Passport will provide notice to Provider at least twenty-four (24) hours in advance of the commencement of such scheduled maintenance. For the purpose of this section, "business hours" means Monday through Friday between 9 am 5 pm EDT. In the event that Passport determines that unscheduled maintenance is necessary, Passport will give Provider as much advance notice as is reasonably practicable, unless such unscheduled maintenance is necessitated by emergency circumstances for which it would be unfeasible or impossible to notify Provider in advance.

## 8. System Uptime; Billing Credits

Passport will provide the Software with uptime of at least ninety-nine percent (99.0%) 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, multiplied by the total fees payable to Passport for such month. For example, if during a given month the software uptime falls to ninety-five percent (95.0%) and if during that month the fees payable to Passport were one hundred dollars (\$100.00), Passport will issue a billing credit of four dollars (\$4.00). For the purposes of this agreement, uptime is defined as any period of time during which end users of the Software can use the Software.

## 9. Service Levels

Subject to the uptime guarantee set forth in Section 8, Passport's sole and exclusive obligation in the event of an error or interruption of the Software is to use its best efforts to restore or repair the Software as quickly as practicable.

## 10. Technical Support

A. Passport will provide telephone and email support to Provider's staff from Monday to Friday between the hours of 8:00 a.m to 7:00 p.m. EST to address technical and operating setting issues. Passport will provide "after-hours emergency telephone support" available 24/7.

- Monday-Friday 8AM - 7PM EST
  - (US) 980-939-0990
  - [Help@passportinc.com](mailto:Help@passportinc.com)
- After-Hours Emergency Support
  - 866.815.3043

B. Provider will provide initial support, including inquires via telephone and email, for end-users ("parkers"). If the Provider is unable to address the parkers technical questions, Provider may escalate end-users to Passport's End-User Support Team for technical issues from Monday to Saturday between the hours of 8:00 a.m to 9:00 p.m. EST at (US) 704-817-2500 or Support@passportinc.com. Provider may not display Passport's phone number (or other direct contact information for Passport) on any marketing or signage visible by parkers.

## 11. Data Rights

This Section shall govern the rights of Passport and Provider, 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 Provider 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://passportinc.com/privacy-policy/>.

A. Operational data is data specific to the Provider's operation that is provided by Provider to Passport to be used in the providing of services. Operational data is specific to the Provider'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, relevant details of partner agreements. In each case, Operational data may refer to past, present, or future states of such items.

Operational data is the sole and exclusive property of the Provider. The Provider grants Passport a perpetual, irrevocable, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Operational data, provided that, Passport 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.

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.

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. Passport must secure such data in accordance with PCI-DSS. As such, Passport may not grant Provider derivative rights to such PCI-DSS Information and Passport shall not be required to disclose such PCI-DSS Information to Provider.

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

D. Activity data is any data generated in the providing of services under this agreement by Passport to Provider 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 the Provider 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 Passport chooses in its sole discretion to expose such data through its administrative portal or as otherwise agreed upon with the Provider and only for the Provider's internal use in connection with the services provided under this agreement.

## 12. Privacy Policy; Terms of Use

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

## 13. Intellectual Property

A. Passport grants Provider 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 Provider in this agreement are reserved to Passport.

B. Provider will not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the 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.

## 14. Publicity; Use of Names and Marks

Subject to the provisions of Section 19 (Confidentiality) below, the parties will have the right to publicly disclose that Passport is Provider's provider of the Software 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 use the name or marks of Provider, or reference the fact that Provider is a client of Passport, for business development purposes, as part of a portfolio or work, or in an illustrative list of clients.

## 15. Payment Gateway

Provider must supply a payment gateway for the payment of all fees by end users. Passport can provide payment gateway services and Exhibit B contains a list of other payment gateways supported by Passport. For any unsupported payment gateway selected by Provider, Passport will charge a two hundred and fifty dollar (\$250.00) per development hour necessary to perform necessary integrations. Provider will bear all costs associated with payment gateway services, including all per transaction costs. Provider may elect to

use Passport's payment gateway at any time (which shall be reflected in a written amendment to this Agreement) at the rate of \$0.05 per transaction.

#### 16. Payment Terms

If Passport is the Merchant of Record ("MOR"), Passport will remit the funds to Provider from the preceding month within fifteen (15) days of the conclusion of the month after netting out Passport's fees and merchant processing fees.

If Provider is the MOR, Passport will send monthly invoices to Provider for all fees payable to Passport that accrued during the preceding month. If Provider fails to remit payment according to such invoices within thirty (30) days after the date on the invoice, Passport will have the right to suspend Provider's access to the software and/or assess interest at the rate of 18% per annum on the delinquent balance, or the maximum rate permitted by state law, if lower, until such delinquent balance is paid.

#### 17. Refunds

Passport agrees to forgo or return, as applicable, its per transaction fees for any refund granted by Provider. Provider will be responsible for reimbursing Passport for all merchant processing fees, including without limitation payment gateway fees, settlement fees, and interchange reimbursement fees, if any, incurred by Passport for all transactions, including refunded transactions.

#### 18. Capacity

Provider represents and warrants that it has obtained or will obtain all applicable governmental approvals, authorizations, or licenses necessary to enter into this Agreement. Provider further represents and warrants its signatory is duly authorized to bind Provider to the terms herein.

#### 19. Confidentiality

A. Provider and Passport 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 Provider 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 Provider.

#### 20. Wallet Services

Provider may elect to provide parking customers with a virtual wallet (a "wallet program"). With a wallet program, parking customers would be required to prepay funds into a wallet account for the payment of future parking fees and/or transit ticket fares. Provider and Passport shall agree in advance on the minimum amount required to fund the wallet.

#### 21. Marketing and Design Services

At Provider's request, Passport may provide marketing and design services to Provider as value-added services to Provider in connection with the services provided under this Agreement. Provider should contact its Passport sales associate for additional details pertaining to these services. Any services selected and any applicable fees and terms will be memorialized in a written addendum to this Agreement and shall be incorporated herein by reference.

#### 22. Cooperative Purchasing

Provider will allow any public agency located in the United States to purchase, and Passport to offer to such public agency or agencies, the Software at the same price and under the same conditions agreed upon in this Agreement without any competitive bidding on the part of such public agency or agencies, to the extent permitted by law. Each such public agency will execute its own contract directly with Passport and Provider shall not incur any responsibility—financial or otherwise—in connection therewith.

#### 23. Force Majeure

Neither Passport nor Provider 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.

#### 24. Disclaimer of Warranties

The Software is provided to Provider by Passport “as is” and with all faults. Provider acknowledges and agrees that Passport bears no liability for any error, omission, defect, deficiency, or nonconformity within the Software except as expressly provided in this Agreement. Other than as specifically set forth herein, Passport does not make any representations, warranties, or guarantees, express or implied, directly or indirectly, including, without limitation, any warranty of condition, merchantability, or fitness for a particular purpose or use, with respect to, arising out of, or in connection with the Software and related services to be performed pursuant to this Agreement.

#### 25. Severability

If any provision of the agreement is found to violate applicable law, the violating provision will be ineffective only to the extent that it violates the law, without invalidating the remainder of the section containing the violating provision or any other provisions or sections of this Agreement. Any court or arbitrator adjudicating the matter of the invalidity of a provision shall, to the extent permitted by law, reform any such illegal or unenforceable provision such as to give it the maximum effect.

#### 26. Assignment

This Agreement and all of its provisions will be binding upon and inure to the benefit of the parties and their respective permitted successors and assignees. Neither Passport nor Provider may assign any rights, interests, or obligations hereunder without prior written consent of the other party, provided, however, that Passport may, without such written consent, assign this agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this agreement, or in the event of its merger, consolidation, change in control or similar transaction. 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.

#### 27. Contractual Silence

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

#### 28. Amendments

The parties may not amend or modify this agreement except by a written instrument signed by an authorized signatory of each party.

#### 29. Currency

Unless otherwise specified in the Agreement, all fees and other monetary amounts are in U.S. Dollars. If a currency other than the U.S. Dollar is specified, the exchange rate will be fixed at the foreign exchange rate published by the United States Federal Reserve on the date the payment of remittance is transmitted from Provider to Passport, or vice versa, as the case may be.

#### 30. Cooperate

If either Provider or Passport has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this agreement, the parties agree to cooperate in good faith to achieve a satisfactory resolution of such matter. If after sixty (60) days the dispute remains unresolved, the parties may pursue other remedies available at law or in equity. Notwithstanding the foregoing, either party shall have the right to immediately seek any applicable remedies available at law or in equity for a breach or threatened breach of the confidentiality obligations as set forth in Section 19.

### 31. Independent Contractor

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

### 32. Limitation of Liability

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

### 33. Notices

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

If to Passport:

Passport Labs, Inc.  
Attn: Khristian Gutierrez  
128 S. Tryon St., Suite 2200  
Charlotte, NC 28202  
Fax: (888) 804-1783  
[khristian.gutierrez@passportinc.com](mailto:khristian.gutierrez@passportinc.com)

With a hard copy to General Counsel and by email to [jason.Idilbi@Passportinc.com](mailto:jason.Idilbi@Passportinc.com)

If to Provider at the contact information provided on the "General Terms" page.

### 34. Construction

No rule of law that requires that any part of the Agreement be construed against the party drafting the language will be used in interpreting this Agreement.

### 35. Waiver

Any failure or delay by Passport to enforce the provisions of this Agreement shall in no way constitute a waiver by Passport of any contractual right hereunder, unless such waiver is in writing and signed by Passport.

36. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, representations or agreements between the parties, whether verbal or written, including any printed terms and conditions which may appear on either Party's purchase orders, releases, invoices or other forms to the extent such terms are different from or inconsistent with this Agreement.

Exhibit B  
Supported Payment Gateways

1. Authorize.net
2. Cash Net
3. Chase Paymentech (Orbital) - US / Canada
4. Converge (Elavon)
5. DataCash - United Kingdom
6. Desjardins - Canada
7. FirstData Rapid Connect
8. FIS Pay
9. Heartland
10. Internet Secure
11. Moneris - US / Canada
12. Point and Pay
13. TD Beanstream/Bambora
14. Vantiv
15. WorldPay (Securenet)



## Memorandum

**To:** Chairman Flower and Public Works Committee  
**CC:** Dave Nord, City Administrator

**From:** Sylvia Mullally, Parking Manager

**Re:** Agenda Item #11 Discussion/Recommendation-New Revenue Initiative  
August Thursdays Park-N-Walk Day

**Date:** July 3, 2019

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### **New Revenue Initiative**

Staff is requesting that the committee consider closing Wrigley from Visitors Center to Boat Launch as a Park-N-Walk Day.

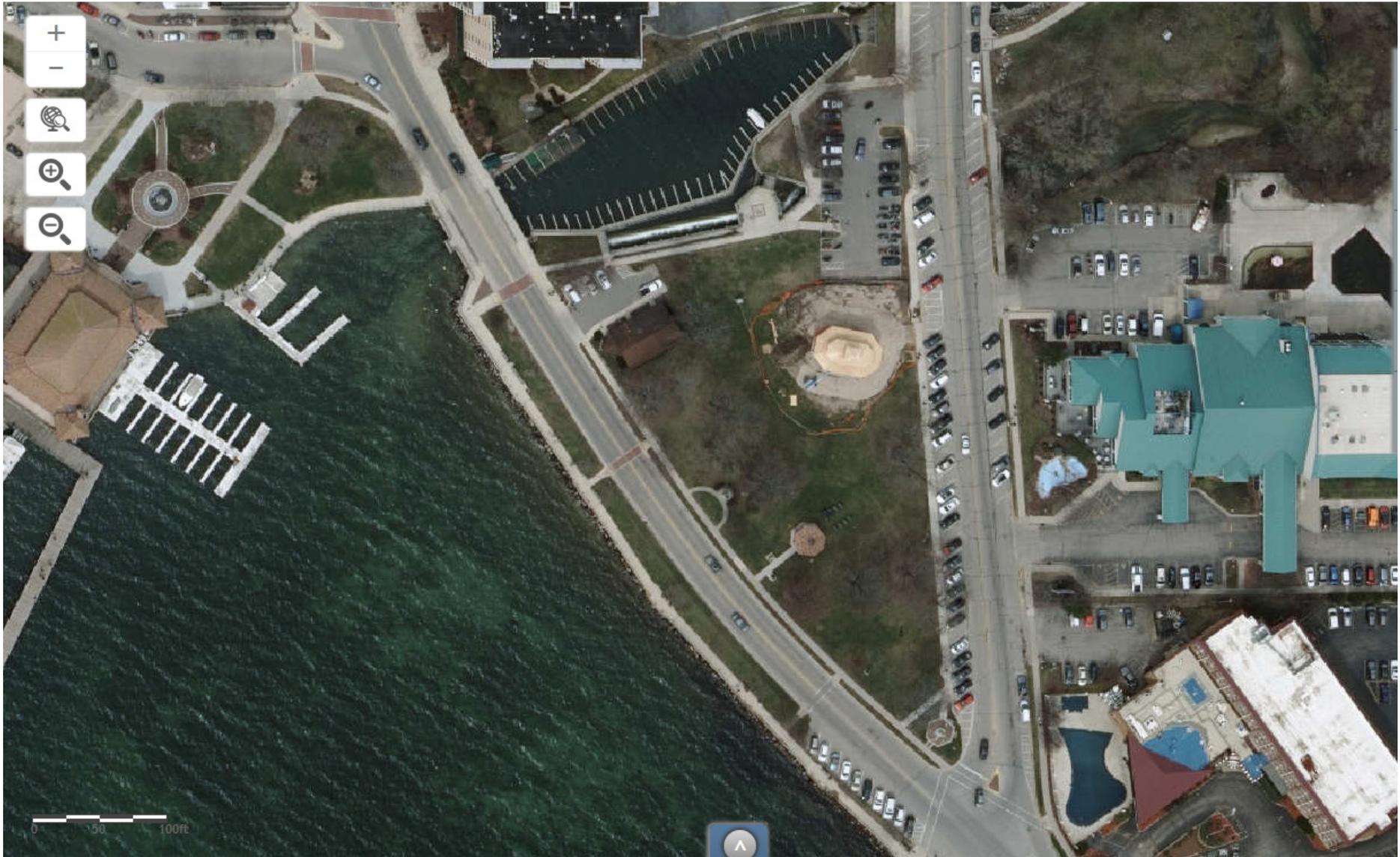
### **Recommendation**

- Proven concept-configuration has been prove successful during Venetian/Scooter
- Allows diversification of vendors to Wrigley who might not have lakefront property
- Compromise with Brooks Initiative
- Complements Music in the Park
- Complements Food and Craft vendors with temporary permits
- Does not lose parking revenue or parking spaces for public

### **New Revenue**

- The City would have potential to create new revenue by renting street space
- 10x10 space estimated at \$50 to \$100
- Potential of 20-40 rental space areas
- Potential of new revenue of \$1,000 to \$2,000 per Thursday

# Item #11 - New Revenue



# August Thursdays Park-N-Walk Days



## Wrigley Closure on Thursdays

- Proven configuration used – Venetian/scooter fest
- Compromise on the Brooks Initiative
- Complement to Music in Park Events
- Complement to food truck already permitted
- Fulfills Lakefront Historical Park Study-Br/Ct. on Elm Park/Flat Iron
- **“increasing usefulness of park/lakefront”**
- No significant loss of revenue
- New Revenue can be generated

# August Thursdays Park-N-Walk Days



## Opportunity to Generate New Revenue

- 300 Ft. space for renting to vendors/ community groups
- 10x10 ft. booths w/4ft. btw at \$50-\$100 per Thursday
- Potential of 20-40 booths (both street sides)
- **Potential of \$1,000-\$2,000 per Thursday**

# Item #11 - New Revenue



## Opportunity to Generate New Revenue

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