

**Explanation of Consent Agenda Item E.2.c.(6) December 16, 2015**

**ITEM:**

**Consideration of authorizing staff** to renew Smart Marketing Concept's (SMC) contract with the Port for the on-line parking reservation system, under automatic renewal for the third year of five (5) one-year renewal options.

**EXPLANATION:**

A formal solicitation process authorized by the Commission was undertaken by staff in 2012 and ultimately resulted in a contract approved by the Commission in October 2012. The contract term is a one year base term effective December 20, 2012 with five one-year renewal options. This request is for the third year renewal option effective December 20, 2015.

The online reservation system provided by SMC is operational and functional to suit the needs of the Port. Guests are able to make payment for parking online, which allows us to expedite arriving guests in a timelier manner. The system also generates the types of reporting that our finance department prefers, which allows compatibility in report sharing for fiscal reporting and comparisons. SMC support takes our requests seriously and resolves issues in a timely manner.

Staff is requesting a one year renewal of the SMC contract.

**Funding Review by Finance (Pat Poston):**

This item is an operational cost and is included in the FY16 Operating Budget.

**Staff recommends approval.  
Prepared by Brian Blanchard**

**SMC Software  
CRUISE PORT PARKING  
Reservations Service Agreement**

THIS AGREEMENT is entered into this 20 day of DECEMBER 2012 (the "Effective Date"), by and between SMC Software ("SMC"), a Florida corporation, located at 120 East State Street, Suite 104, Oldsmar, FL 34677 and Canaveral Port Authority ("CLIENT") located at 445 Challenger Rd, Suite 301, Cape Canaveral, FL 32920.

**RECITALS**

A. CLIENT is engaged in the business of providing a service for parking vehicles at Canaveral Port Authority Cruise Terminal Facilities.

B. SMC is engaged in the business of providing a web-based Centralized Reservations System (CRS) to the parking industry through its proprietary, patent-pending software.

C. CLIENT wishes to engage in the CRS services provided by SMC.

NOW THEREFORE, for and in consideration of the mutual covenants and undertaking herein and of other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties agree as follows:

**1. SERVICES BY SMC**

Beginning on the Effective Date:

1.1 Reservation Services: SMC agrees to provide CLIENT with a real-time CRS for CLIENT's website(s) and channel(s).

1.2 Data Maintenance and Reports: SMC agrees to provide CLIENT access to view/modify rates, inventory, products, policies and channels. SMC will grant real-time access to view standard reports of CLIENT's account activity.

1.3 Training: SMC agrees to provide CLIENT with system training (to be scheduled by CLIENT) following the implementation date.

1.4 Support: SMC agrees to provide CLIENT with 24/7 support to CLIENT for any system interruptions.

1.5 Integration: SMC agrees to provide system integration into a PARC'S system.

**2. OBLIGATIONS OF CLIENT**

Beginning on the Effective Date:

2.1 CLIENT agrees to pay SMC in accordance to the pricing as set forth on Exhibit A.

2.2 CLIENT agrees to pay net confirmed reservations charges promptly upon invoice but in no event later than thirty (30) days following date of invoice. CLIENT agrees to pay late charges of 1.5% per month for any delinquency in payment and fifty (50) dollars for all checks returned from

SMC's banking institution due to Non-Sufficient Funds (NSF).

2.3 CLIENT agrees to offer its product through SMC's CRS on such terms and conditions as it offers to the general public.

2.4 CLIENT agrees to have a high-speed connection to access SMC's CRS.

2.5 CLIENT agrees (*if applicable*) to process all prepaid reservation transactions through a virtual payment gateway designated by SMC.

### **3. TERMS AND TERMINATION**

3.1 This Agreement shall commence on the Effective Date and shall continue in force for a period of One (1) year with Five (5) one year options unless terminated earlier as provided herein. The one year options are at the discretion of the Canaveral Port Authority.

3.2 This Agreement shall renew for additional periods of one (1) year at the end of the term unless notice of non-renewal is sent from one party to the other at least thirty (30) days prior to the end of current term.

3.3 This Agreement may be terminated upon written notice in the event of non-payment or any other default in the terms hereof and following the failure of the defaulting party to timely cure thirty (30) days the specified default.

3.4 This Agreement supersedes all existing contracts or agreements, written or oral, between the parties hereto.

3.5 If either party terminates the Agreement, upon termination CLIENT must immediately cease all use of the Software, and (a) destroy all copies of the Software and Software documentation in your possession, or (b) return the Software and documentation according to the instructions by SMC. Upon termination, SMC will close CLIENT'S account, disable access to portions of the Software for which the usage rights have been terminated, and provide CLIENT with an electronic file of the Customer Data in a comma separated value (.csv) format. CLIENT acknowledges that after the thirtieth (30th) day following any such termination, SMC has no obligation to retain the Customer Data and may delete and destroy such Customer Data without providing CLIENT with notice of such deletion. After the thirtieth (30th) day following any such termination, SMC shall have no obligation to maintain any data stored in CLIENT's account or to forward any data to CLIENT or any third party.

### **4. CONFIDENTIAL INFORMATION AND CONFIDENTIAL MATERIALS:**

4.1 In consideration of CLIENT's exposure and participation in the proprietary web-based application programs of SMC, the parties hereto agree as follows:

(a) "Confidential Information" means nonpublic information that SMC designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, smartLUIS™, and other web-based software programs of SMC, information relating to released or unreleased SMC products, the marketing or promotion of any SMC product or service, SMC business policies or practices, and information received from others that SMC is obligated to treat as confidential.

(b) The term "Confidential Information" shall not be deemed to include information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party,

generally known or available; (ii) is known by the receiving Party at the time of receiving such information from the other Party as evidenced by its records; (iii) is rightfully furnished to the receiving Party by a third party without restriction on disclosure subsequent to the time it is disclosed to the receiving Party by the other Party; (iv) is independently developed by employees or agents of the receiving Party without the use of or reference to any information disclosed by the other Party, as shown by the receiving party's written records; or (v) is the subject of a written permission to disclose provided by the disclosing Party.

(c) "Confidential Information" shall mean all information disclosed by SMC to the CLIENT, containing Confidential Information, including without limitation smartLUIS™, whether in oral, written, graphic or electronic form, including, but not limited to, any information, idea, know-how, process, technique, algorithm, program, designs, drawing, formula or test data relating to any research project, work in process, future development, engineering, manufacturing, marketing, servicing, financing or personnel matter relating to the disclosing Party, its present or future products, sales, suppliers, CLIENTs, customers, employees, investors, or business, and information the disclosing Party provides regarding third parties.

(d) CLIENT will receive User ID/Password for access to smartLUIS™ to and manage rates, inventory, policies and/or view reports and reservation transactions as applicable for all Booking Channels. CLIENT shall be responsible for maintaining the confidentiality of CLIENT's ID/password and will be solely liable for all actions taken via CLIENT's account and under CLIENT's ID/password, whether or not made with CLIENT's knowledge or authority.

(e) All Confidential Information and Confidential Materials are and shall remain the property of SMC. By disclosing information to CLIENT, SMC does not grant any express or implied right to copyrights, trademarks, trade secret information or software reengineering.

(f) Non-Disclosure of Confidential Information. Neither CLIENT, nor any of its officers, directors, employees or agents shall directly or indirectly, during or after the term of this Agreement, divulge or use for the benefit of any other person, persons, partnership, association or corporation SMC's Confidential Information as defined herein. CLIENT and any of its officers, directors, employees or agents will NOT disclose to any third party, without prior written consent of SMC, any current feature, new or non-public functionality made under or relating to this Agreement or any proprietary or confidential information obtained from SMC under this Agreement, including trade secrets, intellectual property and confidential or other information which may be proprietary to SMC, all of which shall be subject to the CONFIDENTIAL INFORMATION AND CONFIDENTIAL MATERIALS described in Section 4 hereof.

4.2 For greater efficiency and for the benefit of users, SMC may at any time and without prior warning unilaterally modify the services it provides or the operational, technical or usage conditions of the Services. Similarly, with a view to improving the service and establishing an optimum quality level (the ultimate aim of SMC), CLIENT is invited to suggest any modifications in writing they may consider useful by contacting the person(s) responsible for the maintenance and support of service at the following email address: support@smcsoftware.com.

a) SMC reserves all right, title, and interest in the smartLUIS™ Marks and the smartLUIS™ CRS and TMS software applications, along with any intellectual property rights associated with any of the foregoing, and no title or ownership of any of the foregoing is transferred to CLIENT or any other entity or person under this Agreement.

b) CLIENT is only permitted to use smartLUIS™ and the Services for the purpose for which they are provided, in the course of this agreement. CLIENT shall not use smartLUIS™ or the Services for personal gain and CLIENT may not sell or provide access to smartLUIS™ to any third

party, or otherwise profit from, any of the Services.

c) CLIENT must keep User ID and Password details strictly confidential and secure at all times. CLIENT shall not disclose them to anyone or allow anyone else to use them. SMC cannot be held responsible for any use made of smartLUIS™ and/or any bookings made or services used on or through it as a result of CLIENT not keeping User ID and Password details secure and confidential. If CLIENT knows or suspects that someone else knows CLIENT's assigned User ID and Password details, and/or is making unauthorized use of User ID and Password, CLIENT agrees to notify SMC immediately by contacting the person(s) responsible for the maintenance and support of service at the following email address: support@smcsoftware.com.

d) No competitors or future competitors will be permitted access to smartLUIS™ CRS

e) CLIENT shall not copy, record, publish, extract, scrape, replicate, reproduce, use or resell, modify, merge, supplement, reverse engineer, reverse assemble, decompile or disassemble the smartLUIS™ software application or cause or permit the copy, record, publish, extract, scrape, replicate, reproduce, use or resell, modify, merge, supplement, reverse engineer, reverse assemble, decompile or disassemble of the smartLUIS™ software application.

f) CLIENT agrees not to copy, record, publish, extract, scrape, replicate, modify, reproduce, use or resell, for any competing commercial purpose any data presented on smartLUIS™. SMC may, at its sole discretion, immediately terminate access to smartLUIS™ should any employees or agents of the CLIENT or CLIENT's conduct fail to conform to any of these Terms.

g) The Canaveral Port Authority will retain all pricing controls at all times and have the capability of changing at anytime without any approvals.

## **5. MISCELLANEOUS**

5.1 Neither party shall be liable to the other for indirect, special or consequential damages for loss of revenue, profits, or data, arising in connection with this Agreement, even if advised of the possibility of such damages.

5.2 Neither party makes any express or implied warranties or representation with respects to its services or any products sold through the Agreement (including, without limitation, warranties of fitness for particular purpose, merchantability, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition neither party makes any representation that the operation of business or services will be uninterrupted or error-free, and neither will be liable to the other for the consequences of any interruptions or errors.

5.3 Each party acknowledges that the other may not at any time, directly, or indirectly, solicit customer referrals on terms that may differ from those contained in this Agreement.

5.3 Each party has independently evaluated the desirability of participating in this Agreement and is not relying on any representation, guarantee, or statement other than as set forth in this Agreement.

5.4 This Agreement may not be transferred or assigned by CLIENT or SMC without the prior written consent of the other. Notwithstanding the foregoing, this Agreement will be binding on, insure to the benefit of, and be enforceable against the parties hereto and their respective successors and assigns.

5.5 Failure to enforce the strict performance of any provision of this Agreement will not constitute

a waiver or modification of any right to subsequently enforce such provision of, or any other provision of this Agreement.

5.6 SMC and CLIENT are independent contractors and nothing herein contained shall be deemed to place any of the parties in the relationship of partners, co-owners, employer/ employee or joint ventures. This is merely an agreement to provide reservations and related services.

5.7 The parties agree that any dispute under this Agreement will be subject to binding arbitration before one (1) arbitrator under the commercial rules of the American Arbitration Association in the county of Brevard in the State of Florida.

5.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

5.9 If any action is brought by a party to this Agreement arising out of or related to this Agreement, the prevailing party in such action shall be entitled to a judgment or award of its reasonable attorney fees and all costs of prosecution, including, but not limited to, filing and witness fees.

5.10 This is the entire Agreement between the parties and may only be amended in writing signed by both parties.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed and delivered this Agreement on the day and year first written above.

**SMC Software**

By: M. J. Harley

Name: Michael J. Harley

Title: President/COO

Date: 12-20-12

**Canaveral Port Authority**

By: [Signature]

Name: J. Stanley Payne

Title: CEO

Date: 12/18/12

**Exhibit A**

**Website CRS**

**One-time set-up fee \$0.00**

**Transactional fee \$1.50 per Net Confirmed Reservation**

**Facebook CRS**

**One-time set-up fee \$0.00**

**Transaction fee \$1.50 per Net Confirmed Reservation**

**Channel CRS**

**One-time set-up fee \$0.00**

**Transactional fee \$1.50 per Net Confirmed Reservation**

**Mobi-site CRS**

**One-time set-up fee \$0.00**

**Transactional fee \$1.50 per Net Confirmed Reservation**