



7737 Kenamar Court
San Diego, CA 92121
ipsgroup.com
858-4040-0607

CUSTOMER AGREEMENT

Date Created:
11/15/2023

Created For:
City of Laredo, TX

AGREEMENT TO PURCHASE PARKING TECHNOLOGY AND RELATED SERVICES

This Agreement To Purchase Parking Technology And Related Services ("Agreement") is made effective ____ 11/15/2023____ (the "Effective Date"), by and between CITY OF LAREDO, TEXAS , a MUNICIPALITY (the "MUNICIPALITY"), and IPS GROUP, INC., a Pennsylvania corporation ("IPS"), with reference to the following:

RECITALS

- A. MUNICIPALITY is a duly organized and validly existing under the laws of the State of Texas with the power to carry on its business as it is now being conducted under the statutes of the State of Texas
- B. IPS is a Pennsylvania corporation that is qualified to do business in the State of Texas. IPS markets and supports a variety of parking technologies, hardware, software and related services.
- C. MUNICIPALITY and IPS desire to enter into this Agreement for IPS to deliver and install its parking technology hardware (the "Equipment") and related software services (the "Services", and collectively "Equipment and Services") to the MUNICIPALITY upon the terms and conditions set forth below. The Equipment and Services are described in Attachment A.

Now, therefore, the parties agree as follows:

TERMS AND CONDITIONS

1. Term of Agreement.

- 1.1. **Initial Term.** The term of the Agreement means the period from the Effective Date above and will be in effect for a period of five (5) years ("Initial Term").
- 1.2. **Option to Extend.** MUNICIPALITY shall have the option to extend the term of the Agreement for five (5) additional one (1) year increments, for a total period of ten (10) years. MUNICIPALITY shall notify IPS of its intention to exercise the option to extend the Agreement at least ninety (90) days prior to the end of each such term, absent which the term shall automatically renew for the next one (1) year period.

2. IPS Services.

- 2.1. **Scope of Services.** IPS agrees to diligently undertake, perform, and complete all of the services described in Attachment A as directed by the MUNICIPALITY. In the case of any conflict, the Terms and Conditions section of this agreement shall supersede information contained in the Attachments or Exhibits contained herein.

3. MUNICIPALITY Services & Responsibilities. The MUNICIPALITY agrees to:

- 3.1. Make available to IPS any currently existing documents, data or information required for the performance of this Agreement, including any material updates therein.

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- 3.2. Designate a representative authorized to act on behalf of the MUNICIPALITY.
 - 3.3. Keep, at its own cost and expense, the Equipment in good repair, condition and working order, adhering to any requirements for preventative maintenance.
 - 3.4. Notify IPS of any need for customer service support or warranty repair work and will coordinate the return process with IPS.
 - 3.5. Comply with applicable national, state, and local laws and regulations in any way relating to the possession or use of the Equipment and Services.
- 4. Equipment Delivery, Installation and Acceptance.**
- 4.1. IPS shall deliver new, fully tested Equipment. No used or previously owned Equipment will be allowed unless otherwise agreed to in writing by the MUNICIPALITY.
 - 4.2. Delivery and installation of all Equipment will take place during standard business hours.
 - 4.3. Unless otherwise stated to the contrary, all prices for delivery of Equipment are FOB San Diego.
 - 4.4. Unless otherwise notified in writing, the Equipment shall be deemed accepted by the MUNICIPALITY and to its satisfaction no later than ~~fifteen~~ (150) business days following completed installation or thirty (30) days following delivery, whichever occurs first.
- 5. Compensation**
- 5.1. The MUNICIPALITY will compensate IPS for the IPS Equipment and Services, as set forth in Attachment B.
 - 5.2. MUNICIPALITY further agrees to pay to IPS the amounts specified in Attachment B on a Net 30 basis from the date of invoice.
 - 5.3. For any merchant accounts held by IPS for the benefit of the MUNICIPALITY, IPS shall be entitled to withhold any banking, interchange, gateway, convenience, service, merchant account, or other monthly fees when remitting a monthly net amount to the MUNICIPALITY.
 - 5.4. Payment for the Equipment shall be due and paid upon delivery of each batch or invoiced line item of Equipment to the MUNICIPALITY.
 - 5.5. MUNICIPALITY agrees to promptly notify IPS in writing of any dispute with any invoice, and those invoices for which no such notification is made within 10 business days after receipt of the respective invoice shall be deemed accepted by the MUNICIPALITY.
 - 5.6. MUNICIPALITY shall pay interest on any invoices amounts which are unpaid after 45 days at a rate of 1.5% per month (18.0% per year, effective rate) and the maximum allowable by law, whichever is less, from the date such amounts become due. For amounts that are in excess of 90 days past due, MUNICIPALITY agrees to pay all costs incurred by IPS to collect any overdue amounts.
 - 5.7. All-pricing excludes any taxes that may be applicable to the MUNICIPALITY. Any applicable taxes will be added to invoices and will be paid by the MUNICIPALITY on submission of an invoice. Exemption from the payment of applicable taxes shall be provided by the MUNICIPALITY in writing. The MUNICIPALITY warrants that it is a corporate and political body under the laws of the state of Texas and that it claims exemption from state and use taxes under Texas Tax Code Am.

S151309 as amended. MUNICIPALITY shall provide Exemptions Certificates to IPS, upon request. MUNICIPALITY further warrants that it does not pay personal property taxes or similar taxes and governmental charges associated with the ownership, possession or use of the Equipment, subject to this Agreement, which IPS may be required to pay, or reimburse IPS for any charge. - The MUNICIPALITY indemnifies IPS against any claim for payment of any such taxes.

- 5.8. IPS shall have the right to adjust Agreement pricing due to increases in Inflation as published by the US Bureau of Labor Statistics for All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. MUNICIPALITY Average compounded annually. Such pricing adjustments shall require 30 days' prior notice.

6. Risk and Title.

- 6.1. IPS shall bear risk of loss of the Equipment, including any damage sustained during transportation to the delivery site. Risk in the Equipment shall pass to MUNICIPALITY upon delivery. Transfer of title to Equipment shall only pass to MUNICIPALITY upon full payment for the Equipment.

7. Warranties.

- 7.1. IPS shall provide a limited 12-month warranty on the Equipment as described in Attachment C, being the IPS Limited Warranty. Extended warranties are available for an additional fee.
- 7.2. IPS shall provide technical support via telephone Mondays through Fridays from 8:00 AM to 4:00 PM PST. IPS can provide on-site services at the MUNICIPALITY's request. Lead times and costs for such services will be provided at the time of the request. IPS shall ensure the availability of current manuals and shall provide all manuals for any future upgraded or new services to the MUNICIPALITY.
- 7.3. Wireless Coverage & Longevity: IPS does not operate a mobile wireless network, but relies on third party carriers for this service. MUNICIPALITY agrees that it is not a 3rd party beneficiary from any agreements between IPS and its carrier partners, and as there is no direct contract between the MUNICIPALITY and the carrier for this Agreement, the wireless carrier shall have no liability of any kind created by this Agreement. Carriers from time to time may change coverage areas, wireless technology platforms or make other network changes that are not within the control of IPS. During the term of this Agreement, IPS shall provide the MUNICIPALITY the ability to upgrade or change carriers as needed at the prices contained herein or at such prices as may be agreed. Any such change or upgrades shall be at the sole cost and discretion of the MUNICIPALITY.
- 7.4. IPS warrants that the software Services will substantially conform to the applicable scope of work. IPS does not warrant that the software Services will operate uninterrupted or error-free. IPS will use commercially reasonable efforts to deliver to the MUNICIPALITY software Services free from any viruses, programs, or programming devices designed to modify, delete, damage or disable the software Services or MUNICIPALITY data.
- 7.5. MUNICIPALITY warrants that it shall not share usernames or passwords to allow any 3rd party, including but not limited to consultants, agents, or any other individuals, to gain access to Equipment and Services of any kind without the written permission of IPS. MUNICIPALITY further agrees to not do anything that could potentially compromise the security of IPS Equipment and Services or use IPS Equipment and Services in any manner which could violate local, provincial,

state or federal law.

7.6. THE WARRANTIES CONTAINED IN THE AGREEMENT DOCUMENTS ARE IPS'S SOLE AND EXCLUSIVE WARRANTIES. IPS AND ITS 3RD PARTY SUPPLIERS PROVIDE SOFTWARE SERVICES "AS IS". THE EXTENT OF IPS'S LIABILITY FOR A WARRANTY CLAIM IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE EQUIPMENT OR DEFECTIVE SOFTWARE SERVICE. IPS DOES NOT PROVIDE ANY WARRANTY OF ANY KIND WITH REGARDS TO 3RD PARTY EQUIPMENT, WIRELESS COVERAGE OR SOFTWARE SERVICES, WHETHER SUPPLIER IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE. IPS AND ITS 3RD PARTY SUPPLIERS AFFIRMATIVELY EXCLUDE ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE EQUIPMENT AND/OR SERVICES PROVIDED INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT IPS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) WHETHER ARISING BY LAW OR BY REASON OF CUSTOM OF THE TRADE.

7.7. The provisions of this Section will survive expiration or termination of this Agreement.

8. Intellectual Property and Ownership.

8.1. IPS represents and warrants that it owns or has acquired all requisite rights and licenses to use all intellectual property embodied, practiced or employed in IPS Equipment and Services being used by the MUNICIPALITY pursuant to this Agreement.

8.2. IPS hereby grants the MUNICIPALITY, including its departments, commissioners, officials, officers, employees, consultants, and agents (collectively, "MUNICIPALITY") all the rights and licenses required to use IPS Equipment and Services. Such rights and licenses are limited, non-assignable, non-transferable and non-exclusive, and solely for the MUNICIPALITY's internal use for the specific purposes of this Agreement.

8.3. All pre-existing and independently developed intellectual property (including copyrights), and any derivation thereof, including but not limited to designs, models, inventions, processes, methodologies, software, associated documentation, software upgrades, modifications and customizations, copyrightable material and other tangible and intangible materials authored, and combinations thereof, prepared, created, made, delivered, conceived or reduced to practice, in whole or in part, by IPS and provided to the MUNICIPALITY ("Pre-Existing and Independently Developed IP") will at all times remain the sole and exclusive property of IPS and/or its vendors. Nothing in this Section or elsewhere in this Agreement shall be construed as assigning, selling, conveying, or otherwise transferring any ownership rights or title in IPS's Pre-Existing and Independently Developed IP.

8.4. IPS understands the nature of public information and the requirement for the MUNICIPALITY to adhere to all rules and laws that apply to public information, such as the Freedom of Information Act, Public Records Act(s), and the like. Should the Municipality be obliged to disclose any information relating to the Equipment, the Services or any Confidential Information concerning IPS, the Municipality undertakes to give IPS prior written notice of its intention to do so and to afford IPS

sufficient time in which to launch injunctive proceedings.

8.5. The MUNICIPALITY agrees that it shall not knowingly agree, whether directly or indirectly, to sell, loan or rent any equipment or allow any third party to gain access to Equipment, software, back-office software, reporting or documentation provided by IPS for any purpose, including but not limited to the purposes of inspection, benchmarking or reverse engineering or evaluation without the prior written consent of IPS, or as mandated by applicable law or any binding order of Court.

8.6. The provisions of this Section will survive expiration or termination of this Agreement.

9. Confidential Information.

9.1. "Confidential Information" shall mean, without limitation, all strategic information, business plans, data, sketches, drawings, pictures, business records, customers lists, marketing plans, policies and procedures, pricing, product information, drawings, source code, API documentation, designs, specifications, information relating to processes, technologies, methodologies, concepts or theory and any or all other information which may be disclosed by the disclosing party to the recipient that may reasonably be considered to be proprietary and non-public data, including correspondence both written and verbal and identified as "confidential" or which could reasonably be determined as confidential.

9.2. The recipient acknowledges the competitive value and confidential nature of the Confidential Information and the damages that would result to the disclosing party if any such information were disclosed or misused, therefore, recipient will keep Confidential Information protected, utilizing the same level of care and discretion that is used by the recipient to protect similar sensitive information, and shall not be disclosed by the recipient in any manner whatsoever.

9.3. The recipient shall have no non-disclosure obligation hereunder with respect to any Confidential Information which (A) has been legally made public, other than by acts of the recipient in violation of this Agreement or (B) was or becomes independently known or available to the recipient, on a non-confidential basis, from a source other than the disclosing party and which is not subject to any restrictions or disclosure or (C) is independently developed by the receiving party, such independent development being reasonably documented or (D) is disclosed with written permission by the disclosing party or (E) is obligated to be produced where required by a court order.

9.4. The recipient shall notify the disclosing party promptly of any loss, misuse or misappropriation of the Confidential Information. Recipient agrees that no license, either expressed or implied, is hereby created or granted to recipient by disclosing party to use any of the Confidential Information. All rights and title to the Confidential Information shall remain in the disclosing party.

10. Dispute Resolution.

10.1. If any dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to meet and confer and negotiate in good faith prior to initiating a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum and to the extent possible, one senior level individual with decision making authority regarding the dispute. The purpose of this and any

subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation via a mutually agreed third party, with the cost of mediation equally shared between the MUNICIPALITY and IPS or as otherwise agreed to between the parties. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described above.

11. Termination of Agreement for Cause.

- 11.1. If either the MUNICIPALITY or IPS violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the aggrieved party may give the other party (the "responsible party") written notice of such failure or violation. The responsible party will correct the violation or failure within 30 calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party. The option to terminate will be at the sole discretion of the aggrieved party and shall not affect the aggrieved party's right to claim damages.

12. Termination of Agreement for Convenience.

- 12.1. If at any time during the term of this Agreement, the MUNICIPALITY is unable to budget funds to support this Agreement due to financial constraints, a declaration of bankruptcy or financial insolvency, the MUNICIPALITY may terminate this Agreement for convenience upon ninety (90) days written notice of such termination. Upon a termination for convenience, MUNICIPALITY waives any claims for damages, including but not limited to loss of anticipated revenues or profits. As IPS's sole remedy and MUNICIPALITY's sole liability, MUNICIPALITY will pay IPS in full for all outstanding invoices for Equipment provided and Services rendered on or before the date of termination for convenience, as well as reasonable costs incurred by IPS related to the labor, both direct and indirect, and materials used specifically in the process of terminating the Agreement for convenience.

13. Insurance.

- 13.1. IPS agrees to obtain and maintain during the term of this Agreement the following minimum insurance. Certificates of Insurance: Prior to commencing work under the Agreement, IPS agrees to furnish Certificates of Insurance coverage as set forth below. The premiums for such insurance shall be paid by IPS.

13.2. Commercial General Liability.

- i. Minimum Limits: IPS shall obtain minimum limits of \$1,000,000.00 each occurrence for bodily injury and property damage, \$1,000,000.00 general aggregate, \$1,000,000.00 products/completed operations aggregate, and \$1,000,000.00 personal and advertising injury. The general aggregate limit shall apply on a "Per Project" basis. These minimum limits may be obtained by a primary liability policy, umbrella/excess liability policy, or any combination thereof.
- ii. Additional Insured: If IPS is required to indemnify certain parties, then IPS shall include such indemnified parties as additional insureds under its Commercial General Liability Policy for

liability due to IPS's negligence resulting from IPS's work for the indemnified parties. A copy of the additional Insured endorsement shall accompany IPS's certificate of insurance.

13.3. Automobile Liability, including bodily injury and property damage coverage.

- i. Minimum Limits: IPS shall obtain minimum limits of \$2,000,000.00 each occurrence for all owned, hired, and non-owned vehicles written on a policy form equivalent to Insurance Services Office coverage form CA 0001. These minimum limits may be obtained by a primary liability policy, umbrella/excess liability policy, or any combination thereof.

13.4. Workmen's Compensation. IPS shall obtain Worker's Compensation in accordance with Federal and State Laws for all States in which work is performed.

- i. Waiver of Subrogation: IPS shall provide a waiver of subrogation with respect to workers compensation in favor of the MUNICIPALITY. A copy of the endorsement shall be attached to the certificate of insurance.

13.5. Employer's Liability Coverage. IPS shall obtain Employers Liability Coverage of at least \$1,000,000.00 each accident, \$1,000,000.00 disease policy limit and \$1,000,000.00 disease each employee.

13.6. Professional [E&O], Data Breach, and Cyber Liability. IPS shall maintain Professional (E&O), Data Breach Liability, and Cyber Liability coverage in the amount of not less than \$2,000,000.00 per claim. Coverage may be written on a claims made basis.

13.7. Cancellation: IPS shall provide to the Municipality 30 days' notice in the event of cancellation, termination, or non-renewal without replacement. This notice shall be 10 days in the event cancellation for non-payment of premium.

13.8. Carrier Rating: All carriers must have an AM Best rating of no less than A IX.

14. Indemnification and Limits of Liability

14.1. IPS agrees to defend with counsel reasonably acceptable to the MUNICIPALITY and indemnify MUNICIPALITY, its elected and appointed officials, officers, agents, employees, contractors and agents (collectively, the "Indemnified Parties") from and against losses, claims, expenses (including, but not limited to, reasonable attorneys' fees), costs, liabilities or damages (collectively, "Losses") arising from IPS's breach of its obligations under this Agreement, arising from IPS's acts or omissions, for any Losses incurred by or asserted against any one or more or all of the Indemnified Parties by reason of damage to property or injury to, or death of, any person, caused by the acts, omissions, or negligence of IPS, its employees, agents or contractors. IPS shall not be responsible for any Losses attributable to acts, omissions, or negligence of the Indemnified Parties, including misuse or abuse of IPS Equipment and Services, nor for any Losses arising directly or indirectly caused by acts of vandalism.

14.2. Notwithstanding the foregoing, this indemnification shall not apply to claims made by third parties in instances in which (a) IPS simply followed the directions or instructions provided by MUNICIPALITY; (b) MUNICIPALITY changed, modified or altered the services rendered or tasks performed by IPS such that, absent MUNICIPALITY's actions, no such claims would have been

brought against IPS and/or MUNICIPALITY; or (c) the claims asserted by a third party derive from the combination of technology and/or intellectual property of IPS when used with MUNICIPALITY's owned or licensed technology and/or intellectual property such that, absent such combination, no such claims could have independently been brought by or against IPS.

14.3. In order for MUNICIPALITY to obtain the indemnification from IPS specified herein, MUNICIPALITY must: (a) promptly notify IPS in writing of the claims for which indemnification is sought; (b) provide IPS with copies of all pleadings, writings and documents pertaining to such claim; (c) permit IPS to control the defense of such claim and all settlement discussions in regards to resolving such claim; and (d) provide reasonable cooperation to IPS in regards to the litigation or negotiation of a resolution of such claim. Notwithstanding the foregoing sentence, IPS will not enter into any settlement without MUNICIPALITY's prior written consent, unless all third party claims against MUNICIPALITY are released without any further liability on MUNICIPALITY's part. This paragraph shall survive the termination or expiration of this Agreement.

14.4. Nothing in this Agreement shall constitute any form of real or implied revenue guarantee by IPS.

14.5. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, ANTICIPATED RENVUES OR OTHER MONETARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY ACTIONS OR OMISSIONS WITH RESPECT THERETO, WHETHER OR NOT ANY SUCH MATTERS OR CAUSES ARE WITHIN A PARTY'S CONTROL OR DUE TO NEGLIGENCE OR OTHER FAULT ON THE PART OF A PARTY, ITS AGENTS, AFFILIATES, EMPLOYEES OR OTHER REPRESENTATIVES (INCLUDING ANY CLAIMS ARISING FROM INTERRUPTION OF OR OTHER DEFICIENCIES IN WIRELESS OR INTERNET SERVICES), AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN TORT, CONTRACT, BREACH OF WARRANTY OR OTHERWISE. THE TOTAL CUMMULATIVE LIABILITY INCURRED BY IPS IN CONNECTION WITH THIS AGREEMENT SHALL BE SOLELY LIMITED TO THE AMOUNT PAID TO IPS IN AN AMOUNT EQUAL TO THE PRECEDING 6 MONTHS TOTAL FEES PRIOR TO THE CLAIM.

14.6. Both Parties acknowledge that the Limitations of Liability set forth above are fundamental elements of this Agreement, without which neither Party would not have entered into this Agreement.

15. Liens and Taxes.

15.1. MUNICIPALITY shall keep the Equipment free and clear of all levies, liens, and encumbrances, except those created by this Agreement. MUNICIPALITY shall pay, when due, all charges and taxes (local, state, and federal), which may now or hereafter be imposed in conjunction with this Agreement.

16. Notices.

16.1. All notices under this Agreement must be in writing, shall refer to the title and effective date of this Agreement, and shall be sufficient if given personally, sent and confirmed electronically, or mailed certified, return receipt requested, postage prepaid, and at the address hereinafter set forth or to

such address as such party may provide in writing from time to time. Any such notice will be deemed to have been received five days subsequent to mailing. Notices shall be sent to the following addresses:

IPS:
IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121
Attn: Chad Randall
chad.randall@ipsgroupinc.com
tel: 858-4040-0607

MUNICIPALITY:
City of Laredo
1110 Houston Street
Laredo, TX 78040
Attn: Norma Ramirez
nramirez@ci.laredo.tx.us

17. Relationship of the Parties.

- 17.1. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association between the parties, and both Parties shall be and remain independent entities. Neither Party has the right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever, except as otherwise provided in this Agreement.

18. Assignment.

- 18.1. Should the MUNICIPALITY enter into an agreement with a third party for parking operations during the term of this Agreement, IPS shall provide that operator the same rights, terms, and conditions as included in this Agreement. Such assignment shall not be effective unless and until the MUNICIPALITY has provided notice to the IPS of such assignment, and any such third party will be required to adhere to all terms and conditions contained herein.
- 18.2. IPS may not assign, hypothecate or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of MUNICIPALITY, which shall not be unreasonably withheld.

19. General Provisions.

- 19.1 Waiver. A waiver of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No delay or failure on the part of either Party to insist on compliance with any provision of this Agreement shall constitute a waiver of such Party's right to enforce such provision, no matter the length of the delay. In the case of any granted waiver by the consenting Party, which must be provided in writing, such waiver shall not constitute a waiver of the same obligation or any other obligation under this Agreement.

- 19.1-19.2 ~~Waiver of defense. MUNICIPALITY does not and shall not waive or relinquish any immunity or defense on behalf of itself, its commissioners, officers, employees and agents as a result of the execution of this Agreement and the performance of the functions and obligations described herein.~~

- 19.2-19.3 Modification or Amendment. No oral modifications shall be effective and nothing shall be deemed as a modification of this Agreement unless provided in writing and signed by both Parties.

- 19.3 19.4 Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof. Understandings, agreements, representations or warranties not contained in this Agreement, or as written amendment hereto, shall not be binding on either Party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality or specifications of this Agreement shall be binding on either party without the written consent of both Parties.

- 19.4-19.5 Injunctive Relief. The Parties agree that a breach of the obligations in Section 8 ("Intellectual Property and Ownership") and Section 9 ("Confidential Information") may cause irreparable harm to the affected party, the amount of which would be impossible to ascertain, and that there is no adequate remedy at law. Notwithstanding the provisions of Section 10 ("Dispute Resolution"), and in addition to any other rights and remedies it may have, the affected Party shall have the right to

obtain an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any provision of this Agreement, and both Parties agree that no bond or other security shall be required in obtaining such equitable relief and consents to the issuance of such injunction and to the ordering of specific performance without proof of actual damages.

19.5. ~~19.6.~~ Integration. This Agreement may be executed in multiple counterparts each of which shall be deemed an original, but all of such taken together shall constitute only one Agreement, superseding all prior understandings, oral or written; and it is expressly understood, and that this Agreement does not obligate either party to enter into any other or further agreements.

19.6. ~~19.7.~~ Governing Law. This Agreement shall not be construed against either Party regardless of which Party drafted it. This Agreement shall be construed and enforced according to the laws of the State of Texas, without regards to conflict-of-laws principles, and all local laws, ordinances, rules, and regulations.

19.7. ~~19.8.~~ Venue and Jurisdiction. The MUNICIPALITY and IPS agree that the venue shall be in Webb County and Texas. Any litigation arising out of this Agreement may only be brought in either the United States District Court, or the ~~District~~ Superior Court of Texas, County of Webb appropriate. The Parties agree that venue exists in either court, or each Party expressly waives any right to transfer to another venue. The Parties further agree that either court will have personal jurisdiction over the Parties to this Agreement.

19.8. ~~19.9.~~ Attorney's Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce rights, judgments or otherwise pursue, defend or litigate issues, or any other controversy arises from this Agreement, the prevailing Party shall be entitled to recover from the other party and the other Party agrees to pay the prevailing Party, in addition to costs and disbursements allowed by law, such sum as the court, arbitrator or other adjudicator may adjudge reasonable as an attorney's fee in such suit, action, arbitration or other proceeding, and in any appeal. Such sum shall include an amount estimated by the court, arbitrator or adjudicator, as the reasonable costs and fees to be incurred in collecting any monetary judgment or award or otherwise enforcing each award, order, judgment or decree entered in such suit, action or other proceeding.

19.9. ~~19.10.~~ Force Majeure. If any Party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that Party, including, but not limited to, acts of God, war, civil disturbance, insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, flood or storm, labor disturbances including strikes or lockouts or epidemic, and failures of public utilities (such as internet, cellular network, and electricity), it shall not be in default in the performance of its obligations stated in this Agreement. Provided, however, any Party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the Party to which it is obligated within ten days following the event. If the notified Party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed Party, no time extension shall be granted. If any event of force majeure exists for a continuous period of more than 120 days, then either Party shall be entitled to terminate this Agreement without being liable for any

claim from the other Party.

~~19-10-~~19.11. Severability. If any provision in this Agreement subsequently is determined to be invalid, illegal or unenforceable, that determination shall not affect the validity, legality or enforceability of the remaining provisions stated in any section or sub-section of this Agreement unless that effect is made impossible by the absence of the omitted provision.

~~19-11-~~19.12. Authorization. Both Parties represent and warrant that the person executing this Agreement on behalf of each Party is an authorized agent who has actual authority to bind each Party to each and every term, condition, and obligation of this Agreement and that all requirements of each Party have been fulfilled to provide such actual authority.

~~19-12-~~19.13. Determination. Notwithstanding anything to the contrary, should either Party be required to make any determination in terms of this Agreement, such determination shall be made in a reasonable and objective manner without undue delay.

~~19-13-~~19.14. Binding Document. The MUNICIPALITY and IPS each binds itself, its partners, successors, assigns, and legal representatives to the other Party hereto in respect to all covenants, conditions, and obligations contained in the Agreement.

~~19-14-~~19.15. Section Headings. All section headings in this Agreement are for the convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

~~19-15-~~19.16. Survival of Provisions and Obligations. Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, will survive termination and remain effective for a reasonable time. Any obligation that accrued prior to termination of this Agreement will survive termination of this Agreement.

Signature page to follow:

In witness whereof, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST:

By: 

Jose A. Valdez, Jr.
City Secretary

APPROVED AS TO FORM:

By: 

Rodolfo Morafes, III
Assistant City Attorney



MUNICIPALITY:

By: 

Joseph Negb
City Manager

IPS GROUP, INC.,
a Pennsylvania corporation

By: 

Brian Webber
General Counsel

ATTACHMENT A – SCOPE OF SERVICES

INSERT SCOPE OF WORK

ATTACHMENT B – Pricing and Warranty

SINGLE-SPACE AND SENSORS

CAPITAL AND ONGOING COSTS

M5™ Capital Costs	New	Factory Certified*
M5™ IPS Credit Card-Enabled Single-Space Meter (12-month warranty, NFC contactless, RFID tag) Quantity 0-500	\$535.00	\$395.00
M5™ IPS Credit Card-Enabled Single-Space Meter (12-month warranty, NFC contactless, RFID tag) Quantity 501-1000	\$525.00	\$375.00
M5™ IPS Credit Card-Enabled Single-Space Meter (12-month warranty, NFC contactless, RFID tag) Quantity 1000+	\$515.00	\$355.00
Optional: Add BLE capability	\$65.00	\$65.00
Shipping (Ex Works – to be quoted based on ship to zip code)	TBQ	TBQ
Installation (to be quoted based on scope)	TBQ	TBQ
Optional: Extended Warranty (12-month period)	\$50.00	\$60.00
Optional: Extended Warranty (48-month period)	\$170.00	\$200.00

M5™ Ongoing Fees	Option 1	Option 2
Secure Wireless Gateway/Data Fee and Meter Management System Software License Fee (per meter per month)	\$6.60	\$9.00
Secure Credit Card Gateway Fee (per transaction)	\$0.13	\$0.07
Optional: Merchant Processing Fees (per transaction)	To be quoted based on volume	
Optional: API or Data Integration Services	To be quoted based on the need	

VEHICLE DETECTION SENSORS CAPITAL AND ONGOING COSTS

Vehicle Detection Sensors Capital Costs	Price per unit
In-Ground Vehicle Detection Sensors (includes 12-month warranty)	\$295.00
Dome Mount Vehicle Detection Sensors (includes 12-month warranty)	\$295.00
Shipping (Ex Works – to be quoted based on ship to zip code)	TBQ
Installation (to be quoted based on scope)	TBQ

Vehicle Detection Sensors Ongoing Costs	Cost per space per month
Management System/Base Data Fee	\$3.50

Optional: Real Time Reporting Fee	\$3.00
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SPARE PARTS

M5™ Spare Part Pricing	M5™
Single Space Electronic Meter Mechanism	\$535.00
Card Entry Keypad Assy	\$65.00
Hybrid Card Reader	\$75.00
Coin Validator	\$95.00
Complete Top Cover (with Lexan insert)	\$85.00
Lexan for Top Cover	\$25.00
Coin Entry Slot	\$2.00
M5 Battery Pack (H3)	\$49.00
M5 Battery Pack (H5) (available on the 147/247 models only)	\$60.00
Solar Panel / Communications Board	\$185.00
Main Board	\$185.00
Display Board	\$125.00
Display Board with NFC	\$145.00
BLE Beacon Upgrade	\$65.00
RFID Tag	\$10.00
MK5 Batter Charger (daisy chain charging unit)	\$125.00
Card Reader Cleaning Card featuring Waffletechnology® (40) per box	\$54.00

Sensor Spare Part Pricing	In-Dome	Pole
IPS vehicle detection sensor	\$295.00	\$295.00
Battery Replacement (per D-cell)	\$20.00	\$20.00

NOTE: This pricing is FOB, IPS Group, San Diego, CA. Sales taxes and shipping charges will be added to the final invoice. IPS shall have the right to adjust Agreement pricing due to increases in Inflation as published by the US Bureau of Labor Statistics for All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average compounded annually.

*Factory Certified meters are previously owned or trial meters but 100% inspected by IPS factory and carry standard 12-month warranty.

MOBILE PAYMENTS

PARK SMARTER™ MOBILE PAYMENT SOLUTION

Product/Service	Price per unit
PARK SMARTER™ mobile payment decals for SSPM	\$2.00
PARK SMARTER™ mobile payment decals for MSM	TBQ
Decal Shipping	TBQ
On-site Setup and Installation	see below
Additional signage or scope of work to be quoted upon request	TBQ

On-site setup: IPS shall provide the client with instructions on how to set up / install decals in support of the PARK SMARTER™ mobile payment application. However, IPS will send staff to provide installation and setup services. The costs for these services will be based on the costs of travel, rental car, hotel, and per diem expenses and will be added to the setup invoice at the completion of the service.

Per Transaction Fees	Fees
Secure Credit Card Gateway / Convenience Fee (per transaction)*	\$0.35
Optional: Pushing Time to Meter	\$0.10
Optional: Merchant Processing Fees (per transaction)	TBQ

***Per transaction fees:** IPS shall charge a user convenience fee described above, which shall be deposited with the client and invoiced monthly. Alternatively, IPS can quote a combination of fees plus merchant fees that can be paid directly from the merchant account.

Preferred Card Processing Rates: Using our own payment provider IPS can provide preferred pricing for small-ticket mobile payment merchant processing. Quotes for this service are available upon request.

IMPLEMENTATION WITH 3RD PARTIES

Product/Service	Price per unit
Implementation with 3 rd party for enforcement	TBQ
Customizations	\$200/hr

Implementation: IPS shall integrate with 3rd party enforcement software or IPS can provide the client with IPS enforcement software at prices not included in this proposal. Any client designated 3rd party that charges IPS for integration services will be passed along to the client.

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REPLACEMENT PARTS & REPAIR SERVICES

IPS shall provide warranty and non-warranty repair services based out of our office in San Diego, CA. For repair services not able to be first achieved on-site by the Customer or by phone, these meters will be returned to IPS at 7737 Kenamar Court, San Diego, CA, 92121, for repair or rework, and IPS will endeavor to ship within 3-4 weeks of receipt, depending on the quantities received and work schedules. ALL RETURNS REQUIRE AN "RMA" NUMBER prior to shipment to IPS in order to avoid additional delays. An RMA may be requested by contacting the responsible IPS customer support manager, by contacting the IPS Help desk, phone (877) 630-6638 or (858) 404-0607) or email (support@ipsgroupinc.com). All items returned to IPS must be securely packaged to avoid further damage in shipment and all shipments will be via Ground Freight Service unless expedited service and payment of associated fees are requested. Automated RMA tracking, including work performed to repair meters, can be viewed at any time using IPS meter management system.

Product/Service	Price per unit
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Single Space M3™ Non-Warranty repair work (includes parts/labor)	\$125.00 + shipping
Single Space M5™ Non-Warranty repair work (includes parts/labor)	\$95.00 + shipping
Multi-Space MS1™ Non-Warranty repair work	To be quoted
On-site technical services: shall be quoted to include labor, travel costs, accommodation, car rental, and per diem costs. Spare Parts shall be quoted and added to final costs based on the identified needs.	\$950/day + parts
Shipping costs for any of the above shall be added to the final invoice	

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IPS LIMITED WARRANTY – METER SOLUTION

IPS will provide a limited parts warranty for any new meter or sensor product manufactured and supplied by IPS for 12 months under normal use. The warranty protects against defects in materials and workmanship from the point of installation or 15 months from the date of delivery, whichever is sooner, and 90 days from the date of delivery received in the case of spare or repaired products. Software Services are provided “as-is” and IPS shall provide bug fixes at no cost during the contract term.

Additional Warranty Provisions: IPS must have the opportunity to assist in the initial deployment and system installation. Repair or replacement under warranty of any defective product (including any meter or subcomponent) does not extend the warranty period for that product or subcomponent. IPS will either repair or replace products or subcomponents, at our discretion, that are found to be defective within the defined warranty period, with transportation costs prepaid by the customer. Returns for credit will only apply once IPS has received a defective product (including any meter or subcomponent) and confirmed that defects were within the warranty period and are covered under the terms and conditions of the warranty provided. IPS strongly recommends that customers pre-purchase spare parts inventory for immediate access. Defective parts can be replaced immediately from customer stock and IPS shall replace such components upon receipt and determination of defect. On-site labor is explicitly not included in this limited warranty. Customer shall be sufficiently trained to perform all on-site work, including meter or sub-component removal/replacement. IPS can provide additional on-site services under a separate maintenance agreement or quoted on an as-needed basis. THE WARRANTIES CONTAINED IN THE AGREEMENT DOCUMENTS ARE IPS'S SOLE AND EXCLUSIVE WARRANTIES. THE EXTENT OF IPS'S LIABILITY FOR A WARRANTY CLAIM IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE EQUIPMENT OR DEFECTIVE SERVICE OR SOFTWARE AT THE SOLE OPTION OF IPS. IPS AFFIRMATIVELY EXCLUDES ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE EQUIPMENT AND/OR SERVICES OR SOFTWARE PROVIDED INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT IPS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE)

WHETHER ARISING BY LAW OR BY REASON OF CUSTOM OF THE TRADE.

Exclusions: Warranty voided with use of imitation or non-genuine IPS replacement parts, un-authorized alterations, abuse, vandalism, improper installation by customer, handling or general misuse to the equipment (hardware or software), including attempted repairs that result in damage. The warranty specifically excludes any consumable items such as paper, batteries, etc. Software warranty is void if usernames and/or passwords are shared with third parties, or allowance of third party access to IPS software without IPS written consent. **Force Majeure:** IPS shall not be liable for any warranty provisions where such product failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, internet services or cellular telecommunication failures caused by any of the events or causes described above. IPS provides no warranty with respect to any third-party hardware or software, whether supplied in connection with this Agreement or otherwise.

Preventative Maintenance: The primary operational elements will be a working battery, card reader, coin validator and printer (if applicable). All product surfaces should be kept clean with mild soap and water. No harsh chemicals should be used on any plastic surfaces. The card reader heads should be cleaned with a cleaning card every 1-2 months to ensure optimum performance. Cleaning cards may be purchased from IPS. Batteries should be replaced when notified by the IPS Data Management System. At 6-month increments, the coin validator shall be visually inspected for any damage or debris. Compressed air may be used to keep the card reader, coin acceptor or printer (if applicable) clear of debris, every 6 months. Additional preventative maintenance shall be administered by customer staff at such time as it is apparent to be necessary, even if it should occur on a more frequent basis than described herein.