# FRAMEWORK AGREEMENT

**THIS FRAMEWORK AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **IPS GROUP, INC**., a Pennsylvania corporation, whose address is 7737 Kenamar CT., San Diego, CA 92121 (the "Contractor"), collectively, the "Parties" and individually a "Party."

## RECITALS

**WHEREAS**, the City awarded this Agreement to the Contractor through a sole source determination for the purchase and maintenance of parking meters with an on-street parking management system.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above agree as follows:

1. **DEFINITIONS**: Whenever used herein, any schedules, exhibits, order forms, or addenda to this Agreement, the following terms shall have the meanings assigned below unless otherwise defined therein. Other capitalized terms used in this Agreement are defined in the context in which they are used.

   1.1. "**Acceptance**" means the Deliverable demonstrates to the City's reasonable satisfaction that the Deliverable conforms to and operates in all material respects according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing in all material respects, and for Deliverables not requiring Acceptance Testing that the Deliverable reasonably conforms in all material respects to the Acceptance Criteria or the City's requirements.

   1.2. "**Acceptance Certificate**" means a written instrument by which the City promptly notifies the Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

   1.3. "**Acceptance Criteria**" means functionality and performance requirements determined by the City and set forth on the Order Form for the applicable Product or Service, based upon the Specifications, which must be satisfied prior to the City's Acceptance of a Deliverable, or the System. The City and the Contractor shall agree upon written Acceptance Criteria in the Order Form for the applicable Product or Service.

   1.4. "**Acceptance Date**" means the date on which the City issues an Acceptance Certificate for the System or a Deliverable.

   1.5. "**Acceptance Test**" means the evaluation and testing method, procedures, or both, that are set forth in the Order Form for the applicable Product or Service and are used to determine whether or not the System or a Deliverable requiring Acceptance Testing performs in accordance with the Acceptance Criteria.

   1.6. "**Agreement**" means this agreement, including all attached exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

   1.7. "**City Data**" means all information, data, and records, regardless of form, created by or in any way originating with the City and all information that is the output of any computer processing or

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other electronic manipulation including all records relating to the City's use of the Contractor's Services.

**1.8.** "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the Federal Bureau of Investigation's Criminal Justice Information Services Division and all Criminal Justice Records as defined under § 24-72-302, C.R.S.

**1.9.** "**Data Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the City. Data Incidents include, without limitation (i) successful attempts to gain unauthorized access to a City system or the City information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City system hardware, firmware, or software characteristics without the City's knowledge, instruction, or consent. It shall also include any actual or reasonably suspected unauthorized access to or acquisition of computerized City Data that compromises the security, confidentiality, or integrity of City Data, or the ability of the City to access City Data.

**1.10.** "**Deliverable(s)**" means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of the Contractor's Work that is intended to be delivered to the City by the Contractor under this Agreement.

**1.11.** "**Documentation**" means, collectively: (i) all materials published or otherwise made available to the City by the Contractor that relate to the functional, operational and/or performance capabilities of the Services; (ii) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by the Contractor, including marketing materials that describe the functional, operational and/or performance capabilities of the Services; (iii) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by the City, and the responses thereto from the Contractor, and any document which purports to update or revise any of the foregoing; and (iv) the results of any the Contractor "Use Cases Presentation," "Proof of Concept" or similar type presentations or tests provided by the Contractor to the City or as required to be produced by the Contractor subject to the terms of this Agreement.

**1.12.** "**Downtime**" means any period of time of any duration that the Services are not made available by the Contractor to the City for any reason, including scheduled maintenance or Enhancements.

**1.13.** "**Effective Date**" means the date on which this Agreement is fully approved and signed by the City as shown on the Signature Page for this Agreement. The Effective Date for Services may be set out in an Order Form or similar exhibit.

**1.14.** "**Enhancements**" means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that the Contractor may develop or acquire and

incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers.

**1.15.** "**Equipment**" means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus, to be provided to the City by t h e Contractor under this Agreement.

**1.16.** "**Error**" means any defect, problem, condition, bug, or other partial or complete inability of a Product to operate in accordance with the applicable Specifications.

**1.17.** "**Order Form**" means an ordering document, regardless of form, specifying the Work to be provided hereunder including any addenda and supplements thereto.

**1.18.** "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or other credit card information as may be protected by state or federal law.

**1.19.** "**PII**" means personally identifiable information including, without limitation, any information maintained by the City about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§ 24-72-501 and 24-73-101, C.R.S.

**1.20.** "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act. If this Agreement involves the transmission of PHI a separate Business Associates Agreement will become a part of this Agreement.

**1.21.** "**Product(s)**" means any movable material acquired, produced, or delivered by the Contractor and shall include any software, equipment, supplies, and any movable material acquired, produced, or delivered by the Contractor in connection with the Services as set forth in this Agreement.

**1.22.** "**Protected Information**" includes, but is not limited to, personally identifiable information, student records, protected health information, criminal justice information or individual financial information and other data defined under § 24-72-101 *et seq*., and personal information that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. The loss of such Protected Information would constitute a direct damage to the City.

**1.23.** "**Service(s)**" means the services to be performed by the Contractor and shall include any services or enhancements to be rendered by the Contractor in connection with the Products, including the Contractor's computing solutions provided to the City as set forth in this Agreement.

1.24.  "**Specifications**" means the most current cumulative statement of capabilities, functionality, and performance requirements for the Products or Services as set out in the Acceptance Criteria, Order Forms, Documentation, the Contractor's representations, t h e Contractor's proposal, and the City's Request for Proposals.

1.25.  "**Subcontractor**" means any third party engaged by the Contractor to aid in performance of the Work.

1.26.  "**System**" means the operational combination of all Products and Services to be provided by the Contractor to the City under this Agreement.

1.27.  "**Work**" means the Goods delivered and Services performed pursuant to this Agreement.

1.28.  "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work, nor material that is developed by or on behalf of the Contractor after the Effective Date not specific to the obligations of the Contractor in terms of this Agreement.

2.  **COORDINATION AND LIAISON**: The Contractor shall fully coordinate all technology and professional services under the Agreement with the Executive Director of Denver's Department of Transportation and Infrastructure (the "Director") or other designated personnel of the Department of Transportation and Infrastructure ("Agency" or "DOTI").

3.  **SOFTWARE AS A SERVICE, EQUIPMENT, SUPPORT, AND SERVICES TO BE PERFORMED**:  As the Director, or other designated supervisory personnel directs, the Contractor shall diligently undertake, perform, and complete the technology related Work and delivery equipment as set forth on the attached **Exhibit A**, Scope of Work ("SOW") to the City's reasonable satisfaction. The City shall have no liability to compensate the Contractor for Work that is not specifically set forth in this Agreement. The Parties acknowledge that they may further define the SOW, in which case that work product ("Follow-Up SOW") will become a part of this Agreement by incorporation. If the Follow-Up SOW materially alters the attached SOW, the Parties agree to amend this Agreement in writing. If the Follow-UP SOW involves further cost or time to complete, then the Parties must agree the terms thereof before its incorporation in the SOW. The Contractor is ready, willing, and able to provide the technology related Work required by this Agreement. The Contractor shall faithfully perform the Work in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement.

4.  **TERM**: The Agreement will commence on November 1, 2022, and will expire, unless sooner terminated, on October 31, 2025 (the "Term"). Subject to the City's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the City.

5. **COMPENSATION AND PAYMENT**

   **5.1.** **Fees**: The City shall pay, and the Contractor shall accept as the sole compensation for services rendered, goods delivered, and costs incurred under the Agreement the agreed upon rates set forth in **Exhibit B,** Pricing, attached hereto**.** The Parties have agreed to set pricing for parking meters, parts, and other related goods and services. Pricing shall remain fixed for the City's initial budgetary year. Thereafter, IPS shall have the right to adjust 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 US Township Average, subject to the percentage increase not exceeding eight (8) per cent per annum. The first adjustment may be introduced by IPS on the anniversary of the City's execution of this Agreement and thereafter on each anniversary of that date. Amounts billed may not exceed the rates set forth in **Exhibit B.**

   **5.2.** **Reimbursable Expenses**: There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in **Exhibit B**. The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services or providing equipment under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, shipping, equipment, and out-of-pocket expenses.

   **5.3.** **Invoicing**:  The Contractor must submit an invoice which shall include the City contract number, clear identification of Work completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

   **5.4.** **Maximum Agreement Liability**:

   **5.4.1.** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed Four Million Five Hundred Thousand Dollars ($4,500,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibits A** and **B**.  Any services performed beyond those in **Exhibits A** and **B** are performed at the Contractor's risk and without authorization under the Agreement.

   **5.4.2.** The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. **SERVICE LEVEL AGREEMENTS; INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE**: To the extent the Contractor provides service level commitments in connection with its provision of any deliverable or service purchased hereunder, the Contractor shall be fully responsible for the delivery and maintenance, in whole and in part, in accordance with the terms of the service level terms attached hereto in **Exhibit A**.

7. **TECHNOLOGY SERVICES SPEIFICATIONS**

    **7.1.** <u>**User ID Credentials**</u>: Internal corporate or customer (tenant) user account credentials shall be restricted as per the following, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures:

        **7.1.1.** Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation);

        **7.1.2.** Account credential lifecycle management from instantiation through revocation;

        **7.1.3.** Account credential and/or identity store minimization or re-use when feasible; and

        **7.1.4.** Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expire able, non-shared authentication secrets).

    **7.2.** <u>**Vendor Supported Releases**</u>: The Contractor shall maintain the currency of all third-party software used in the development and execution or use of the Work including, but not limited to, all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source; with third-party vendor approved and supported releases.

    **7.3.** <u>**Identity Management**</u>: The City's Identity and Access Management ("IdM") system is an integrated infrastructure solution that enables many of the City's services and online resources to operate more efficiently, effectively, economically, and securely. All new and proposed applications must utilize the authentication and authorization functions and components of the IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions regardless of where the application is hosted.

8. **STATUS OF CONTRACTOR**: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

9. **TERMINATION**

    **9.1.** The City has the right to terminate this Agreement, or a product under this Agreement with cause upon written notice effective immediately and without cause upon forty-five (45) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services do not comply with the applicable specification.

    **9.2.** Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**9.3.** The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice of not less than forty five (45) days to the Contractor.

**9.4.** Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement and shall refund to the City any prepaid cost or expenses.

**9.5.** If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools, and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under this Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

10. **GRANT OF LICENSE; RESTRICTIONS**: The Contractor hereby grants to the City a right and license to display, perform, and use the Work and use all intellectual property rights necessary to use the Work as authorized. Title to and ownership of the Work will remain with the Contractor unless expressly agreed otherwise in writing. The City will not reverse engineer or reverse compile any part of the Work. The City will not remove, obscure, or deface any proprietary notice or legend contained in the Work or Documentation without the Contractor's prior written consent.

11. **RIGHTS AND LICENSE IN AND TO DATA**: The Parties agree that as between them, all rights in and to City Data shall remain the exclusive property of the City, and the Contractor has a limited, nonexclusive license to access and use City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder. All City Data created and/or processed by the Work is and shall remain the property of the City and shall in no way become attached to the Work, nor shall the Contractor have any rights in or to the City Data without the express written permission of the City. This Agreement does not give a Party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this Agreement. The City retains the right to use the Work to access and retrieve data stored on the Contractor's infrastructure at any time during the Term.

12. **PROTECTED INFORMATION AND DATA PROTECTION**

**12.1.** The Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for the City's sole benefit and will not share City Data with or disclose it to any third party without the prior written consent of the City or as otherwise required by law. By way of illustration and not of limitation, the Contractor will not use City Data for the Contractor's own benefit and will not engage in "data mining" of City Data or communications, except as specifically and expressly required by law or authorized in writing by the City.

**12.2.** The Contractor will provide access to City Data only to those the Contractor employees, contractors and Subcontractors ("Contractor Staff") who need to access City Data to fulfill Contractor's obligations under this Agreement. The Contractor will ensure that, prior to being

granted access to City Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of City Data they will be handling.

12.3.     If the Contractor receives Protected Information of a Colorado resident under this Agreement, the Contractor shall implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information and the nature and size of the Contractor's business and its operations. Unless the Contractor agrees to provide its own security protections for the information it discloses to a third-party service provider, the Contractor shall require all its third-party service providers to implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information disclosed and reasonably designed to help protect the personal identifying information subject to this Agreement from unauthorized access, use, modification, disclosure, or destruction.  The Contractor and its third-party service providers that maintain electronic or paper documents that contain Protected Information under this Agreement shall develop a written policy for the destruction of such records by shredding, erasing, or otherwise modifying the Protected Information to make it unreadable or indecipherable when the records are no longer needed.

12.4.     The Contractor may provide City Data to its agents, employees, assigns, and Subcontractors as necessary to perform the work under this Agreement but shall restrict access to Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Agreement. The Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Confidential Information.  The Contractor shall provide copies of those signed nondisclosure provisions to the City upon execution of the nondisclosure provisions if requested by the City.

## 13. DATA SECURITY AND INTEGRITY

13.1.     All facilities, whether hosted by the Contractor or a third party, used to store and process City Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to provide the requested Service availability and to secure City Data from unauthorized access, destruction, use, modification, or disclosure appropriate for City Data.  Such measures, when applicable due to the presence of Protected Information, include, but are not limited to, all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services

Security Policy for all CJI, (iv) the Colorado Consumer Protection Act, (v) the Children's Online Privacy Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), (vii) §24-72-101 et seq., (viii) the Telecommunications Industry Association (TIA) Telecommunications Infrastructure Standard for Data Centers (TIA-942); (ix) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Addendum attached to this Agreement, if applicable. The Contractor shall submit to the Manager, within fifteen (15) days of the Manager's written request, copies of the Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access, and if applicable, the Contractor shall comply with all HIPAA requirements contained herein or attached as an exhibit.

**13.2.** The Contractor warrants that all City Data will be encrypted in transmission (including via web interface) and in storage by a mutually agreed upon National Institute of Standards and Technology (NIST) approved strong encryption method and standard.

**13.3.** The Contractor shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement. The Contractor shall ensure that any underlying or integrated software employed by the Service is updated on a regular basis and does not pose a threat to the security of the Service.

**13.4.** The Contractor shall, and shall cause its Subcontractors, to do all of the following:

**13.4.1.** Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement.

**13.4.2.** Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.

**13.4.3.** Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.

**13.4.4.** Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.

**13.4.5.** Promptly report all Data Incidents of which it is aware, including Data Incidents that do not result in unauthorized disclosure or loss of data integrity.

**13.4.6.** Comply with all rules, policies, procedures, and standards issued by the City's Technology Services Security Section.

**13.4.7.** Subject to the Contractor's reasonable access security requirements and upon reasonable prior notice, the Contractor shall provide the City with scheduled access for the purpose of inspecting and monitoring access and use of City Data, maintaining City systems, and evaluating physical and logical security control effectiveness.

**13.4.8.** The Contractor shall perform current background checks in a form reasonably acceptable to the City on all of its respective employees and agents performing services or having access to City Data provided under this Agreement, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior

to the date such employee or agent begins performance or obtains access to City Data shall be deemed to be current.

**13.4.9.** The Contractor will provide notice to the security and compliance representative for the City indicating that background checks have been performed. Such notice will inform the City of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.

**13.4.10.** If the Contractor will have access to Tax Information under this Agreement, the Contractor shall comply with the background check requirements defined in IRS Publication 1075 and § 24-50-1002, C.R.S.

**13.5.** If applicable, Contractor shall use, hold, and maintain Confidential and Protected Information in compliance with all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Confidential and Protected Information.

**13.6.** Prior to the Effective Date of this Agreement, the Contractor, will at its expense conduct or have conducted the following, and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Incident:

**13.6.1.** A SSAE 16/SOC 2 or other mutually agreed upon audit of the Contractor's security policies, procedures and controls;

**13.6.2.** A quarterly external and internal vulnerability scan of the Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age and remediation plan for all issues identified as critical or high;

**13.6.3.** A formal penetration test, performed by a process and qualified personnel of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.

**13.7.** The Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of the Contractor's receipt of such results.

**13.8.** Based on the results and recommendations of the above audits, certifications, scans and tests, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation.

**13.9.** The City may require, at its expense, that the Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of Contractor's receipt of such results.

**13.10.** The Contractor shall protect data against deterioration or degradation of data quality and authenticity, including, but not limited to annual third-party data integrity audits. The Contractor will provide the City the results of the above audits.

**13.11.**    The Contractor shall maintain a continuous and uninterrupted business continuity and disaster recovery program with respect to its services provided under this Agreement. The program shall be designed, in the event of a significant business disruption affecting the Contractor, to provide all of the necessary and sufficient capabilities, processes, and procedures to enable the Contractor to resume and continue to perform its duties and obligations under this Agreement without undue delay or disruption.

**13.12.**    Prior to the Effective Date of this Agreement, the Contractor, will at its own expense conduct or have conducted the following, and thereafter, the Contractor will at its own expense conduct or have conducted the following at least once per year:

**13.12.1.**    A test of the operability, sufficiency, and completeness of business continuity and disaster recovery program's capabilities, processes, and procedures that are necessary to resume and continue to perform its duties and obligations under this Agreement.

**13.12.2.**    Based upon the results and subsequent recommendations of the testing above, the Contractor will, within thirty (30) calendar days of receipt of such results and recommendations, promptly modify its capabilities, processes, and procedures to meet its obligations under this Agreement and provide City with written evidence of remediation.

**13.12.3.**    The Contractor will provide the City with report summaries or other documentation resulting from above testing of any business continuity and disaster recovery procedures regarding the services provided under this Agreement.

**13.13.**    The Contractor represents that it is capable, willing, and able to provide all of the necessary and sufficient business continuity and disaster recovery capabilities and functions that are appropriate for it to provide services under this Agreement.

**13.14.**    **Compliance for In-Scope Services**: The Contractor shall comply with all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to the Contractor's performance under this Agreement. Such obligations may arise from Health Information Portability and Accountability Act (HIPAA), IRS Publication 1075, Payment Card Industry Data Security Standard (PCI-DSS), and FBI Criminal Justice Information Service Security Addendum, and CMS Minimum Acceptable Risk Standards for Exchanges. The Contractor agrees to maintain compliance with the same when appropriate for the data and Services provided under this Agreement. The Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, Subcontractors and any person or entity that may have access to City Data under this Agreement maintain compliance with and comply in full with the terms and conditions set out in this Section. Notwithstanding Force Majeure, the respective processing, handling, and security standards and guidelines referenced by this section may be revised or changed from time to time or City Data may be utilized within the Services that change the compliance requirements. If compliance requirements change, the Contractor and the City shall collaborate in good faith and use all reasonable efforts to become or remain compliant as necessary under this section. If compliance

is required or statutory and no reasonable efforts are available, the City at its discretion may terminate this Agreement for cause.

**13.15.** **Criminal Justice Information Services**: As applicable, private contractors who perform criminal justice functions shall meet the same training and certification criteria required by governmental agencies performing a similar function and shall be subject to the same extent of audit review as are local user agencies. All private contractors who perform criminal justice functions shall acknowledge, via signing of the CJIS Security Addendum Certification page, and abide by all aspects of the CJIS Security Addendum. The CJIS Security Addendum is presented in Appendix H. Modifications to the CJIS Security Addendum shall be enacted only by the FBI.

## 14. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

**14.1.** Except as otherwise expressly prohibited by law, the Contractor will:

**14.1.1.** If required by a court of competent jurisdiction or an administrative body to disclose City Data, the Contractor will notify the City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;

**14.1.2.** Consult with the City regarding its response;

**14.1.3.** Cooperate with the City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and

**14.1.4.** Upon request, provide the City with a copy of its response.

**14.2.** If the City receives a subpoena, warrant, or other legal order, demand or request seeking data maintained by the Contractor, the City will promptly provide a copy to the Contractor. The Contractor will supply the City with copies of data required for the City to respond within forty-eight (48) hours after receipt of copy from the City and will cooperate with the City's reasonable requests in connection with its response.

## 15. DATA INCIDENT RESPONSE

**15.1.** The Contractor shall maintain documented policies and procedures for Data Incident and breach reporting, notification, and mitigation. If the Contractor becomes aware of any Data Incident, it shall notify the City immediately and cooperate with the City regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the City. If there is a Data Incident impacting residents of Colorado or any other jurisdiction, the Contractor shall cooperate with the City to satisfy notification requirements as currently defined in either federal, state, or local law. Unless the Contractor can establish that neither the Contractor nor any of its agents, employees, assigns or Subcontractors are the cause or source of the Data Incident, the Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Data Incident as required by law. After a Data Incident, the Contractor shall take steps to reduce the risk of incurring a similar type of Data Incident in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City.

**15.2.** The Contractor shall report, either orally or in writing, to the City any Data Incident involving City Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of City Data, not authorized by this Agreement or in writing by the City,

including any reasonable belief that an unauthorized individual has accessed City Data. The Contractor shall make the report to the City immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after the Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by the Contractor regarding Data Incidents will be reduced to writing and supplied to the City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

15.3. Immediately upon becoming aware of any such Data Incident, the Contractor shall fully investigate the circumstances, extent and causes of the Data Incident, and report the results to the City and continue to keep the City informed daily of the progress of its investigation until the issue has been effectively resolved.

15.4. The Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

15.5. Within five (5) calendar days of the date the Contractor becomes aware of any such Data Incident, the Contractor shall have completed implementation of corrective actions to remedy the Data Incident, restore the City's access to the Services as directed by the City, and prevent further similar unauthorized use or disclosure. Should the Data Incident arise directly or indirectly from any act or omission attributable to the City, then the City shall notify the Contractor, without unreasonable delay, once the City becomes aware of such Data Incident, and the Contractor shall respond to the City's reasonable instructions on the assistance the City requires from the Contractor to respond to the Data Incident. Prior to providing any assistance to the City as stated herein, the Parties shall negotiate the costs, if any, to be paid to the Contractor for said assistance in a written amendment.

15.6. The Contractor, at its expense, shall cooperate fully with the City's investigation of and response to any such Data Incident.

15.7. Except as otherwise required by law, the Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.

15.8. Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Contractor will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any such Data Incident, including but not limited to providing notification to third parties whose data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Incident in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Incident.

## 16. DATA RETENTION AND DISPOSAL

**16.1.** Using appropriate and reliable storage media, the Contractor will regularly backup data and retain such backup copies consistent with the City's data retention policies.

**16.2.** At the City's election, the Contractor will either securely destroy or transmit to the City repository any backup copies of City Data. The Contractor will supply the City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.

**16.3.** The Contractor will immediately preserve the state of the data at the time of the request and place a "hold" on data destruction or disposal under its usual records retention policies of records that include data, in response to an oral or written request from the City indicating that those records may be relevant to litigation that the City reasonably anticipates. Oral requests by the City for a hold on record destruction will be reduced to writing and supplied to the Contractor for its records as soon as reasonably practicable under the circumstances. The City will promptly coordinate with the Contractor regarding the preservation and disposition of these records. The Contractor shall continue to preserve the records until further notice by the City.

## 17. DATA TRANSFER UPON TERMINATION OR EXPIRATION

**17.1.** Upon expiration or earlier termination of this Agreement or any Services provided in this Agreement, the Contractor shall accomplish a complete transition of the Services from the Contractor to the City or any replacement provider designated solely by the City without any interruption of or adverse impact on the Services or any other services provided by third parties in this Agreement. The Contractor shall cooperate fully with the City or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the City. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Agreement. The Contractor shall extend the Agreement monthly if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

**17.2.** Upon the expiration or termination of this Agreement, the Contractor shall return City Data provided to the Contractor in a common and readily usable format if requested by the City or destroy City Data and certify to the City that it has done so, as directed by the City. If the Contractor is prevented by law or regulation from returning or destroying Confidential Information, the Contractor warrants it will guarantee the confidentiality of, and cease to use, such Confidential Information. To the extent that the Contractor is requested to perform any services beyond the return of the City's Data in connection with termination assistance, the same shall be performed pursuant to a written statement of work under this Agreement and paid for by the City, applying the Contractor's then-current rates for daily/hourly work, as the case may be.

## 18. ACCESSIBILITY AND ADA WEBSITE COMPLIANCE

**18.1.** **Compliance and Testing**: The Contractor's managed or operated public-facing digital experiences (e.g., websites and webpages) must be compliant with Section 508 of the Rehabilitation Act of 1973 and the WCAG 2.0 Level AA guidelines, as it may be amended (collectively, "Guidelines"). Prior to launching to the public, the Contractor shall test all public-facing digital experiences, both manually and in an automated fashion, as applicable, to confirm

and maintain compliance with the Guidelines, and then subsequently, no more than once per each term year thereafter. Such manual and automated testing may only be performed by a third-party vendor approved by the Department of Justice. The City has a list of approved third-party vendors. The City does not warrant the work of any third-party vendor. All testing under this section shall be performed by third party vendors at the Contractor's expense.

18.2. **Validation, Review and Remediation**: The Contractor will notify City when its digital experience is ready for City review and validation. City will then validate, prior to launch and each term year thereafter, to confirm that the digital experience is compliant with the Guidelines. Manual testing of the Contractor's digital experience will be verified by City with approved vendors and individuals of varying disabilities which shall include individuals who are blind, deaf, or hard of hearing, and who have mobility or dexterity limitations. Upon completion of all testing, a review will be performed by the City's web accessibility coordinator to confirm completion of all accessibility requirements. In the event that any deficiencies are discovered in the Contractor's digital experience, City will promptly notify the Contractor, and the Contractor will remediate prior to launch. A digital experience will not launch until all deficiencies are remediated. All digital experiences must include a statement on the site that the experience is accessible, will maintain accessibility, and will provide a mechanism for users to submit feedback about accessibility issues.

18.3. In the event that the digital experience fails compliance at any time, the Contractor shall bring the digital experience into compliance within ninety (90) days, which may be extended by mutual written agreement of the Parties. Failure to bring the digital experience into compliance for any reason within such time, except as may be mutually extended by the written agreement of the parties, shall be a breach of this Agreement.

19. **WARRANTIES, REPRESENTATIONS AND COVENANTS**: The Contractor represents and warrants that:

19.1. The Work will conform to applicable specifications, and operate and produce results substantially in accordance with the Documentation and the Exhibits attached hereto, and will be free from deficiencies and defects in materials, workmanship, design and/or performance during the Term;

19.2. All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards:

19.3. The Contractor has all intellectual property rights necessary to provide the Services to City in accordance with the terms of this Agreement; the Contractor is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying elements; the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any third party; and there is currently no actual or threatened suit against the Contractor by any third party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

**19.4.**     The Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the Work free and clear from all liens, adverse claims, encumbrances and interests of any third party;

**19.5.**     **Date/Time Change Warranty**: The Contractor represents and warrants to City that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. The Contractor must repair any date/time change defects at the Contractor's own expense.

**19.6.**     **Disabling Code Warranty**: The Contractor represents, warrants and agrees that the Services do not contain and the City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code"). In the event a Disabling Code is identified, the Contractor shall take all steps necessary, at no additional cost to the City, to: (a) restore and/or reconstruct all City Data lost by the City as a result of Disabling Code; (b) furnish to City a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to the City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

**19.7.**     **Third-Party Warranties and Indemnities**: The Contractor will assign to the City all third-party warranties and indemnities that the Contractor receives in connection with any products provided to the City.  To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable third-party agreements.

**19.8.**     The Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the Term.

**19.9.**     Delivery of Products shall not be construed to represent Acceptance nor shall Delivery of Products relieve the Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Acceptance, the payment does not grant a waiver of any representation or warranty by the Contractor.

## 20. **DELIVERY AND ACCEPTANCE**

**20.1.**     Prior to accepting Deliverables, the City shall have the right to perform Acceptance Testing to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria, if any, set forth on an applicable Order Form or Statement of Work. The Contractor shall cooperate with the City in the development of Acceptance Criteria that shall be codified in the applicable Order Form or Statement of Work that will set forth the location, date, and other specifications of the Acceptance Testing, if any. Acceptance Testing may occur in one or more phases, depending on the

integration of contingent products, scalability, performance tuning or other measurable features or milestones.

**20.2.** After an Acceptance Test and if at any time the Work or Deliverable does not conform, the City will notify the Contractor in writing within sixty (60) days and will specify in reasonable detail the identified failures and possible reasons for failure. The Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency.

**20.3.** If the City issues an Acceptance Certificate for an "Acceptance with Exception(s)" the City will list the exception(s) and the date for the Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.

**20.4.** If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.

**20.5.** The foregoing procedure will be repeated until the City accepts or finally rejects the Work, in whole or part, in its sole discretion. If the Work does not perform to the applicable specification, the City reserves the right to repudiate acceptance. If the City finally rejects the Work, or repudiates acceptance of it, the Contractor will refund to the City all fees paid, if any, by the City with respect to the Work.

**20.6.** If the City is not reasonably satisfied with the Contractor's performance of the technology related services described in the Statement of Work, the City will so notify the Contractor within thirty (30) days after the Contractor's performance thereof. The Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the technology related service in its sole discretion. If the City finally rejects any technology related service, the Contractor will refund to the City all fees paid by the City with respect to such technology related services.

**21.** **EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right, on giving not less than forty eight (48) hours prior written notice, to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No

examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

22. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

23. **INSURANCE**

    23.1. **General Conditions**: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices Section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices Section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

    23.2. **Proof of Insurance**: The Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk

Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**23.3.** **Additional Insureds**: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees, and volunteers as additional insured.

**23.4.** **Waiver of Subrogation**: For all coverages required under this Agreement, with the exception of Professional Liability – if required, the Contractor's insurer shall waive subrogation rights against the City.

**23.5.** **Subcontractors and Subconsultants**: The Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

**23.6.** **Workers' Compensation and Employer's Liability Insurance**: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims.

**23.7.** **Commercial General Liability**: The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of $1,000,000 for each bodily injury and property damage occurrence, $2,000,000 products and completed operations aggregate (if applicable), and $2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation, or misconduct.

**23.8.** **Automobile Liability**: The Contractor shall maintain Automobile Liability with minimum limits of $1,000,000 combined single limit applicable to all owned, hired, and non-owned vehicles used in performing services under this Agreement.

**23.9.** **Technology Errors & Omissions**: The Contractor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with minimum limits of $1,000,000 per occurrence and $1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

**23.10.** **Cyber Liability**: The Contractor shall maintain Cyber Liability coverage with minimum limits of $1,000,000 per occurrence and $1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

## 24. DEFENSE AND INDEMNIFICATION

**24.1.** The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims,

judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

24.2.      The Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. the Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

24.3.      The Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

24.4.      Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.  The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

24.5.      The Contractor shall indemnify, save, and hold harmless the indemnified parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the indemnified parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by the Contractor under this Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. The Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by the Contractor with any other product, system, or method, unless the other product, system, or method is (i) provided by the Contractor or the Contractor's subsidiaries or affiliates; (ii) specified by the Contractor to work with the IP Deliverables; (iii) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (iv) is reasonably expected to be used in combination with the IP Deliverables.

24.6.      The Contractor shall indemnify, save, and hold harmless the indemnified parties, against all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the indemnified parties in relation to the Contractor's failure to comply with applicable accessibility standards for individuals with a disability.

**24.7.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

25. **LIMITATION OF THE CONTRACTOR'S LIABILITY**: To the extent permitted by law, the liability of the Contractor, its Subcontractors, and their respective personnel to the City for any claims, liabilities, or damages relating to this Agreement shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss or unauthorized disclosure of Confidential Information or City Data, not to exceed three (3) times the Maximum Contract Amount payable by the City under this Agreement. No limitation on the Contractor's liability to the City under this Section shall limit or affect: (i) the Contractor's indemnification obligations to the City under this Agreement; (ii) any claims, losses, or damages for which coverage is available under any insurance required under this Agreement; (iii) claims or damages arising out of bodily injury, including death, or damage to tangible property of the City; or (iv) claims or damages resulting from the recklessness, bad faith, or intentional misconduct of the Contractor or its Subcontractors.

26. **COLORADO GOVERNMENTAL IMMUNITY ACT**: The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. (2003).

27. **COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES**: The Contractor shall comply with all applicable laws and TS policies in performing the Services under this Agreement. Any of the Contractor's personnel visiting the City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. The City will provide copies of such policies to the Contractor upon request.

28. **INTELLECTUAL PROPERTY RIGHTS**: The Parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The Parties agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of the Contractor (collectively, "Contractor Materials") made available, directly or indirectly, by the

Contractor to the City as part of the Scope of Services, are the exclusive property of the Contractor or the third parties from whom the Contractor has secured the rights to use such product. Notwithstanding the aforegoing, the Parties agree that all Contractor pre-existing intellectual property, including that developed and used by the Contractor on other contracts during the Term and not exclusively for the City, shall remain the exclusive property of the Contractor. Contractor Materials, processes, methods, and services shall remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual, and irrevocable license to use the Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City.

29. **CONFIDENTIALITY**

29.1.   "Confidential Information" means all City Data not subject to disclosure under the Colorado Open Records Act, § 24-72-201, *et seq*., C.R.S., ("CORA"). Confidential Information shall include, but is not limited to, PII, PHI, PCI, federal or state tax information ("Tax Information"), CJI, personnel records, financial and statistical data, attorney/client privileged communications, information which is exempt per federal laws, all of which is not subject to disclosure under CORA.

29.2.   Each of the Parties may disclose (a "Disclosing Party") or permit the other Party (the "Receiving Party") access to the Disclosing Party's Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party other than its employees, subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non-employees, with whom it has executed a non-disclosure or other agreement which limits the use, reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The City will retain all right, title, and interest in its Confidential Information. The Contractor will retain all right, title, and interest in its Confidential Information.

29.3.   The Contractor shall provide for the security of Confidential Information and information which may not be marked, but constitutes PII, HIPAA, CJI, or other federally or state regulated information ("Regulated Data") in accordance with all applicable laws, rules, policies, publications, and guidelines. If the Contractor receives Regulated Data outside the scope of this Agreement, it shall promptly notify the City. If Confidential Information is disclosed, it shall only be used for the agreed upon purposes contained herein. The provisions of this Section 29 shall apply equally to Confidential Information vesting in the Contractor.

29.4.   Confidential Information that the Receiving Party can establish: (i) was lawfully in the Receiving Party's possession before receipt from the Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; (iii) was independently developed

or discovered by the Receiving Party without use of Confidential Information; (iv) was received from a third party that was not under an obligation of confidentiality; (v) is disclosed by the Receiving Party with the prior written approval of the other Party; or (vii) is required by law to be disclosed shall not be considered Confidential Information under this Agreement. The Receiving Party shall inform necessary employees, officials, subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.

    **29.5.** Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information and City Data, may be subject to CORA. In the event of a request to the City for disclosure of confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

30. **TAXES, CHARGES AND PENALTIES**: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

31. **ASSIGNMENT; SUBCONTRACTING**: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, Subcontractor or assign.

32. **NO THIRD-PARTY BENEFICIARY**: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other

than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

33. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

34. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS**: Except for the functional requirements provided in response to a request for proposal and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, this Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

35. **SEVERABILITY**: Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

36. **CONFLICT OF INTEREST**

    36.1.    No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, *et seq*. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

    36.2.    The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

37. **NOTICES**:  All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Contractor at the address first above written, and if to the City at:

    Executive Director, Department of Transportation and Infrastructure
    201 West Colfax Avenue, Dept. 608
    Denver, Colorado 80202

    With a copy to:

   Denver City Attorney's Office
   1437 Bannock St., Room 353
   Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

38. **DISPUTES**: All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

39. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

40. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

41. **LEGAL AUTHORITY**: The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing this Agreement to enter into this Agreement.

42. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

43. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.

44. **SURVIVAL OF CERTAIN PROVISIONS**: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

45. **INUREMENT**: The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

46. **TIME IS OF THE ESSENCE**: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence. For the sake of clarity, both Parties acknowledge that there currently is a worldwide shortage of electronic components.

47. **FORCE MAJEURE**: Neither Party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of manufactures, unreasonable unavailability of equipment or software from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other Party and/or other substantially similar occurrences beyond the Party's reasonable control ("Excusable Delay"). In the event of any such Excusable Delay, time for performance shall be extended for as may be reasonably necessary to compensate for such delay.

48. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.

49. **CITY EXECUTION OF AGREEMENT**: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

50. **ADVERTISING AND PUBLIC DISCLOSURE**: The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

51. **PCI DSS COMPLIANCE [APPLICABLE ONLY FOR CREDIT CARD INTERFACE]**

    **51.1.** If the Contractor is directly involved in the processing, storage, or transmission of cardholder data on behalf of the City as part of this Agreement, this Section applies. Any contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment cardholder data must be compliant with the current version of the Payment Card Industry Data Security Standard (PCI DSS).

**51.2.** The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Rules (SDP), and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations ("Association"), and further covenants and agrees to maintain compliance with the PCI DSS, SDP, and (where applicable) the Payment Application Data Security Standard (PA-DSS) (collectively, the "Security Guidelines"). The Contractor represents and warrants that all of the hardware and software components utilized for the City or used under this Agreement is now and will be PCI DSS compliant during the term of this Agreement. All service providers that the Contractor uses under this Agreement must be recognized by Visa as PCI DSS compliant. The Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers (as defined by the PCI Security Council), agents, business partners, contractors, Subcontractors and any person or entity that may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out in this Section. The Contractor further certifies that the equipment, as described herein, will be deployed in a manner that meets or exceeds the PA DSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards. The Contractor shall demonstrate its compliance with PCI DSS by annually providing the City an executed Attestation of Compliance (AOC). The Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of the Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are PCI DSS compliant. If the Contractor is a service provider involved in the processing, storage or transmission of cardholder data or sensitive authentication data (collectively "Data Handling") on behalf of the City that would result in Data Handling being included in the City's PCI scope through connected software or components, then the Contractor must provide a PCI Responsibility Matrix ("Matrix") to be attached to this Agreement as an exhibit. The Matrix must identify where responsibility resides for each PCI control requirement, whether it be with the Contractor, the City or shared by both. Any PCI control requirements that do not apply should be indicated along with any pertinent notes.

**51.3.** The Contractor shall not retain or store CAV2/CVC2/CVV2/CID or such data prohibited by PCI DSS subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, the Contractor shall notify the City in writing consistent with the Data Incident response notification requirements of this Agreement, and shall provide, at the Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

**51.4.** If any Association requires an audit of the Contractor or any of the Contractor's Service Providers, agents, business partners, contractors, or Subcontractors due to a data security compromise event related to this Agreement, the Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City's reasonable costs relating to such audit,

including attorney's fees. No review, approval, or audit by the City shall relieve the Contractor from liability under this section or under other provisions of this Agreement.

**51.5.** In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by the Contractor of this Agreement. In furtherance of this, the Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with PCI DSS and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

52. **EXTERNAL TERMS AND CONDITIONS DISCLAIMER**: Notwithstanding anything to the contrary herein, the City shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

53. **PROHIBITED TERMS**: Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*.

54. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

55. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

56. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The

Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

57. **ATTACHED EXHIBITS INCORPORATED**: The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A**, Scope of Work; **Exhibit B**, Pricing; and **Exhibit C**, Certificate of Insurance.

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**Contract Control Number:**        DOTI-202264578-00
**Contractor Name:**                IPS Group, Inc.


IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:


**SEAL**                                  **CITY AND COUNTY OF DENVER:**


**ATTEST:**                               By:

_____     _____


**APPROVED AS TO FORM:**            **REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:                                  By:

_____     _____


                                             By:

                                           _____

**Contract Control Number:**      DOTI-202264578-00
**Contractor Name:**      IPS Group, Inc.


DocuSigned by:

By: *Brian Webber*
2072FEB751A8429...


Name: Brian Webber
      (please print)

Title: General Counsel
      (please print)


ATTEST: [if required]


By: _____


Name: _____
      (please print)


Title: _____
      (please print)

# EXHIBIT A

## SCOPE OF SERVICES

**M5™ SINGLE SPACE METER**

IPS single-space meters provide customers and their patrons with a simple and consistent parking user experience which is more cost-effective, customer-friendly, and more reliable than alternatives. The patented IPS solution uniquely provides a credit card enabled single-space meter. IPS smart meters offer multiple payment options (credit/debit card, optional contactless payment on M5™, coins, smart card, and tokens), access to real-time data, solar power technology, and a comprehensive web-based management system.

**Primary Features/Benefits:**

- Mechanism is protected by zinc alloy meter dome and UV resistant, anti-fog Lexan cover
- Keypad has four easy-to-read buttons for intuitive payment navigation—rated at more than 250,000 cycles
- LED lights on front and back of meter alert enforcement officers of meter status: paid (green), unpaid (red), and meter fault
- Vandal resistant coin slot/chute allows for worry-free operation and quick servicing
- Environmentally-friendly solar panel and combination rechargeable/back-up battery pack maximize ongoing power
- Proven ability to operate under varying environmental conditions such as snow, sleet, rain, humidity, dust storms, extreme cold, and extreme heat
- RFID technology automatically identifies the meter location and downloads the correct operating configurations
- *NOTE: M5™ meter mechanism shown as installed into a meter housing. Meter housings / vaults are sold separately. Other makes and models are available.*

**MS1™ PAY STATION**

The MS1™ incorporates the unique features of the Proven™ IPS single-space platform, while offering customer focused features such as IntelliTouch™ transaction processing. The MS1™ features robust hardware design, which includes a stainless-steel cabinet and scratch-resistant armored glass.

**Primary Features/Benefits:**

- **Flexibility:** The MS1™ is available in pay-by-space, pay-and-display, and pay-by-plate models. A simple change of the keypad and a firmware update are all that are required.
- **Unparalleled Power Efficiency:** Powered by environmentally-friendly solar panel and combination rechargeable and back-up battery pack to maximize ongoing power.
- **Guaranteed Quality:** High security stainless steel housing with weather and graffiti-resistant powder coating make it both durable and easy to maintain.
- **Improved Visibility:** Blue LED lighting above the display provides enhanced visibility for motorists, technicians, and collections staff.
- **Customer-Friendly Interface:** IntelliTouch™ provides additional flexibility when completing a transaction. Users may begin the payment sequence in any order. The MS1™ will then guide them through the transaction.
- **Dependability:** Pay stations communicate wirelessly on the 4G cellular network, ensuring fast and reliable communications while processing secure credit card authorizations, wireless downloads of rates and messages, and transmissions to DMS.
- **Easy Maintenance:** Modularly designed with the technician in mind for easy plug-and-play maintenance.
- **Future-proof Design:** IPS Group's open interface provides seamless integration with third-party systems, such as enforcement, permitting, and ANPR (automatic number plate recognition) in order to further optimize parking operations.

**MS3™ PAY STATION**

The MS3™ pay station is the latest generation of unattended payment systems from IPS Group.  The MS3™ Pay Station features a full-color screen with an optional touchscreen and provides your patrons with easy-to-read parking instructions in a vibrant showcase.  For your staff, the MS3 ties into the powerful IPS Data Management System, allowing you in-depth analysis of parking data, full financial, administration and technical reporting and remote configuration.

**Primary Features/Benefits:**

- **Flexibility:** The MS3 is available in pay-by-space, pay-and-display, and pay-by-plate models. A simple change of the keypad and a firmware update are all that are required.
- **Robust Hardware Design:** Highly secure, stainless steel cabinet is standard with weather and graffiti-resistant powder coating, providing maximum longevity.
- **Customer-Friendly Interface:** 7-inch active matrix, high resolution color LCD display that can provide clear instructions to guide users through the transaction process. Fully customizable and configurable to allow touch screen operation for enhanced customer engagement.
- **Multiple Payment Options:** Flexible payment options include credit/ debit card, coins, Smart Card, pay-by-cell integration, and NFC contactless payment with applications such as Apple Pay® and Google Pay®.
- **Security:** Each unit contains a separate maintenance cabinet and collection vault. The cash box is housed in a secure vault that features a six-point locking system and a high-security electronic lock.
- **Unparalleled Power Efficiency**: Powered by environmentally friendly solar panel and rechargeable combination battery to maximize ongoing power and uptime.
- **Improved Visibility:** Blue LED lighting above the display provides enhanced visibility for motorists, technicians, and collections staff and optional rear LEDs for visual enforcement (pay-by-space).
- **Dependability:** Pay stations communicate wirelessly on the 4G cellular network, ensuring fast and reliable communications while processing secure credit card authorizations, wireless downloads of rates and messages, and transmissions to DMS.
- **Easy Maintenance:** Modularly designed with the technician in mind for easy plug-and-play maintenance.
- **Future-proof Design:** IPS Group's software interface provides seamless integration with third-party systems, such as enforcement, permitting, and LPR (license plate recognition) to further optimize parking operations.

**VECHICLE DETECTION SENSORS**

IPS Vehicle Detection Sensors reliably detect the presence and absence of a vehicle in a parking space, while recording arrival and departure times. IPS sensor data integrates seamlessly with the IPS data management system and third-party enforcement applications, creating a powerful system for monitoring real-time occupancy and analyzing parking trends. The IPS sensor uniquely directs all sensing information to the IPS parking meter cellular communications backbone, saving customers the hassle of installing additional network equipment and dramatically reducing the cost of ownership. The IPS sensor uses multiple sensing technologies to detect vehicles. Its unique design provides the most accurate data on the sensor market and allows for quick installation and servicing.   NOTE: While the Sensors provide accurate data no sensor system can be 100% accurate because of many variable conditions such as inaccurate parking, line of sight interference, weather conditions, human intervention and many other factors not associated with the Sensor operation.

**Benefits of IPS Sensors**
- Ability to reset the meter to zero when a vehicle leaves the parking space.
- Ability to prevent meter feeding, thereby generating turnover.
- Ability to offer courtesy time resulting in positive public perception of the meters.
- Access to real-time occupancy data.
- Installed under the ground or in the meter dome, eliminating the need for additional infrastructure.
- Proven to increase revenue.

**Dome Mount or Pole Mount (M5 only)**
- Non-intrusive installation—sensor is integrated directly into the meter dome
- Easy access for maintenance and/or replacement
- Configuration for any parking environment
- Wireless connection to the IPS meter via cellular network—no additional infrastructure required
- Pole mount design used with yokes, on meter poles and in applications where a dome mount sensor cannot be optimally installed.

**In Ground (M3 or M5)**
- Underground sensor contains both power source and antenna for a completely wireless solution
- Wireless connection to the IPS meter via cellular network—no additional infrastructure required

**DATA MANAGEMENT SYSTEM**

The IPS Data Management System (DMS) is a real-time, web-based application that allows parking professionals to remotely monitor their parking network from anywhere, at any time.

**Reporting & Analytics**

A comprehensive set of financial, technical, and administrative reporting features paired with remote meter configuration make the DMS both intuitive and powerful. DMS analytics creates a visual representation from large tables of data to help managers gain helpful insight into the patterns and trends of their parking program and leverage this information to derive future strategy and optimize systems.

All reports are flexible with customized views for comparison purposes and/or to reveal "what-if" scenarios. With these fully integrated tools, customers can better manage the financial aspects of the Park's parking program. All reports can be exported into various formats, including XLS, CSV, and PDF.

**Seamless Integration**

The DMS allows managers to seamlessly integrate parking meters with vehicle detection sensors, pay-by-cell capability, and other smart applications. A standard web browser is the only tool required to access the DMS and to make changes/ configurations to the Park's meters.

- Hardware requirements: IPS provides a hosted DMS; there is no local hardware required other than internet access.
- Network requirements: IPS recommends a high-speed internet connection to the DMS service, such as cable or DSL access.
- Operating system software requirements: An internet browser is the only tool required to access the system. Windows and Apple iOS are typical.
- Browser requirements: Any current internet browser will be sufficient to access the IPS DMS. MS Explorer, Mozilla Firefox, Google Chrome, iOS supported browsers are all compatible, including mobile phone browsers.

**Primary Features**

- Real-time updates and live alerts
- Customizable routes to maximize efficiency
- Seamless integration with all IPS meters and sensors
- Flexibility to use as much, or as little data as you choose
- Ability to monitor meter health remotely
- Analytics view options to turn data into usable charts
- User profiles to control access
- Compatibility with Android OS and Apple iOS
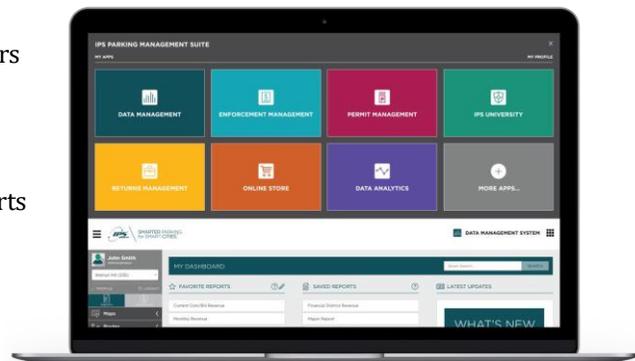
**MOBILE APP PAYMENTS**

IPS offers its own integrated mobile app called PARK SMARTER™, which works with IPS Smart Meters to bring greater efficiency and choices to the on-street parking customer experience and parking operations.

PARK SMARTER™ integrates with the DMS so that cities can manage parking policy with live alerts, reporting and data analytics across both meters and the mobile app. The app sends expiration notifications and allows the ability to add time to prevent parking ticket fines. Users can add multiple vehicles and credit cards under one account so business and personal parking is conveniently managed in one place.

**Key Features**
- Real-time notifications alert users in advance of parking expiration
- Optimized with optional BLE connectivity to put time directly on the meter
- Parking Finder provides direction to open parking spaces
- Ability to pay and extend parking session remotely (if allowed by parking policy)
- No convenience fees
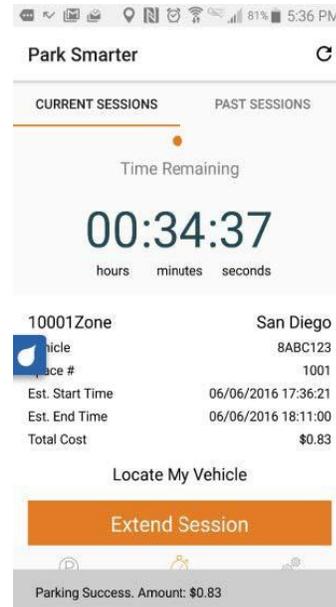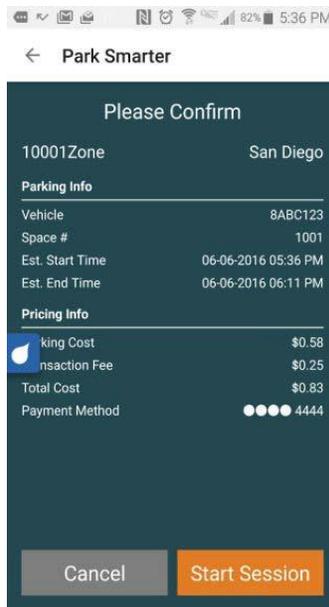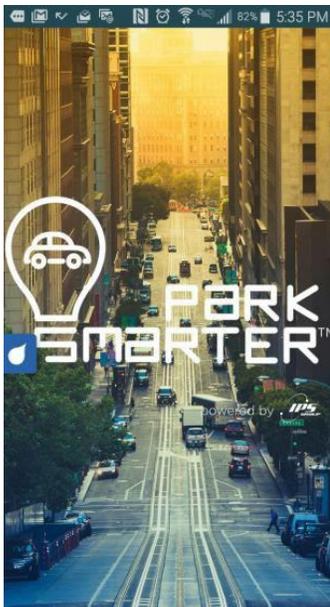
## CUSTOMER SUPPORT PROGRAM

IPS clearly understands the importance of ongoing project support and we encourage the City to speak with our references in this regard. We also understand that ongoing support is a critical element of any successful project and the basis of a long-term partnership. IPS is uniquely positioned to provide support services that will translate into the most responsive and comprehensive service offering available to the City.

**Help Desk & Ongoing Support:** IPS will be providing telephone-based help desk services during standard business hours from 8 a.m. to 5 p.m. CST. IPS offers a toll-free telephone option (877.630.6638). Additionally, IPS provides after-hours service in case of emergency 24/7/365. Additionally, IPS will provide contact information for all IPS senior staff.



**Online Help & Manuals:** IPS provides online help tools, such as product manuals, frequently asked questions, and a portal to submit and track help tickets. IPS offers the online ability to monitor and track RMA status and view help and training videos. These tools can be accessed 24/7.

**Onsite Support:** IPS will support the City with onsite project management and technical support during the implementation phase of the contract. Onsite support can be extended at the request of the City.   Additional onsite support services can be quoted upon request.

**Spare Parts and Warranty Repair Services:** Our US-based facility ensures that spare parts are immediately available to the City at any time. The warranty repair process is managed through the DMS. .   IPS can solve most repair issues over the phone or will some additional training of City staff.  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 package 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 υσινγ ΙΠΣ μετερ μαναγεμεντ σψστεμ.

# EXHIBIT B

## PRICING

### SINGLE-SPACE AND SENSORS

### Capital and Ongoing Costs

| Product/Service | Price per unit |
|---|---|
| M5™ IPS Credit Card-Enabled Single-Space Meter (includes 12-month warranty, RFID tag) | $495.00 |
| Optional: Add BLE capability | $65.00 |
| Optional: Add NFC contactless payment capability | $45.00 |
| Shipping (Ex Works – to be quoted based on volume and ship to zip code) | TBQ |
| Installation and Training (to be quoted based on scope) | TBQ |
| Optional: Extended Warranty (per 12 month period) | $50.00 |
| Optional: Extended Warranty (48 month period) | $170.00 |

| M5™ Ongoing Fees | |
|---|---|
| Secure Wireless Gateway/Data Fee and Meter Management System Software License Fee (per meter per month) | $8.75 |
| Secure Credit Card Gateway Fee (per transaction) | $0.06 |
| Merchant Processing Fees (per transaction) | To be quoted based on volume |
| Standard API or Data Integration Services | No Fee |
| Non-standard API or Data Integration Services | No Fee |

### Vehicle Detection Sensors Capital and Ongoing Costs

| Product/Service | 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 |
| Pole 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 | $2.75 |

*Note: This pricing is FOB, IPS Group, San Diego, CA. shipping charges will be added to the final invoice.*

## Spare Parts

| M5™ parking meter Spare Part Pricing | M5™ |
|---|---|
| Single Space Electronic Meter Mechanism | $495.00 |
| Card Entry Keypad Assy | $65.00 |
| Hybrid Card Reader | $55.00 |
| Coin Validator | $79.00 |
| Complete Top Cover (with Lexan insert) | $85.00 |
| Lexan for Top Cover | $25.00 |
| Coin Entry Slot | $2.00 |
| M5 Battery Pack (H3) | $38.00 |
| M5 Battery Pack (H5)  (available on the 147/247 models only) | $49.00 |
| Solar Panel / Communications Board | $185.00 |
| Main Board | $185.00 |
| Display Board | $99.00 |
| 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-Ground | On-Pole | In-Dome |
|---|---|---|---|
| IPS vehicle detection sensor | $150.00 | $295.00 | $295.00 |
| Meter Comms Board (for sensor) | $150.00 | NA | NA |
| Battery Replacement (per D-cell) | NA | $20.00 | $20.00 |

*Note: This pricing is FOB, IPS Group, San Diego, CA. shipping charges will be added to the final invoice.*

## MULTI-SPACE METERS

| MS1™ Multi-Space | Price Per Unit |
|---|---|
| IPS MS1™ Multi-Space Pay Station – Pay and Display, Pay-by-Space, or Pay-by-Plate (Monochrome Display, Card and Coin, Solar powered, Includes 12-month warranty) | $5,850.00 |
| IPS MS3™ Multi-Space Pay Station – Pay and Display, Pay-by-Space, or Pay-by-Plate (Color Display, Card and Coin, Solar powered, Includes 12-month warranty) | $6,600.00 |
| Shipping and Installation (per unit) – During normal business hours. (Ex Works –to be quoted based on final scope of work. ) | TBQ |
| Optional:  Contactless Card Reader (NFC) | $399.00 |
| Optional: Add for Bill Note Acceptor (BNA) and 1 Stacker | $1,250.00 |
| Optional: Additional Coin Box | $195.00 |
| Optional: Additional BNA Stacker | $230.00 |
| Optional: MS1 Extended Parts Warranty (per 12 month period) | $295.00 |
| Optional: MS3 Extended Parts Warranty (per 12 month period) | $395.00 |

| MS1™ Ongoing Costs | On-Street | Off-Street |
|---|---|---|
| Secure Wireless Gateway/Data Fee and Meter Management System Software License Fee (per meter per month) | $55.00 | $25.00 / $55.00 |
| Secure Credit Card Gateway Fee (per transaction) | Included | $0.13 / $0.06 |
| Optional:  Merchant Processing Fees (per transaction) | To be quoted based on volume | |
| Optional:  API or Data Integration Services | No fee | |

*Note: This pricing is FOB, IPS Group, San Diego, CA. shipping charges will be added to the final invoice.*

## Spare Parts

| Spare Parts List | MS1™ | MS3™ |
|---|---|---|
| Standard Card Reader Assembly | $149.00 | $149.00 |
| AC power upgrade kit | $150.00 | $150.00 |
| Coin Validator Assembly | $79.00 | $95.00 |
| Bill Note Acceptor Assembly (with 600 note stacker)* | $1,250.00 | $1,250.00 |
| Additional 600 note stacker cartridge* | $255.00 | $230.00 |
| Solar Panel Replacement Kit | $795.00 | $895.00 |
| Main Operating Board | $995.00 | $995.00 |
| 4G wireless modem assembly | $270.00 | $270.00 |
| LCD Display only (monochrome) | $295.00 | n/a |
| LCD Display only (color) | n/a | 1,100.00 |
| Armored Display Glass | $125.00 | $125.00 |
| Thermal Printer | $795.00 | $795.00 |
| 4-key Horizontal Keypad | $69.00 | $69.00 |
| 4-key Horizontal Keypad | $69.00 | n/a |
| 4-key Vertical Keypad | $69.00 | n/a |
| 6-key Horizontal Keypad | $75.00 | $75.00 |
| Pay-by-Space Keypad Assembly | $195.00 | $195.00 |
| Pay-by-Plate Alphanumeric Keypad Assembly | $275.00 | $225.00 |
| Coin Shutter | $195.00 | $195.00 |
| Contactless Payment Reader (NFC) | $735.00 | $735.00 |
| E-lock | $175.00 | $175.00 |
| Battery 32Ah (rechargeable) | $324.00 | n/a |
| Battery 72Ah (rechargeable) | $485.00 | $450.00 |
| Additional Large Coin Canister | $195.00 | $195.00 |
| Additional Small Coin Canister | $95.00 | $95.00 |
| Standard Paper Rolls  (standard) approx 2000 3" tickets (.0045" thick) | $27.50 | $25.00 |
| Sticky Back Paper Rolls approx. 2400 2.75" tickets (.004" thick) | $32.50 | $30.00 |

*Note: This pricing is FOB, IPS Group, San Diego, CA. shipping charges will be added to the final invoice.*

## MOBILE PAYMENTS

**ParkSmarter™ Mobile Payment Solution**

| Product/Service | Price per unit |
|---|---|
| ParkSmarter™ mobile payment decals for SSPM | $2.00 |
| ParkSmarter™ 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 City with instructions on how to setup / install decals in support of the ParkSmarter™ 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 based on $950/day/person.

| Per Transaction Fees | Fees |
|---|---|
| Secure Credit Card Gateway Fee (per transaction) | $0.06 |
| Optional: Pushing Time to Meter | $0.10 |
| Optional: Merchant Processing Fees (per transaction) | Interchange + $0.04 |

**Per transaction fees:** IPS shall charge the City the same per transaction gateway fee as we currently charge for the meter program in place today. No additional convenience charges are required, but can be added to the user transaction if the City does not wish to pay this fee.

**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.

**Integration Services**

| Product/Service | Price per unit |
|---|---|
| IPS Group Standard Integrations | No fee |
| Customizations | $200/hr |

**Implementation:** IPS shall integrate with 3rd party enforcement software or IPS can provide the City with IPS enforcement software at prices not included in this proposal. If any city designated 3rd party charges IPS for such implementation, then those charges will be passed along to the City at IPS costs.

*Note: This pricing is FOB, IPS Group, San Diego, CA. shipping charges will be added to the final invoice.*

## 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 (customersupport@ipsgroupinc.com).  All items returned to IPS must be securely package 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 |
|---|---|
| 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. | $150 per hour or $950 per day |
| Shipping costs for any of the above shall be added to the final invoice | To be quoted |

*Note: This pricing is FOB, IPS Group, San Diego, CA. 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.*

# CITY MARKETING SERVICES

## OUR CITY MARKETING PROGRAM HELPS YOU GET COMMUNITY BUY-IN FOR NEW PARKING INITIATIVES.

We use a comprehensive approach, including all major marketing elements, from Web design to posters that local merchants can display in their windows.

IPS Group can produce all of these materials ourselves, as part of our service, creating a comprehensive marketing program for your merchants and citizens. We can provide the materials in an all-inclusive contract, or we would be pleased to work with your designated local providers/DBE firms for printing and other collateral services.



## RECOMMENDED KEY COMPONENTS INCLUDE:

## CUSTOMIZED MARKETING CAMPAIGN AND MATERIALS:

Formulating the right messaging and raising public awareness is a key element for the successful deployment of new parking initiatives. IPS will provide customized marketing and public awareness materials that can be customized to the City's specific needs.

## COLLATERAL MATERIALS DEVELOPMENT:

Working with the City, we will develop collateral materials for the public including an informational tri-fold brochure, standard informational poster, customized website, links to "how-to-videos" for use on your city website and any other relevant print material for the City to assist with the public outreach initiative. An example of the "How to use Your New Meter" video can be viewed here: https://vimeo.com/65824595.

## CUSTOMIZED WEBSITE:

In order to help the City introduce IPS meters to their parking public, IPS Group is offering a custom designed website for the public to learn how to use the parking meter through written directions, how-to-video tutorials and any other services that are important for the city to highlight.

# CITY MARKETING SAMPLES



## CONTINUED SUPPORT:

Μαρκετινγ ανδ πυβλιχ ρελατιονσ συππορτ χαν χοντινυε τηρουγηουτ τηε λ
ιφε οφ τηε χοντραχτ ωιτη τηε Χιτψ φορ αν αδδιτιοναλ φεε.

# CITY MARKETING PACKAGES

For a standard to a full-agency experience, please choose from our tiered packages below. All marketing collateral/art files will be sent electronically.

| 1 BASIC PACKAGE | 2 DELUXE PACKAGE | 3 PREMIUM PACKAGE |
|---|---|---|
| **COLLATERAL** | **COLLATERAL** | **COLLATERAL** |
| Standard Website— City Hosted | Custom Website— IPS Hosted | Custom Website — IPS Hosted |
| Custom Trifold | Custom Trifold | Custom Trifold + Printing |
| Custom Poster | Custom Poster | Custom Poster + Printing |
| Road or Garage Sign Design | Road or Garage Sign Design | Road or Garage Sign Design |
| Press Release | Press Release | Press Release |
| How-to-Use Video | How-to-Use Video | Custom Intro on How-to-Use Video |
| 1 Round of Revisions | Mini Postcard | Mini Postcard + Printing |
| | Tent Card | Tent Card + Printing |
| **Customer Cost:** **$0** | 2 Rounds of Revisions | Window Cling + Printing |
| | | Additional Outdoor Sign Design |
| | **Customer Cost:** $5,000 (+95/mo. web hosting fee) | Promotional Landing Page |
| | | Eblast for your Database |
| | | 1 Design for Promo Item |
| | | 4 Social Media Posts |
| | | 4 Rounds of Revisions |

**Customer Cost:** $9,500 (+$95/mo. web hosting fee; printing & shipping will be quoted separately)

Prices above are subject to change. Customized programs beyond the scope of standard packages will be priced accordingly. For services à la carte, we can quote those items separately. Additional edit rounds will be billed at $100/hr. For more information, please contact us.

**REQUEST A DEMO**

ot8277FE9E2

**IPS Limited Warranty**

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 pre-paid by the customer. Returns for credit will only apply once IPS has received 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.  Warranty specifically excludes any consummable items such as paper, batteries, etc.  Software warranty is void if usernames and/or passwords are shared with 3rd parties, or allowance of 3rd 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 3rd 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.

EXHIBIT C

# ACORD®
# CERTIFICATE OF LIABILITY INSURANCE

3/19/2023

**DATE (MM/DD/YYYY)** 8/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| PRODUCER | CONTACT NAME: | |
|---|---|---|
| Lockton Insurance Brokers, LLC<br>License #0F15767<br>4275 Executive Square, Suite 600<br>La Jolla CA 92037<br>(858) 587-3100 | PHONE (A/C, No, Ext): | FAX (A/C, No): |
| | E-MAIL ADDRESS: | |

| | INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|---|
| INSURER A : | National Fire Insurance Co of Hartford | 20478 |
| INSURER B : | Valley Forge Insurance Company | 20508 |
| INSURER C : | The Continental Insurance Company | 35289 |
| INSURER D : | Lloyd's Syndicate 457 (Munich Re Syndicate Limited) | |
| INSURER E : | American Casualty Company of Reading, PA | 20427 |
| INSURER F : | | |

**INSURED**
1377909
IPS Group, Inc.
7737 Kenamar Court
San Diego CA 92121

**COVERAGES** IPSGR01    **CERTIFICATE NUMBER:** 18835788    **REVISION NUMBER:** XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY<br>☐ CLAIMS-MADE X OCCUR | Y | Y | 4034952942 | 3/19/2022 | 3/19/2023 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 1,000,000 |
| | | | | | | | MED EXP (Any one person) | $ 15,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER:<br>☐ POLICY X PRO-JECT ☐ LOC<br>OTHER: | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000,000 |
| | | | | | | | | $ |
| B | AUTOMOBILE LIABILITY<br>X ANY AUTO<br>☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS<br>X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY | N | N | 6013847872 | 3/19/2022 | 3/19/2023 | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) | $ XXXXXXX |
| | | | | | | | BODILY INJURY (Per accident) | $ XXXXXXX |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ XXXXXXX |
| | | | | | | | Comp./Coll. Ded | $ 1,000 |
| C | X UMBRELLA LIAB X OCCUR<br>☐ EXCESS LIAB ☐ CLAIMS-MADE<br>☐ DED ☐ RETENTION $ | N | N | 4034952990 | 3/19/2022 | 3/19/2023 | EACH OCCURRENCE | $ 20,000,000 |
| | | | | | | | AGGREGATE | $ 20,000,000 |
| | | | | | | | | $ XXXXXXX |
| E<br>C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | N | 5093308451 (CA)<br>5093308496 (AOS) | 3/19/2022<br>3/19/2022 | 3/19/2023<br>3/19/2023 | X PER STATUTE ☐ OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 1,000,000 |
| D | Tech E&0/Cyber | N | N | 01MRCT0000037-00 | 3/19/2022 | 3/19/2023 | Each Occ. 5,000,000;<br>Agg.: 5,000,000;<br>Ded.: 100,000 | |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**
Worker's Compensation insurance does not apply to states ND, OH, WA, WY. Tech E&O/Cyber provides coverage for Network Security and Privacy Liability, as well as Breach Event, Cyber Extortion, and Business Interruption RE: City & County of Denver Department of Transportation & Infrastructure is an Additional Insured to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement(s) or policy language. Insurance provided to Additional Insured(s) is primary and non-contributory as per the attached endorsement or policy language. Notice of Cancellation applies per the applicable policy language or endorsements.

| CERTIFICATE HOLDER | CANCELLATION   See Attachment |
|---|---|
| **18835788**<br>City & County of Denver<br>Department of Transportation & Infrastructure<br>201 West Colfax Ave., 3rd Fl.<br>Denver CO 80202 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE |

ACORD 25 (2016/03)    The ACORD name and logo are registered marks of ACORD