

EQUIPMENT PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made this _____ day of _____, 2010 (the "Effective Date") between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **IPS GROUP, Inc.**, a corporation incorporated in the Commonwealth of Pennsylvania, whose principal place of business is located at 6195 Cornerstone Ct E, Suite 114, San Diego, CA 92121 (the "Contractor" or "IPS").

10-931

RECITALS

A. The City wishes to procure from the Contractor parking meters, supporting equipment and services related to the installation of those meters.

B. The Contractor is ready, willing, and able to provide these products and associated services as set forth below.

C. Payment for the equipment shall be financed through a separate lease-purchase agreement (the "LPA") between the City and CHASE EQUIPMENT FINANCE, INC. ("Lessor").

NOW, THEREFORE, the parties agree as follows

AGREEMENT:

For and in consideration of the agreements contained, and subject to the terms and conditions stated, in this Agreement, the parties agree as follows:

1. **FORM OF AGREEMENT.** This Agreement shall consist of the terms and conditions stated in the following numbered Articles, together with those exhibits or attachments that are referenced and incorporated in such Articles. In the event that any conflict between the terms and conditions contained in this document and those contained in any exhibits or attachments shall occur, the terms and conditions of these numbered Articles shall be controlling.

2. **COORDINATION AND LIAISON.** The Contractor shall fully coordinate all services under the Agreement with the Manager of Public Works ("Manager") or, if and as directed, with a designated supervisory person, ("Project Manager"). The Contractor shall submit work orders, correspondence, pay requests, and submittals to the Project Manager

3. **EQUIPMENT AND WARRANTIES TO BE PROVIDED.**

A. Contractor shall provide to the City the equipment and warranties listed and described on **Exhibit A** attached hereto (hereinafter referred to as the "Equipment" and "Warranties").

B. It is understood and agreed that the Equipment and Warranties associated with this Agreement that are being provided to the City hereunder are also routinely provided to nongovernmental customers on the same terms and conditions that were offered to the City and are agreed to by the City in this Agreement.

4. **SPECIAL PURCHASING TERMS AND CONDITIONS:** In addition to all other terms and conditions stated in this Agreement, Contractor shall comply with the following special purchasing terms and conditions:

A. Pricing is F.O.B. San Diego, CA. Delivery shall be on or before the delivery periods set out in **Exhibit A**.

B. Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered as a result of this Agreement which occur prior to delivery to the City; and such loss, injury or destruction shall not release Contractor from any obligation hereunder. Thereafter, risk of loss shall pass to the City and Lessor as further described in the LPA.

C. Contractor agrees to furnish, upon the written request of the City, any additional information needed to substantiate or clarify the design and/or performance characteristics of the Equipment.

D. Contractor Invoices must include the following:

- (1) City contract control number.
- (2) Items listed individually.
- (3) Invoice number and date.
- (4) Requesting department name and "ship to" address.
- (5) Payment terms.

5. **TERM.** The term of this Agreement shall commence upon July 15, 2010, and expire on July 15, 2015.

6. **COMPENSATION.**

A. It is understood and agreed that the City has elected to lease/purchase/finance the Equipment and Warranties through the LPA. The City and Lessor have also entered into an escrow agreement that together with the LPA provide for payment to the Contractor of the maximum amount stated herein subject to the procedure set out in the LPA. The Contractor's performance under this Agreement is expressly conditioned upon funding of the escrow agreement and proper payment as set out herein.

B. The total compensation payable to Contractor for acquiring and delivering the Equipment together with the Warranties shall not exceed the amount of FIVE HUNDRED SEVENTY-SEVEN THOUSAND AND FOUR HUNDRED SIXTY-ONE DOLLARS and Sixty Cents (\$577,461.60) (the "Maximum Purchase Amount"), payable directly to the Contractor by Lessor. Title to the Equipment shall vest with Lessor upon payment of the Maximum Purchase Amount to Contractor. Beneficial use of the Equipment and Warranties shall remain with the City.

C. The total compensation payable by the City to Contractor under this Agreement for the Equipment and Warranties shall not exceed Zero Dollars (\$0.00) (the "Maximum Contract Amount").

D. The total obligation of the City hereunder shall be limited to funds appropriated for the purposes of this Agreement by the Council of the City and County of Denver, paid into the Treasury of the City and encumbered for the purpose of this Agreement.

7. **TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by Contractor, time is of the essence.

8. **STATUS OF CONTRACTOR:** It is understood and agreed by and between the parties that the status of Contractor shall be that of an independent contractor and it is not intended, nor shall it be construed, that Contractor or any employee or subconsultant is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

9. **TERMINATION OF AGREEMENT:**

A. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager

B. Notwithstanding the preceding paragraph, the City may terminate the 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, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. If the Agreement is terminated without cause the Contractor will be compensated for work requested and satisfactorily performed. Upon termination of the Agreement by the City, with or without cause, the Contractor will not have any claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work requested and satisfactorily performed as described in the Agreement.

D. If the 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 City documents in any form that were prepared under the 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." At no time, will the City be entitled to any software, source code or any additional services provided by IPS as a result of such termination.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by either Party constitute or be construed to be a waiver by either Party of any breach of covenant or default that may then exist on the part of either Party. No payment, other action, or inaction by either Party when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

11. **EXAMINATION OF RECORDS:** Contractor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor, involving transactions related to this Agreement.

12. **TAXES, PERMITS AND LICENSES:** Contractor agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Contractor of all required licenses and permits and all taxes. Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed which will in any way impair the rights of the City under this Agreement.

13. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

14. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor, its officers, agents, and employees 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's barring Contractor from City facilities or participating in City operations.

15. **ASSIGNMENT AND SUBCONTRACTING:**

A. Provided that the City shall have accepted the Equipment, the City shall not have the right to and shall not assert against any assignee of Lessor or other registered owner of the Equipment any claim, counterclaim or other right the City may have against the Contractor.

B. None of the City's right, title and interest in any portion of the Equipment may be assigned or encumbered by the City for any reason; except that the City may sublease all or part of such Equipment if (a) such sublease is to an agency or department of, or a political subdivision of, the State or (b) the City obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the rental payments made to Lessor under the lease-purchase transaction referenced herein from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to the lease-purchase transaction with Lessor and the rights of Lessor in, to and under such transaction with respect to the Equipment.

C. The City is otherwise not obligated or liable under this Agreement to any party other than the Contractor named herein. Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **NOTICES:** Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance 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 Contractor at the address first above written, and if to the City at:

Manger of Public Works
201 West Colfax Avenue, 3rd Floor
Denver, Colorado 80202

And to the Contractor at:

IPS Group, Inc.
6195 Cornerstone Ct E, Suite 114,
San Diego, CA 92121

Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by mail are effective upon deposit with the US 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.

18. **INSURANCE:**

A General Conditions: 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. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. 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 contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall

send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Contractor to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. 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.

B. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor certifies that the attached certificate of insurance (preferably an ACORD certificate of insurance) complies with all insurance requirements of this Agreement. 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 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.

C. **Additional Insureds:** For General Liability, Contractor’s insurer shall name the City as an additional insured.

D. **Waiver of Subrogation:** For all coverages, Contractor’s insurer shall waive subrogation rights against the City.

E. **Subcontractor:** All sub-contractors, sub-consultants, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such sub-contractors, sub-consultants, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the City.

F. **Workers’ Compensation/Employer’s Liability Insurance:** 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 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the term of this

Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. **Commercial General Liability:** Contractor shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$3,000,000 policy aggregate.

H. **Automobile Liability:** Contractor shall maintain minimum limits of \$1,000,000 combined single limit applicable to all vehicles used in performing services under this Agreement. Auto pollution liability coverage must be carried for any vehicle hauling cargo containing pollutants or contaminants.

I. **Technology Errors & Omissions including Cyber Liability:** Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

J. **Additional Provisions:**

(1) For all General Liability, the policies must provide the following:

- (a) If any aggregate limit is reduce by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate the aggregates required;
- (b) Contractual liability covering the indemnification provisions of this Agreement;
- (c) A severability of interests provision;
- (d) Waiver of exclusion for lawsuits by one insured against another;
- (e) A provision that coverage is primary; and
- (f) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) For all General Liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

19. **INDEMNIFICATION:**

A. 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 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.

B. 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. 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.

C. 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.

D. 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.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement in the event that an action or claim is occurs prior to expiration or termination.

F. In the event of any claim against the City concerning infringement or violation of a third party’s intellectual property rights, the City will endeavor to promptly notify Contractor in writing of any such claim and will cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (1) contest, (2) settle, (3) procure for the City the right to continue using the Equipment, software, or services, or (4) modify or replace them to be non-infringing (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If none of the foregoing options is reasonably possible, then Contractor will refund a pro-rata portion of the amounts paid hereunder with respect to the Equipment, software, or services (based on the expected life thereof) and reimburse the City for all reasonable expenses for removal and replacement of the Equipment or software. Contractor is not liable for any infringement-related liabilities based upon modifications to the Equipment or software made by the City without Contractor’ consent or being used or sold with products not provided by Contractor and made without Contractor’s consent.

20. **CITY’S INSURANCE.** The City is self-insured pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., and shall not be required to obtain any liability, fire, casualty or other insurance as a result of this Agreement. Neither shall any contrary statement contained in any attachment or exhibit hereto be construed to shift the risk of loss or liability to the City.

21. **CONFLICT OF INTEREST:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.9 and 1.2.12.

22. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including but not limited to subcontractors and suppliers. It is otherwise the express intention of the City and Contractor that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

23. **CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS:**

A. The City and Contractor each have intellectual property rights that shall remain the property of the originating Party. Specifically, all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the originator remain the property of the originator at all times. No intellectual property rights are hereby sold, assigned or transferred from either Party. All data produced or generated by the City in the possession or control of the Contractor is the property of the City.

B. Both Parties acknowledge and accept that, in performance of all work under the terms of this Agreement, either Party may have access to Proprietary Data or confidential information that may be owned or controlled by either Party, and that the disclosure of such Proprietary Data or information may be damaging to either Party or third parties. Both Parties agree that all Proprietary Data or confidential information provided or otherwise disclosed by either Party to either Party shall be held in confidence and used only in the performance of its obligations under this Agreement. Both Parties shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent party would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to either Party by either Party. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

C. Except as expressly provided by the terms of this Agreement, both Parties agree that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. Both Parties further acknowledge that by providing this Proprietary Data or confidential information, neither Party is not granting to the other Party any right or license to use such data except as provided in this Agreement. Both Parties further agree

not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager or an authorized IPS company officer.

D. Both Parties agree that any ideas, concepts, know-how, computer programs, or data processing techniques developed by either Party in connection with this Agreement, any Proprietary Data, or any confidential information shall be deemed to be the sole property of the originating Party and all rights, including copyright, shall be deemed to be the sole property of the originating Party and all rights, including copyright, shall be reserved to the originating Party. Both Parties agree, with respect to the Proprietary Data and confidential information, that:

- (1) Neither Party shall copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the other Party;
- (2) Neither Party shall retain copies, recreations, compilations, or decompilations, in whole or in part, of such data;
- (3) Both Parties shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to either originating Party.

E. Both Parties will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of both Parties under this Agreement shall survive the expiration or earlier termination of this Agreement. Neither Party shall disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

F. In the event that this Agreement or any exhibit or attachment is the subject of an open records request by a third party under Colorado law, the City will notify Contractor of such request. If Contractor believes that any material furnished to the City under this Agreement is not subject to disclosure, it shall take whatever action it deems necessary or appropriate to obtain a court order from the Denver District Court to preclude such disclosure by the City.

24. **DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code §56-106(b) et. seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 2 hereof.

25. **TAXES, CHARGES AND PENALTIES:** The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

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

27. **SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

28. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, Contractor's obligations for the provision of insurance, for indemnity to the City and for preserving confidentiality of trade secrets and other information shall 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.

29. **AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS:** This Agreement, together with the LPA, are intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect or bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

30. **LEGAL AUTHORITY:**

A. Contractor assures and guarantees 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.

B. The person or persons signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Article.

31. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

32. **PCI/DSS COMPLIANCE:**

A. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program/CISP, MasterCard's Security Data Program and SDP Rules, and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations (generally "Association"), and further covenants and agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS), MasterCard Site Data Protection (SDP), and (where applicable) the VISA Payment Application Best Practices (PABP) (collectively, the "Security Guidelines"). Contractor represents and warrants that all of the hardware, software and communication components that it supplies to the City or uses under this Agreement is and will be PCI DSS compliant. All service providers that Contractor uses under the Agreement must be recognized by VISA as compliant with PABP. 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 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. Contractor further certifies that the meters, as described herein, are to be deployed in a manner that meets or exceeds the PADSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards.

B. The Contractor shall not retain or store CVV2/CVC2 data 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, Contractor shall immediately notify the City in writing, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

C. 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 Payment Card Industry Data Security Standards (PCI DSS) compliant.

D. The Contractor must provide quarterly results of a network scan for all Internet or IVR payment acceptance modules that verify PCI DSS compliance, or in the City's sole discretion, allow the City's contracted PCI DSS compliance auditor full access to the Contractor's system(s) at any time to provide this verification to the City. Any cost associated with the City's contracted PCI DSS compliance auditor will be paid by the City. If any Association requires an audit of the Contractor or any of Contractor's Service Providers, agents, business partners, contractors or subcontractors due to a data security compromise event related to this Agreement, 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.

E. 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 Contractor of this Agreement. In furtherance of this, Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

33. **HARDWARE FAILURE**: The City shall be entitled to an invoice credit pro-rating of Contractor's charges if the operability of system hardware falls below 97% during any calendar month during the warranty period. The credit shall be applied for every occurrence in excess of the 3% failure allowance. Hardware operability is defined as the total number of hours meters may be enforced during any given month. For example, if the City deployed 4000 meters in an area where parking was metered for 8 hours daily for four weeks (given no parking holidays) then total operability would be 768,000 hours, of which 23,040 hours would be permitted to be non-functional. The City shall be entitled to a credit reimbursement for lost revenue for any non-functional meters beyond the 3% allotment. Lost revenue may be determined based on the actual history of the meter or a statistically similar meter.

[Signatures on following page]

The parties have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
JOHN W. HICKENLOOPER,
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:
DAVID R. FINE, Attorney
For the City and County of Denver

By: _____
GUILLERMO VIDAL,
Manager of Public Works

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No. XC06014

By: _____
DENNIS GALLAGHER, Auditor of the
City and County of Denver

"CITY"

IPS GROUP, INC.

Tax ID No. 23-3028164

By: 

Title: Chief Operating Officer

"CONTRACTOR"

EXHIBIT A
XC06014

EQUIPMENT PURCHASED

<u>Quantity</u>	<u>Item</u>	<u>Unit Price</u>	<u>Total Price</u>
908	IPS Flexi-Pay Single Space Parking Meter	\$395.00	\$358,660.00
908	IPS RFID Tag	\$25.00	\$22,700.00
531	Duncan Model 90S	\$300.00	\$159,300.00
531	Abloy Vault Lock Model CL623E	\$37.00	\$19,647.00
531	Abloy Lock Model CL200VE	\$32.00	\$16,992.00
12	Lock Keys	\$13.55	\$162.60
TOTAL PURCHASE AMOUNT			\$577,461.60

Specifications of equipment and warranties to be provided by Contractor are set out on the attached pages, which together with this cover sheet constitute **Exhibit A**

STATEMENT OF WORK

This is a procurement and installation contract with IPS Group, Incorporated (the Contractor) for 908 IPS Flexi-Pay Single Space Parking Meters, and associated equipment, linked with the On-Street Parking Management System (OPMS) within the City and County of Denver through its Public Works, Right-of-Way Services (ROWS). The Contractor shall assume the responsibility for delivery and installation of Meters in the City and County of Denver as outlined below. This Scope of Work details the Contractor’s responsibilities for installing and testing the Meters at the point of installation.

SECTION 1: DEFINITIONS

OPMS or System: The terms “OPSM” or “System” shall mean a complete, fully tested and operational On-Street Parking Management System, including, but not limited to, database

management functions, report and recordkeeping functions, form, report and notice generation functions, accounting functions, collection functions with full City network compatibility. The On-Street Parking Management System shall otherwise perform or provide all required services, products and functions specified in this Agreement.

IPS Meter: The term “IPS Meter” shall mean IPS Flexi-Pay Single Space Parking Meter. See Attachment 1

Associated Equipment: The term “Associated Equipment” shall refer to the meter housing, locks, bank, vault, IPS RFID tag, and ‘T’ bar meter mount. See Attachment 2

Meter: The term “Meter” shall mean any device that manages on-street parking assets.

Reports: The term “Reports” shall mean the presentation of OPMS performance and accomplishments during the OPMS operation in electronic format. Specific content requirements for each Report shall be described herein.

Pole Address: The term “Pole Address” shall mean the unique location code assigned to an active pole, relative to its location, by the City.

Days: The term “Day(s)” shall mean calendar days and not business or working days, unless otherwise indicated.

Functional Meter: The term “Functional Meter” shall mean any IPS Meter functioning within the normal parameters of operation. A functional meter will accept all forms of payment, properly interface with end users, actively communicate with the OPMS at designated times, properly indicate payment status by illuminating light emitting diodes; red for non-paid meters, green for paid meters, properly reports battery power, collection status, and coin count.

Acceptance: The term ‘Acceptance’ shall mean the point at which the City assumes responsibility for merchandise provided by the contractor. Acceptance shall occur after IPS has successfully completed installation of all merchandise and said merchandise is properly integrated and communicating with the OPMS. Merchandise must meet the definition of Functional Meter or Functional Sensor at the time of acceptance.

Significant Weather Event: The term ‘Significant Weather Event’ shall mean weather conditions that, in the determination of the Manager of Right-of-Way Enforcement, represents an unacceptable risk to personnel working in the City’s right-of-way. Significant Weather Events may include rain, snow, excessive heat, excessive cold or any other adverse weather condition.

SECTION 2: METER PROCUREMENT

The Contractor shall provide the City with 908 IPS Flexi-Pay Single Space Parking Meters.

The Contractor shall install the 908 IPS Flexi-Pay Single Space Parking Meters as described in Section 3.

The Contractor shall provide the City with 908 meter specific RFID tags.
The Contractor shall provide 531 complete meter housings in a style identical to those already deployed within the City. The housings shall include Upper Housings, Lower Housings, and applicable Abloy locks as described in Attachment 2.

SECTION 3: METER DEPLOYMENT

Both Parties recognize the importance for the smooth deployment of the IPS meters and rollout of the OPMS system. As such, the City shall provide IPS with a copy of the City's Prioritized Deployment Plan (PDP) no later than 30 (thirty) days prior to the targeted deployment date and no later than 10 days subsequent to contract execution.

Prioritized Deployment Plan:

The PDP shall include the following information:

- 1) A map indicating the location of the meters scheduled to be deployed by phase and phase priority.
- 2) A complete copy of the IPS SSPM Profile associated with each phase and phase priority.
- 3) A requested pre-deployment date and deployment date.

Pre-Deployment:

IPS will be responsible for the pre-deployment of the parking meters system in accordance with the PDP. During pre-deployment, IPS will take all necessary measure to set-up the deployment area in the OPMS system which shall include:

- 1) The creation of a map using GPS coordinates of each pole.
- 2) Associating the GPS located pole with the accurate meter address.
- 3) Determining the IPS meter serial number associated with each meter address.
- 4) Verifying the initial programming of the pre-deployed meter matches the programming requested in the PDP.

Deployment:

Upon the successfully completion of pre-deployment, IPS will work with the City to complete the actual deployment of the parking system. City staff will accompany IPS staff during the deployment.

City personnel will be responsible for the following activities:

- Installing the double meter adaptor assembly
- Installing the meter housing
- Installing the meter bank
- Installing the meter vault
- Installing the locking devices on the meter bank and housing.
- Cross-checking the serial number of the IPS device affixed to the pole address.
- Verifying the initial functionality of the IPS device.
- Loading credit on the IPS device should it be required.

IPS personnel will be responsible for the following activities:

- Installing the IPS device.
- Verifying the serial number of the IPS device is affixed to the proper pole address.
- Verifying the functionality of the IPS device.
- Verifying that the IPS device is properly communicating with the OPMS.

Deployment Timetable:

Deployment of the parking meters will begin once the City has provided IPS with an executed version of this contract (XC06014),

Both Parties agree to the following deployment timetable listed below for the deployment of 908 single space parking meters. This timetable may be modified by mutual agreement, or as a result of a Significant Weather Event.

The number of ‘days’ indicate the number of calendar days subsequent to the City providing IPS with copies of the executed agreements. The

- 5 days: City provides IPS with the PDP in full.
PDP Deployment
- 55 days: IPS completes pre-deployment of PDP.
- 60 days: IPS delivers the shipment of 908 meters and all other necessary equipment.
- 61-65 days: IPS and the City install the PDP meters.
- 75 days: The City makes final acceptance of meters.

SECTION 4: IPS FLEXI-PAY METER - OPMS INTERFACE

The IPS meters shall interface with the OPMS system. This secure system will provided the OPMS system with data on each meter including but not limited to financial, technical and configuration information.

Each meter shall provide all necessary data and information to generate the following reports, at any reporting level, for any given period:

- Monthly Statistics
- Area Revenue
- Daily Bank Reconciliation
- Coin Collection
- Coin Revenue
- Sensor Reset
- Battery Voltage
- GPS Location
- Automated Address Event
- Vault Collection Notification
- Meter Maintenance
- Meter Communication
- Sensor Communication
- Electronic Maintenance Report

ATTACHMENT 1
IPS FLEXI-PAY METER DESCRIPTION

The IPS Flexi-Pay Single Space Parking Meter will operate in conjunction with the OPMS. The IPS Single Space Parking Meter is a direct replacement upgrade that fits into the City's existing single space poles and housings.

The IPS meters shall have the following capabilities:

- Accepts credit cards, debit cards, smart cards and coins
- Uses the City's existing meter housings and poles, equipment, collection carts
- Solar powered with rechargeable battery pack (3 yr guarantee)
- PCI Compliant for real-time credit/debit card authorization
- Highly visible expiry indicator
- Wirelessly networked and connected to a web-based management system
- Vandal resistant LEXAN dome
- No external power is required.
- Will allow for real-time credit card authorizations and meter status reporting.
- Will conform to the sample meters provided to the City during the test period.

ATTACHMENT 2
ASSOCIATED EQUIPMENT DESCRIPTION

IPS shall provide associated equipment necessary for the deployment of the IPS Flexi-Pay Single Space Parking Meter. This equipment shall be of the same make and model of those deployed throughout the City (Duncan Model 90S)

Lower Housings:

- A one-piece integral casting constructed of ductile iron
- Round door opening machined to close tolerance, provides close fit of vault door
- Door is hinged internally and located on the front of the lower housing
- Tolerance between the lower housing door diameter and the lower housing door opening does not exceed .030"
- Locked door is secured to the lower housing by two opposing, cam activated hardened steel bars
- Different lock and key used for upper and lower housing
- The key-way corridor is at least 15/32" deep from the outside surface of the doors key-way to the face of the lock; minimum of .280" nominal wall thickness

Upper Housings:

- Has an impact strength equal to or exceeding zinc alloy Zamac #5
- Cap assembly fits onto the mechanism housing portion with a metal-to-metal tongue & groove design
- Tongue portion is 1/8" high and is continuous except for an area not to exceed 2 3/16" where the mechanism extends through the housing
- Cap assembly is hinged to the upper housing to allow for inspection, removal or replacement of the meter mechanism; groove overlaps housing tongue by 1/8"
- Cap strap is capable of being detached by the removal of four internal screws
- Access to the upper housing is gained through separate lock combination and key and does not allow access to the coin compartment of the lower housing

Locks:

- High-security Abloy Parking Meter locks. Abloy Model CL623E shall be used for vault door access while Abloy model CL600VE shall be used to access the upper mechanism.

IPS Limited Warranty

IPS will provide a limited warranty for any new meter product manufactured and supplied by IPS for 12 months against defects in materials and workmanship from the point of installation or 18 months from the date of delivery, whichever is sooner, and 90 days from the date of delivery received in the case of repaired products. IPS does not cover defects caused by improper care or use, lack of preventative maintenance, and does not warranty any defects due to vandalism or other factors contained as a part of the Force Majeure clause below.

Additional Provisions:

- IPS must have the opportunity to assist in the initial deployment and system installation
- Repair or replacement under warranty of any defective product does not extend the warranty period for that product.
- IPS will either repair or replace products, at our discretion, to replace parts that are found to be defective within the warranty period.
- Any sub-component (does not include complete meter mechanism) installed will have a warranty period beginning on the date installed

Exclusions:

- Problems caused by faulty installation of replacement components
- Warranty voided by use of non-IPS replacement parts, un-authorized alterations to the equipment (hardware or software)
- Provisions of this warranty are only for the City of Denver, CO.
- 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 [or cellular telecommunication failures caused by any of the events or causes described above].

Preventative Maintenance

- Preventative maintenance will be similar to current single-space parking meters. However, the primary elements will be a working battery, card reader and coin validator.
- Meters surfaces should be kept clean with mild soap and water
- 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.
- At 9-12 month increments, the coin validator be visually inspected for any damage or debris. Compressed air may be used to keep the card reader and coin acceptor clear of debris, every 9-12 months.