

AGREEMENT TO PURCHASE PARKING METER EQUIPMENT AND RELATED SERVICES

This Agreement To Purchase Parking Meter Equipment And Related Services ("Agreement") is made effective April 23, 2013 (the "Effective Date"), by and between the CITY OF Norman, OK, a municipal corporation (the "City"), and IPS GROUP, INC., a Pennsylvania corporation ("IPS"), with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of Oklahoma with the power to carry on its business as it is now being conducted under the statutes of the State of Oklahoma and the Charter of the City.
- B. IPS is a corporation duly organized and validly existing under the laws of the Commonwealth of Pennsylvania.
- C. City and IPS desire to enter into this Agreement for Goods and Services to be delivered in accordance with Bid 1213-70 and the associated IPS RFP response both of which are made a part of this Agreement by reference and included as Attachment A.

Now, therefore, the parties agree as follows:

TERMS AND CONDITIONS

1. Term of Agreement.

- 1.1. **Initial Term.** This Agreement begins on the Effective Date and terminates five calendar years thereafter, unless terminated earlier as set forth in this Agreement.
- 1.2. **Option to Extend.** City has the option, in its sole and absolute discretion and subject to City Council approval, to extend the term of this Agreement for an additional three-year period. City will notify IPS of its intention to exercise the option to extend this Agreement at least 90 days prior to the end of the initial term.

2. IPS Services.

- 2.1. **Scope of Services.** IPS agrees to diligently undertake, perform, and complete all of the services ("Services") described in Attachment A, which include but are not limited to the following items:
 - 2.1.1. All data related to the parking meter system will be maintained by IPS and replicated on one or more duplicate servers with regular backups.
 - 2.1.2. City may, from time to time, wish to implement available upgrades in

meter hardware and software. Additional hardware costs will be paid by the City as provided for in a quote by IPS separate from or by mutual written amendment to this Agreement. The City maintains the sole authority to determine when and where such upgrades will be implemented.

- 2.1.3. IPS will make any publically available software upgrades at no additional charge to the City. However, any data costs associated with downloading such software upgrades to parking meters will apply. Additional charges may apply for new software that requires new or upgraded hardware.

3. City Services. The City agrees to:

- 3.1. Make available to IPS any and all currently existing documents, data or information required for the implementation and ongoing performance of the Services.
- 3.2. Designate a representative authorized to act on behalf of the City.
- 3.3. Promptly examine and render findings on all documents submitted for staff review by IPS.

4. Parking Meter Equipment Delivery and Installation.

- 4.1. IPS shall deliver new, fully-tested parking meter equipment. No used or previously owned parking meter equipment will be allowed.
- 4.2. Coordinated installation of all parking meter equipment will take place according to a pre-defined deployment plan created by City and IPS. The City will provide a detailed deployment database in an electronic format that will also include rates, time limits, hours, and restrictions for each meter.
- 4.3. City staff, in conjunction with IPS staff, will inspect parking meter equipment following installation to ensure proper installation and operation. Acceptance shall take place at the time of installation unless notified in writing of any dispute within 10 business days.

5. Use of Parking Meter Equipment.

- 5.1. City shall use the parking meter equipment in the proper manner and shall comply with and conform to all national, state, and local laws and regulations in any way relating to the possession, use or maintenance of the equipment.
- 5.2. City, at its own cost and expense, shall keep the equipment in good repair, condition and working order. The City will also notify IPS of any need for warranty repair work and will coordinate the return process with IPS.

6. Payments.

- 6.1. The City will compensate IPS for the Services as set forth in Attachment A. Notwithstanding the foregoing, IPS shall not be required to provide any ongoing operating services without ongoing payment.

- 6.2. City further agrees to pay to IPS the amounts specified in Attachment A on a Net 30 basis from the date of equipment installation. City further agrees to pay to IPS the amounts specified in Attachment A on a Net 30 basis from the date of invoice for ongoing services.
- 6.3. City agrees to promptly notify IPS in writing of any dispute with any invoice, and that invoices for which no such notification is made within 10 business days shall be deemed accepted by the City.

7. Warranties.

- 7.1. IPS shall provide a full 12-month warranty on all equipment as described in Attachment A, IPS Limited Warranty, on all installed equipment. Extended warranties are available for an additional fee.

8. Intellectual Property.

- 8.1. The City exclusively and solely owns all City Data and the intellectual property therein. IPS further agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership rights in City Data. For purposes of this Agreement, "City Data" means all intellectual property of the City, including but not limited to occupancy data, financial records, programming configurations of the parking meters, GIS location and rates, and other operational data and tailored operational programming.
- 8.2. IPS may not provide or disclose any City Data to any third party without the City's prior written consent.
- 8.3. IPS hereby grants the City, including its departments, commissioners, officials, officers, employees, consultants, and agents (collectively, "City") all the rights and licenses required to use IPS Equipment and Software. Such rights and licenses are non-assignable, non-transferable and non-exclusive, and specific only to use within the City.
- 8.4. Nothing in this Agreement will be construed as assigning, selling, conveying, or otherwise transferring any ownership rights or title in IPS Equipment and Software, including but not limited to pre-existing or independently developed intellectual property, materials, software, methodologies, tools, or inventions, that are developed, conceived or created for any IPS business purpose, or any derivative works to any of the foregoing.
- 8.5. IPS understands the nature of public information and the requirement for the City to adhere to all rules and laws that apply to public information, such as the Freedom of Information Act, Public Records Act, and the like. However, the City also understands that the IPS Equipment and Software contains intellectual property, copyrights, and trade secrets that do not exist in the public domain. Therefore, the City agrees that it will not knowingly agree, assist, or sell any equipment or allow any third party to gain access to equipment, software, or documentation provided by IPS for the purposes of reverse engineering or evaluation without the prior written consent of IPS, or as mandated by applicable law.

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

9. Event of Default

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

9.2. Upon termination, the City is liable only for all outstanding payments required by the terms of this Agreement for Services received and accepted by the City at that point in time.

10. Termination and Suspension. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. CITY may terminate or suspend performance of this Agreement for the CITY'S convenience upon written notice to IPS. IPS shall terminate or suspend performance of the Services on a schedule acceptable to CITY, and CITY shall pay IPS for all the Services performed. Upon restart of suspended Services, an equitable adjustment shall be made to IPS'S compensation and the Project schedule.

11. Dispute Resolution. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute.

12. Insurance. During the performance of the Services under this Agreement, IPS shall maintain the following insurance:

- (a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

- (b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

IPS shall, upon written request, furnish CITY certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to CITY. City shall require all Project contractors to include CITY, IPS, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both CITY and IPS, each to the same extent.

13. **Schedule.** IPS shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment A. According to this schedule meters and sensors are to be delivered to the City of Norman ready for installation within 60 days of a Notice of Award.
14. **Standard of Care.** The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.
15. **Indemnification and Limitations of Liability.** IPS agrees to defend and indemnify City, its City Council, boards and commissions, officers, agents, and employees (collectively the "CITY"), from and against any loss, damages, liability, claims, suits, costs, expenses, and judgments, whatsoever, including reasonable attorney's fees, arising from the gross negligence or willful acts, errors or omissions solely of IPS or IPS's officers, agents, employees or subcontractors, in the performance of services, activities or work conducted pursuant to this Agreement. The CITY agrees to defend and indemnify IPS, its board, officers, employees, from and against any loss, damages, liability, claims, suits, costs, expenses, and judgments, whatsoever, including reasonable attorney's fees, arising from the gross negligence or willful acts, errors or omissions solely of the CITY. Limits of Liability: Any damages claimed for any reason under this contract shall not exceed the value of the contract itself.
16. **Liens and Taxes.** City shall keep the parking meter equipment free and clear of all levies, liens, and encumbrances, except those created by this Agreement. City shall pay, when due, all charges and taxes (local, state, and federal), which may now or hereafter be imposed in conjunction with this Agreement.

17. **Notices.** All notices under this Agreement must be in writing, shall refer to the title and effective date of this Agreement, and shall be sufficient if given personally, sent and confirmed electronically, or mailed certified, return receipt requested, postage prepaid, and at the address hereinafter set forth or to such address as such party may provide in writing from time to time. Any such notice will be deemed to have been received five days subsequent to mailing. Notices shall be sent to the following addresses:

IPS: IPS Group, Inc.
5601 Oberlin Drive, Suite 100
San Diego, CA 92121
Attn: Chad Randall
chad.randall@ipsgroupinc.com

City: City of Norman
201 West Gray Street
Norman, OK 73069
Attn: Shawn O'Leary
shawn.oleary@normanok.gov

18. **Relationship of the Parties.** This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association between the parties, and both parties shall be and remain independent entities. Neither party has the right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever, except as otherwise provided in this Agreement.
19. **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.
20. **Integration.** This Agreement, including Attachment A, incorporated by this reference, represents the entire and integrated agreement between the CITY and IPS. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.
21. **Successors and Assigns.** CITY and IPS each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.
22. **No Third Party Rights.** The Services provided for in this Agreement are for the sole use and benefit of CITY and IPS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CITY and IPS.
23. **Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of ~~California~~ ^{Oklahoma}, without regards to conflict-of-laws principles, and all local laws, ordinances, rules, and regulations.

24. **Venue and Jurisdiction.** Any litigation arising out of this Agreement may only be brought in either the ~~any court with jurisdiction in the State of Oklahoma, United States District Court, Central District of California,~~ or the Superior Court of California, County of San Diego, CA, as appropriate. The parties agree that venue exists in either court, and each party expressly waives any right to transfer to another venue. The parties further agree that either court will have personal jurisdiction over the parties to this Agreement.
25. **Force Majeure and Delay in Performance.** Neither the CITY nor IPS shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the CITY or IPS under this Agreement. IPS shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
26. **Severability.** If any provision in this Agreement subsequently is determined to be invalid, illegal or unenforceable, that determination shall not affect the validity, legality or enforceability of the remaining provisions stated in any section or subsection of this Agreement.
27. **Authorization.** Each party warrants to the other party that the individuals executing this Agreement are authorized to do so.
28. **Section Headings.** All section headings in this Agreement are for the convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.
29. **Survival of Provisions and Obligations.** Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, will survive termination and remain effective for a reasonable time. Any obligation that accrued prior to termination of this Agreement will survive termination of this Agreement.
30. **Equal Employment Opportunity.** IPS hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. IPS affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is IPS'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. IPS further affirms

completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

In witness whereof, the parties have caused this Agreement to be executed as of the Effective Date listed on Page 1 of this Agreement.

ATTEST:

CITY of Norman, OK
a municipal corporation


By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

CONTRACTOR:
IPS GROUP, INC.,
CONTRACTOR:
a Pennsylvania corporation

By: _____
City Attorney

By:  _____
CHAD P. RANDALL
Chief Operating Officer

ATTACHMENT A
(RFP AND ASSOCIATED RESPONSE)