

RESOLUTION NO. 2012 - 2113

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE AGREEMENT WITH IPS, FOR THE INSTALLATION AND EQUIPMENT OF THIRTY CREDIT CARD ENABLED METER HEADS FOR A TRIAL PERIOD OF NINETY DAYS; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MAYOR TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") wishes to retain IPS to install thirty credit card enabled meter heads on our current single space meters at no charge for installation and equipment for a trial period of ninety days; and

WHEREAS, the new meters are aimed at providing the public with a greater range of payments options and increased convenience in parking; and

WHEREAS, the new meters will accept coins, credit cards and debit cards; and

WHEREAS, after the completion of the ninety-day trial period, the Town will review the increased revenues, if any, from the new meters and make a business case decision whether or not to recommend a permanent agreement to the Town Commission; and

WHEREAS, IPS has provided the Town of Surfside with a proposal to pay the vendor a one-time credit card set up fee of \$125; \$0.13 per credit card transaction; \$3.75 per meter per month for the secure wireless Gateway Data Rate; and \$2.00 per meter per month for the web-based management system fee; and \$3.50 per sensor per month for the wireless data; and

WHEREAS, the total cost for the ninety-day experiment will be \$747.50 and if the Town Commission decides to end the experiment, there is no additional cost; and

WHEREAS, if the Town Commission decides to purchase the credit card accepting meters, the cost will be \$24,750.00 for the Town's fifty meters which decision will be made by the Town commission after the 90 day test period; and

WHEREAS, the Town Commission finds that approval of the Agreement between IPS and the Town is in the best interest of the Town.

NOW, THERE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Agreement. The Agreement between IPS and the Town of Surfside to install thirty credit card enabled meter heads on our current single space meters, a copy of which is attached as Exhibit "A", together with such non-material changes as may be acceptable to the Town Manager is approved.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend Municipal Parking funds to implement the terms and conditions of the Agreement.

Section 5. Execution of Agreement. The Town Mayor is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement.

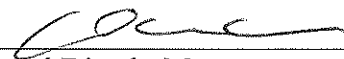
Section 6. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 19th day of September 2012.

Motion by ^{Vice Mayor} ~~Commissioner~~ Karukin, second by Commissioner Kligman.

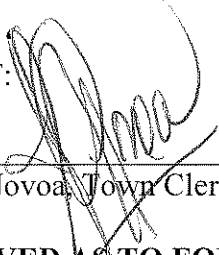
FINAL VOTE ON ADOPTION

Commissioner Joseph Graubart	<u>yes</u>
Commissioner Michelle Kligman	<u>yes</u>
Commissioner Marta Olchyk	<u>Absent</u>
Vice Mayor Michael Karukin	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>



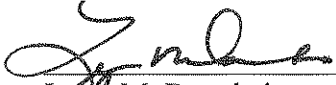
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Lynn M. Dannheisser
Town Attorney

**IPS GROUP, INC.
PARKING METER FIELD TRIAL AGREEMENT**

THIS AGREEMENT made this ___/___/2012, by and between the **Town of Surfside, FL** whose principal place of business and mailing address is 9293 Harding Avenue, Surfside, FL 33154, (hereinafter called the "**Town**") and IPS GROUP, INC., a Pennsylvania corporation, whose principal place of business and mailing address is 6195 Cornerstone Ct E, Suite 114, San Diego, CA 92121 (hereinafter called the "**IPS**").

WHEREAS, the **Town** desires to contract with the **CONTRACTOR** to perform a parking meter field test within the **Town** using the patented IPS credit card enabled single space parking meter (SSPM) and IPS vehicle detection sensors; and

WHEREAS, the **CONTRACTOR** will install Thirty (30) SSPM ("Meters") within **Town** with no charge for installation and equipment to the **Town** for a trial operational period of ninety (90) days; and **CONTRACTOR** will install Ten (10) vehicle detection sensors ("Sensors") within **Town** with no charge for installation and equipment to the **Town** for a trial operational period of ninety (90) days

WHEREAS, the **Town** shall pay the **CONTRACTOR** a total amount not to exceed a one-time credit card processor set-up fee of \$125; Thirteen Cents (\$0.13) per credit card transaction; Three Dollars and Seventy-Five Cents (\$3.75) per meter per month for the secure Wireless Gateway Data rate; and Two Dollars (\$2.00) per meter per month for the web-based management system fee; and Three Dollars and Fifty Cents (\$3.50) per sensor per month for the wireless data. Field trials that extend beyond the initial period outlined above shall then be charged an additional meter hardware rental fee of \$15 per meter per month (30 days), sensor hardware rental fee of \$10 per sensor per month (30 days), and will be prorated in the event of a partial month of use.

WITNESSETH:

The **Town** and **IPS**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. **Recitals.** Each party named in this Agreement agrees to execute the Agreement and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.

Contract Price. The **Town** shall pay the **CONTRACTOR** a total price not to exceed a one-time credit card processor set-up fee of \$125; Thirteen Cents (\$0.13) per credit card transaction; Three Dollars and Seventy-Five Cents (\$3.75) per meter per month for

the secure wireless Gateway Data Rate; and Two Dollars (\$2.00) per meter per month for the web-based management system fee; and Three Dollars and Fifty Cents (\$3.50) per sensor per month for the wireless data

2. **Payments.** Payment shall be made to **IPS** as follows:

- a) **CONTRACTOR** will invoice the **Town** at the end of each month after the trial period for all costs outlined in the contract price in paragraph 2 above.
- b) The contract price in paragraph 2 excludes any taxes that may be applicable to the **Town**. Any applicable taxes will be added to the fees per paragraph 2 and will be paid by the **Town**.
- c) The contract price in paragraph 2 excludes any additional costs associated with applicable permits that may be applicable and required by the **Town**. Any applicable costs associated with permits will be added to the fees per paragraph 2 and will be paid or waived by the **Town**.

3. **IPS's Duties.** **IPS** shall be responsible for providing the following:

- a) Thirty (30) single space parking meters ("meters"); Meter Management System (MMS), and PCI-DSS Level 1 Certified Payment Gateway Services.
- b) Ten (10) vehicle detection sensors ("sensors");
- c) Configure the meters and sensors as directed by the **Town** with regards to rates, hours of operation and credit card acceptance.
- d) Lead, with supervision of the **Town**, the installation of the meters, sensors, and associated meter and management system training;
- e) Provide full technical support throughout the duration of the field trial via phone support, but will come on-site if required;
- f) Pay for shipping to/from the **CONTRACTOR's** facility for any repair services that cannot be successfully completed by the **Town**;
- g) Meet with the **Town** on a regular basis (via conference call) to review the field trial and performance of the units;
- h) Measure the performance of the meters to determine the usage of credit cards and the corresponding benefit to the **Town**;

4. **Town's Duties.** The **Town** shall be responsible for providing the following:

- a) Provide all required information regarding credit card processing and meter configuration to **IPS** in order to install the meters; The **Town** will not require any third party gateway, however, the **Town** will be required to pay for all services associated with the merchant account, including account management fees, interchange and processing fees. It is also the duty of the **Town** to make **IPS** aware of any changes associated with the merchant account during the term of this agreement.
- b) Supervise and be present with the **CONTRACTOR** during the installation and removal of the meters and sensors;
- c) Remit payment to **IPS** as outlined in the contract price in paragraph 2 on a Net 30 basis;
- d) Perform first line meter maintenance, including clearing of coin jams, card reader jams, and the like;
- e) Actively communicate any issues to **IPS**, in order for **IPS** to respond appropriately to reach a resolution.
- f) Provide current meter operating data to **IPS** in order to make a proper comparison between current operations and the trial meters. Data should include, but is not limited to, revenue data, paid occupancy data, meter uptime;
- g) Allow **IPS** to use the trial data and analysis in a case study, as a customer testimonial or use the **Town** as a reference, subject to approval by the **Town**.
- h) Allow **IPS** to conduct a public survey with regards to public preferences for new technology, to be paid entirely by **IPS** and approved by the **Town** prior to commencement of survey.

5. **Term.** The term of this Agreement shall commence on the date that **IPS** shall install and make operational all trial meters and shall terminate ninety (90) days thereafter, unless mutually agreed to extend the trial in writing by both parties. **IPS** shall provide written notice to the **Town** indicating that all trial meters have been installed, and the date of such written notice shall constitute the

commencement of the field trial terms. Either party may terminate field trial by giving the other thirty (30) business day's written notice.

6. **Notice.** All notices, requests, demands, if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

As to the **Town:** Town of Surfside
9293 Harding Ave.
Surfside, FL 33154
ATTN: Elinor Joseph
TEL: 305-861-4862

As to **IPS:** Chad P Randall
COO
IPS Group, Inc.
6196 Cornerstone Ct E, Suite 114
San Diego, California 92121
Tel: 858-404-0607

7. **Assignment.** IPS shall not, without prior written consent of the **Town**, assign any portion of its interest under this Agreement and, specifically, **IPS** shall not assign any monies due or to become due without the prior written consent of the **Town**.
8. **Ownership/Use.** All equipment provided shall remain the property of **IPS** unless the **Town** enters into a separate agreement with **IPS** for the purchase of said equipment. All equipment provided shall be used for the purpose of this agreement and evaluation only and the **Town** shall not license, sell, dispose, or transfer the equipment to any other 3rd party without the written consent of **IPS**.
9. **Authorization.** Each party warrants to the other party that the individuals executing this Agreement are authorized to do so.
10. **Force Majeure.** If any party is prevented from performing its obligation stated in this Agreement by any event not within the reasonable control of that party, including, but no limited to, an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the **Town**), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of

delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

11. **Confidentiality/Intellectual Property.** IPS understands the nature of public information and the requirement for the **Town** to adhere to all rules and laws that apply to public information, such as Freedom of Information Act, Public Information Requests, and the like; However, the **Town** also understands that the equipment provided by **IPS** contains intellectual property, copyrights and trade secrets that do not exist in the public domain. Therefore, the **Town** agrees that it will not knowingly agree, assist, or sell any equipment or allow any third party to gain access to equipment, software, documentation provided by **IPS** for the purposes of reverse engineering or evaluation without the written consent of **IPS**.
12. **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 this Agreement unless that effect is made impossible by the absence of the omitted provision.
13. **Binding Document.** The **Town** and **IPS** each binds itself, its partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, conditions, and obligations contained in the Agreement.
14. **Venue.** This Agreement shall be governed by the laws of the State of California as now and hereafter in force. The venue for actions arising out of this Agreement shall be in San Diego, CA
15. **Entire Agreement; Modification** - This Agreement between the parties consists only of the express written terms and conditions set forth in this Agreement. All understandings and agreements made between the parties are superseded by this Agreement, which alone fully and completely express the parties' understanding. There are no promises or agreements, oral or otherwise, inducing entry into this Agreement, except only as expressly in writing herein. The parties are relying only on the express terms, conditions and agreements set forth in this Agreement. The parties further agree that any promise or agreement, not expressly set forth in writing and signed by both parties, can-not be relied upon and will not be valid or enforceable.

16. **Signatures Required.** This Agreement shall be considered null and void unless signed by both **IPS** and the **Town**. This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

Town

IPS GROUP, INC.

By: _____

By: _____

Printed Name: Roger M. Carlton

Printed Name: Chad P. Randall

Title: Town Manager

Title: Chief Operating Officer

Date:

Printed Name:

Date: _____

Title: Town Attorney

Date: