

**PARKING METER PARTS AND COMPONENTS
TERM & SUPPLY CONTRACT**

Between
MacKay Meters, Inc.
And
City of Columbia, Missouri

THIS AGREEMENT (hereinafter “Agreement”) is by and between the City of Columbia, Missouri (hereinafter “City”), a municipal corporation whose address is 701 E. Broadway Columbia, MO 65201 and MacKay Meters, Inc. (hereinafter “Contractor”), a Florida corporation with authority to transact business within the State of Missouri and whose head office address is 1342 Granton Abercrombie Rd, New Glasgow, NS B2H 5E3, Canada, and is entered into on the date of the last signatory below (hereinafter “Effective Date”). City and Contractor are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, City is the owner and operator of parking meters throughout the city of Columbia which must be maintained and replaced as needed;

WHEREAS, City has need for a term and supply contract for provision of parts and components for the maintenance and replacement of its parking meters;

WHEREAS, Contractor distributes parts and components for parking meters that meet the City’s needs with its existing parking meters;

WHEREAS, City wishes to purchase, and Contractor wishes to provide, parts and components for parking meters consistent with the terms and provisions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. DEFINITIONS.

(a) “*Contractor Pricing Guide*” or “*Pricing Guide*” shall mean a list of all Parts that Contractor offers for sale and their corresponding prices. This is generally updated on an annual basis by Contractor, but Contractor reserves the right to update it at any time.

(b) “*Parts*” shall mean the parking meter parts and components listed for sale by Contractor in the Contractor Pricing Guide.

2. CITY RESPONSIBILITIES.

2.1. **Purchase of Parts.** City will submit a purchase order to Contractor for the Parts it wishes to purchase. The pricing for this order will be governed by the most current Contractor Pricing Guide. City will submit full payment to Contractor for all Parts prior to delivery.

2.2. **Not to Exceed Amount.** Under no circumstances shall the cumulative amount of payment from City to Contractor for Parts pursuant to this Agreement exceed the amount appropriated for that purpose in a given year, and each order shall have a not to exceed amount in the purchase order.

3. CONTRACTOR RESPONSIBILITIES.

3.1. **Supplying Parts & Delivery.** After receipt of payment and purchase order, Contractor agrees to supply City with the Parts ordered. Contractor is responsible for delivery of the ordered Parts to City within sixty (60) days, of receipt of purchase order. If City has not received the parts within sixty (60) days, then the City may, at its discretion, cancel its order by providing written notice of cancellation to Contractor. Contractor shall promptly provide a full refund to the City for any ordered product not yet in process at the time Contractor receives cancellation notice from the City.

3.2. **Pricing.** The applicable price for each Part will be listed in the Contractor Pricing Guide. Contractor agrees to provide its most current Pricing Guide to City upon request. The Contractor Pricing Guide is generally updated on an annual basis; however, Contractor reserves the right to update the Pricing Guide at any time.

3.3. **Any Additional Costs Covered by Contractor.** City is responsible for the price of the Parts listed in the Contractor Pricing Guide plus the shipping costs and applicable taxes charged at the time of the order. Contractor is responsible for all other costs associated with the supply of the ordered Parts.

3.4. **Warranty on Parts.** Contractor warrants that on delivery, and for a period of one (1) year from the date of delivery in accordance with Contractor's standard Terms of Warranty. The Parts shall: (a) conform in all material respects with their description and any applicable specifications; and (b) be free from material defects in design, material and workmanship. Contractor shall repair or replace any defective Parts that do not meet this warranty provided that City gives notice of the issue in writing during the warranty period and City returns the defective Parts to Contractor. See a copy of Contractor's standard Terms of Warranty appended herein as APPENDIX A.

4. TERM AND TERMINATION

4.1. **Term.** The initial term of this Agreement shall be one (1) year commencing on the Effective Date. Thereafter, the term shall automatically renew for successive one (1) year terms unless otherwise terminated as provided for herein.

4.2. **Termination for Default.** If either Party fails to perform its duties and obligations provided for herein, then that Party shall be in default. The non-defaulting Party may provide written notice outlining the default. If the default is not cured within thirty (30) calendar days' from receipt of the written notice of default, then the non-defaulting Party may terminate this Agreement in whole or in part for failure to perform by providing written notice of termination. The written notice of termination will be effective immediately upon its receipt.

4.3. **Termination for Convenience.** Either Party may terminate this Agreement for convenience at any time by providing no less than sixty (60) calendar days' written notice.

5. MISCELLANEOUS

5.1. **Hold Harmless Agreement.** To the fullest extent not prohibited by law, each Party shall indemnify and hold harmless the other Party, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any negligent act or failure to act on the part of the indemnifying Party or its subcontractors in connection with the provision of this Agreement. Contractor understands that City is a government entity and agrees that this provision does not require City to indemnify Contractor to an extent that it would unconstitutionally waive City's sovereign immunity.

5.2. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.

5.3. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

5.4. **General Laws.** Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances.

5.5. **Notices.** Any notice, demand, request or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt request, with postage prepaid to:

IF TO CITY:

City of Columbia
Public Works Department
ATTN: Public Works Director
P.O. Box 6015
Columbia, MO 65205-6015

IF TO CONTRACTOR:

MacKay Meters, Inc.
ATTN: Jim Taylor
1342 Abercrombie Road
New Glasgow, NS
Canada B2H 5E3

Any notice required by this Agreement to be given in writing shall be deemed to have been completed when sent by certified or registered mail to the other Party when sent by certified or registered mail to the other Party at the address set forth herein, or delivered in person to said Party or their authorized representative.

- 5.6. **No Third-Party Beneficiary.** No provision of this Agreement is intended to, nor shall it in any way, inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.
- 5.7. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
- 5.8. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY OF COLUMBIA, MISSOURI

BY: _____
Mike Matthes, City Manager

DATE: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor *NK*

MacKay Meters, Inc.

BY: _____

PRINTED
NAME: JAMES MACKAY

TITLE: VP SALES

DATE: 25 JUNE, 2018

ATTEST:

By: _____

Title: VP FINANCE

APPENDIX A – Warranty

Terms of Warranty

MacKay Meters, Inc. and J.J. MacKay Canada Limited (“MacKay”)

The product that you have purchased is warranted by the manufacturer, J.J. MacKay Canada Limited (“MacKay”), for a period of one (1) year from the date of delivery against defects in workmanship and/or materials. The warranty starts one (1) month from MacKay’s recorded shipping date.

This warranty specifically excludes any other product not manufactured, but sold by MacKay, as these products are warranted by their respective manufacturers.

Workmanship and/or parts that prove to be defective during the warranty period will either be repaired, adjusted or replaced at MacKay’s option. No repair, adjustment or replacement by MacKay in response to a warranty claim shall extend the length of the warranty. MacKay’s obligations under the warranty are restricted to repair or replacement of defects in workmanship and/or materials.

Should repair become necessary during the warranty period, send your product, postage or freight prepaid, to our service center at 1342 Abercrombie Road, Pictou County, Nova Scotia, Canada, B2H 5C6 or as advised from time to time. Any product repaired or replaced under this warranty will be returned to the owner with freight prepaid. MacKay will not accept delivery of the product or any of its parts for warranty repairs unless prior authorization has been given. Contact MacKay for return procedure.

The foregoing warranty is exclusive and in lieu of all other express warranties and implied warranties, including but not limited to, the implied warranties of merchantability and fitness of purpose, which are specifically excluded. In no event shall MacKay, its agents, servants, contractors and subcontractors be liable for damages including, but not limited to, economic and consequential losses such as loss of revenue, loss of profits, loss of business or loss of goodwill whether direct or indirect or any other incidental, exemplary and punitive damages whether in contract, tort or otherwise or any other claims or expenses in any manner resulting directly or indirectly from or connected with the supply of the products.

Any improper or negligent use, any alteration or repairs not in accordance with MacKay’s written directions or performed by others in such manner as in MacKay’s sole judgment affects the product materially and adversely, shall void this warranty.

This warranty does not cover damages, defects or failures caused by or due to accident, improper handling or operation, use of products for experimental purposes, natural disaster, vandalism, misuse, terrorism, abuse and neglect of routine maintenance as instructed by MacKay from time to time.

The customer is responsible for the security of its parking system including hardware and software. The customer has been made aware by MacKay of the types of theft and fraud which may occur. The customer acknowledges and agrees that MacKay is not responsible in warranty or in contract for any repair, replacement or damages of any sort caused by fraud and/or theft or illegal means.

No employee or representative of MacKay, its agents, servants, contractors and subcontractors is authorized to change this warranty in any way or grant any other warranty unless in writing and signed by an officer of MacKay.

April 1, 2006