

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
MACKAY METERS, INC.
FOR
SINGLE SPACE PARKING METERS**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and MacKay Meters, Inc ("Consultant") (together sometimes referred to as the "Parties") as of December 4, 2018 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 4, 2021, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

1.7 Public Works Contractor Registration. Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$100,000.00, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;

- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed \$100,000. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

- 4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be

provided with limits of not less than **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than **\$1,000,000** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of

such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Mariana Garcia, Economic Development Specialist ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

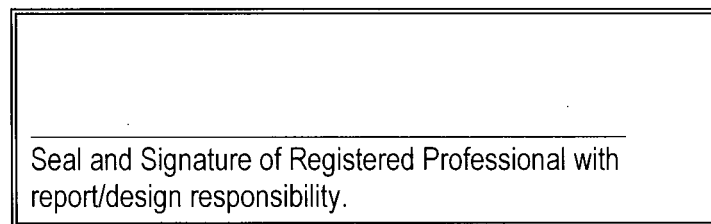
10.10 Notices. Any written notice to Consultant shall be sent to:

J.J. MacKay Canada, Ltd. / MacKay Meters, Inc.
1342 Abercrombie Road
PO Box 338
New Glasgow, NS
Canada, B2H 5C6

Any written notice to City shall be sent to:
City of San Leandro
Economic Development Division
835 East 14th Street
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C and D represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	California Labor Code Section 1720 Information

- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

MACKAY METERS, INC



Jeff Kay, City Manager



James Mackay, Vice President

Attest:



Leticia I. Miguel, City Clerk

Consultant's DIR Registration Number
(if applicable)

Approved as to Fiscal Authority:

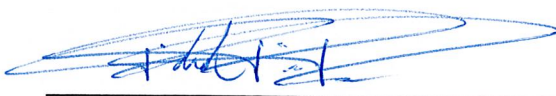


David Baum, Finance Director

132-35-003-5120

Account Number

Approved as to Form:



Richard D. Pio Roda, City Attorney

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

EXHIBIT A
SCOPE OF SERVICES

GENERAL SPECIFICATIONS	Comply
Based upon the location, the City's requirement is for the proposer to install an integrated single space parking technology and hardware solution. Parking technology features must include the following:	
a) Payment must be available through multiple options, including coin, credit card and mobile payment integration.	✓
b) Meters must have the ability to store a minimum of 8 different rate structures.	✓
c) A large screen display is preferred in order for rate information to be displayed, rather than signs posted on the meter.	✓
d) Pre-payment option (payments made in advance of operating hours).	✓
e) All technology must be simple to understand and easy to use.	✓
f) All technology must be reliable, easy to maintain and secure.	✓
g) All technology shall be able to electronically display the following to the patron with minimal effort:	
i. rates	✓
ii. days and hours of operation	✓
iii. user instructions	✓
h) Proposers must offer strong customer support 7 days a week including holidays.	✓
i) Changing rates using the Meter Management System (MMS) shall be completely webbased (no software to install), easy to use with customizable tariff naming and the ability to download rates onto customizable, user-defined groups of meters.	✓
j) All technology, equipment and systems shall be ADA-compliant.	✓
k) All materials and components shall be new and unused.	✓
l) All technology shall have a modular design. Components shall be able to be quickly changed in the field.	✓
m) All electronic components, connections and wiring shall be fully weatherproofed.	✓
n) The meters shall be weather, rust and graffiti resistant and shall be made of stainless steel or an equivalent material.	✓
o) It is preferred that the meter has illumination for dark hour usage. Proposer shall describe how the lighting and/or display operates during dark hours.	see below

The LCD screen is backlight and provides a significant amount of light in darker conditions. The LCD screen activates from sleep mode when a button is pressed on the meter. The mkBeacon also includes a "beacon" light at the top of the meter that shines down on the buttons / front of the meter to make it easier to see at night. The beacon light can be configured for hours of operation.	
p) All technology shall wirelessly communicate usage, payment status, and maintenance alert data in real-time.	✓
q) All technology shall be managed by a web-based meter maintenance system (MMS) that can:	✓
i. Remotely update meter pricing, regulations, and configuration	✓
ii. Provide reports on meters	✓
iii. Automatically create maintenance work order tickets for meter-generated alarms or patron reports of meter malfunctions. Maintenance tickets shall be able to be updated via email, smartphone and tablet.	✓
iv. Record meter maintenance completed by repair staff.	✓
v. Easily indicate meter status and send alarms to designated personnel if a meter is not functioning.	✓
r) All technology shall be warranted to operate as proposed within a temperature range of 0 degrees Fahrenheit to +140 degrees Fahrenheit and under environmental conditions found in the City of San Leandro, including but not limited to grime, rain, fog, salt air, sun (including direct sunlight), and vibrations.	✓
Wireless two-way communications	Comply
a) The technology will be equipped with a modem, antenna, and the required software to support wireless communications.	✓
b) The wireless communications shall be supplied as a "communications service" during the life of the contract, not as a specific type of modem or wireless carrier supply.	✓
c) Describe the modem type: CDMA, GSM and/or Wi-Fi.	✓
The mkBeacon supports both CDMA and GSM modems currently. Wi-Fi is expected to be available by the end of 2018	
d) Identify the likely cellular carrier(s) to be used for San Leandro service and the process of determining reliability of signal coverage.	✓
AT&T ,T-Mobile or Verizon networks would be the options. Cellular strength test would be performed prior to delivery to determine the best network coverage of the three options.	
e) The Proposer shall describe the established process to troubleshoot and resolve communication interruptions and failures.	see below
See credit card process in technical response for complete details in section 1.2.1.	
f) If credit card payments can be accepted during weak wireless signal occurrences, describe the process.	see below
See credit card process in technical response for complete details in section 1.2.1.	
Display	Comply

a) Graphic display shall be easy to read under various daytime and nighttime lighting conditions, including fog and direct sunlight and at various angles. Proposer shall describe its options for altering the display to make viewing in direct sunlight easier.	✓
See display details in technical response section 1.2.2	
b) The meter shall have a backlit graphic display panel that is large enough to legibly display all necessary operating status messages to patrons and repair personnel. The display must be energy efficient and operate in a solar-charging configuration and not cause excessive battery drain.	✓
c) The display shall be scratch and impact resistant.	✓
d) Current rates and hours must be able to be displayed on the meter graphic display and be remotely programmed.	✓
e) Describe the ability to program and display different rate schedules by time of day and day of the week, including dynamic and progressive rate structures for peak occupancy periods. City shall have the ability to program rates independent of vendor support with no additional costs associated with these changes.	✓
The mkBeacon supports rate files that can be broken up into multiple rate times to ensure your parking revenue can be maximized based on occupancy. It also supports up to 16 separate rates plus prepay time.	
f) Graphic display shall support dynamic messaging functionality to reflect changes in pricing, regulations, display messages, format, or configurations made in the MMS and communicated wirelessly to the meter at least once per day. The City shall have the ability to change or adjust the graphic display independent of vendor support and there shall be no additional costs for these types of adjustments.	✓
g) All meters shall have an ability to display special messaging. Proposer shall describe the process and features that enable special messaging, i.e., holiday and special event messages, which can be downloaded remotely.	✓
The display rotates through 3 panels that can be edited by the City. Each panel supports up to 8 lines of text. Display files are saved on Sentinel MMS and can be deployed at any time.	
h) Meter display shall clearly communicate the following electronically, alphanumerically and graphically:	
i. Rates	✓

ii. Days and hours of meter operation	✓
iii. Regulations	✓
iv. Instructions to the user:	✓
1. Read Error, Please Reinsert Card – if card is removed from the mechanism before it could read the information on the card;	✓
2. Coin Only – at the sole discretion of City, if the card slot is inoperable;	✓
3. Card Only – at the sole discretion of City, if the coin slot is inoperable;	✓
4. Out of Order – at the sole discretion of City, if the coin and card slot are inoperable, with customizable instructions.	✓
v. Special messaging	✓
i) Proposer shall describe any static information displayed and the format used.	✓
Keypad	Comply
a) Keypads must be vandal resistant, weatherproof, and corrosion resistant.	✓
b) Proposer shall describe any visual, audible or tactile indication that a button has been pressed, as feedback to the patron.	✓
The mkBeacon uses a Piezo style keypad that is strong, weather-resistant and provides an audible response when pressed.	
Payments	Comply
a) Proposer shall describe coin, card and alternative payment operations, including the number of different coins/currency accepted and the type of card-based payments, including magnetic stripe, contactless cards and chip-based cards (as applicable).	✓
The mkBeacon supports up to 16 coins, smart cards and mag stripe and contactless credit cards. See details in technical response in section 1.2.4	
b) All meters must support secure real-time authorization of credit cards and optional contactless cards.	✓
c) The meter shall accept coins through a jam-resistant coin interface and jam-resistant card payments through a card interface.	✓
d) The coin discrimination system should contain an automatic shutter, which opens during operational hours for coin insertion of approved coins, but not for non-metallic objects.	x
The mkBeacon does not support an anti-pin shutter.	
e) If the coin slot is inoperable, meters must have the option to still accept card payments and third-party payments (e.g., mobile payments).	✓
f) The coin chute or track and coin verifier unit shall be a free-fall type (non-moving and non-mechanized) or an equivalent.	✓
g) The coin chute or track shall include an anti-backup provision to prevent and detect the attempted retrieval of deposited coins (e.g., attached to strings, paddles, wires, etc.).	✓

h) Coins must be deposited directly into, and stored within, secured containers in the vault area of the meter.	✓
i) Meter monies (coins) must be easy to collect, simple to reconcile and include audit capabilities.	✓
j) Maintenance personnel must be able to easily clear coin jams without the use of special tools and without accessing the vault.	✓
k) All meters shall be able to be programmed to accept pre-payments prior to start of regulated parking and extended payment within applicable City policy requirements.	✓
l) The City prefers that the Vendor is the merchant of record. Proposer shall describe in detail the step-by-step process of vendor's credit card acceptance procedure from the time a patron inserts his/her card to the time the money is deposited in the City account. Include the name of your gateway processor (if using a third party) and the name of the gateway software (if your firm uses in-house software). Proposer shall list all subcontractors involved in each step (e.g., cellular providers or gateway companies) and describe the subcontractors' PCI compliance. As the merchant of record, Proposer shall describe any per transaction charges from the vendor and/or the gateway company, or software charges; if none, then state as much.	✓
See details on credit card acceptance process in the response in section 1.2.1. MacKay uses CreditCall for the credit card gateway which supports most merchant processors.	
m) The meter, the associated communications system, the backend server and gateway services shall all be compliant with Payment Card Industry Data Security Standard (PCI Level 1 certified by a Qualified Security Assessor (QSA)).	✓
n) Meter shall be PA-DSS certified by a Qualified Security Assessor (QSA).	✓
o) The technology must be EMV compliant. Proposer shall describe their current and future EMV capabilities including any required upgrades, options and/or associated costs.	✓
The mkBeacon is EMV Level 2 compliant through the contactless card reader	
p) Proposer shall describe any alternative payment options, the associated costs or any additional fees. Proposal shall describe current and future capabilities including any required upgrades or options for the implementation of the alternative payment options.	✓
The mkBeacon also support mobile payment to put time on the meter through several mobile payment apps.	
q) The MMS system shall allow the City to dynamically and remotely adjust parking prices on the meters in real-time.	✓
Clock	Comply

a) The meter must have a 365-day calendar real-time clock that completes a daily timesync with the server at least once every 24 hours and that will either retain the time settings during battery replacements or servicing, or will accurately reset the time settings without losing prior programming; reset shall occur within 3 seconds of battery replacement or servicing. If back-up power built into the meter is used for this function, this back-up power must allow at least 15 minutes for a given battery change without losing the clock settings.	✓
b) The clock shall be programmable at least one year in advance for automatic daylight savings time changes.	✓
c) The time-of-day clock shall be accurate to within plus or minus two seconds per day (where a day is defined as any given 24-hour period).	✓
i. There shall be no upper limit or maximum deviation that would prevent the clock from syncing with the MMS.	✓
ii. The clock shall track the day of week, Monday through Sunday.	✓
iii. Time of day and day of week shall be displayed to maintenance staff, on the front display screen, when the reset feature is activated.	✓
Power	Comply
a) Batteries shall be located in an easily accessible storage area inside the unit that can be changed out in less than 30 seconds once the meter is opened.	✓
b) For environmental reasons, Nickel-Cadmium batteries shall not be used to power the meters.	✓
c) The meter will be powered by battery and/or rechargeable solar-powered battery pack.	✓
d) When battery voltage falls below a minimum threshold, the meter will generate an alert prior to the meter going out of service.	✓
e) Battery connections will be designed to resist corrosion and sustain a minimum of five years of service.	✓
f) Current battery voltage for both rechargeable (solar) and non-rechargeable batteries will be available on the display and through the MMS.	✓
g) All locally-stored meter data will be retained during battery replacement and battery failures of seven days or less.	✓
h) Please describe any unique power management capabilities.	✓
The mkBeacon uses very little power and uses it efficiently. It should run battery neutral on just a couple hours of sunlight per day under normal usage. Battery costs are now a thing of the past when using the mkBeacon meter.	
i) Battery shall have a life of at least 5 years. Proposer shall describe how any and all options will impact battery life, including real-time mobile payment integration and display.	✓

Excessive use of the modem will drain the battery pack faster than normal communications. Support for sensors and adding time to the meter for mobile apps will draw more power and shorten the overall life of the battery pack (or at least require battery swaps periodically for manual recharge - where sunlight is scarce). Through normal use, we fully expect a 5 year battery life.	
Security/Maintenance	Comply
a) Coins passing through the meter shall be deposited directly into secured containers in a separate vault area.	✓
b) The coin vault areas shall not be accessible from the maintenance compartment.	✓
c) Meters shall be resistant to vandalism and other attacks to remove or disable coin from the coin cans.	✓
d) Meters shall have high security locks for all meter doors. Include a description of the locks provided. Electronic locks are preferred with online programmable access parameters including restrictions for maintenance, collections, days of week and hours of day. Describe the manual override process in case of failure or electronic lock malfunction.	✓
Electronic locks are optional. MacKay supports the use of Medeco high security locks including Medeco electronic locks.	
Warranty/Vendor Support	
a) Proposer shall describe their system warranty and extended warranty options on all hardware and software effective from the date of installation.	✓
b) Proposer shall describe technical support services, including 24/7-day customer support help desk availability (including holidays), on-line help features, transaction assistance, on-site support and technical support, during and beyond the installation and warranty periods. Proposer shall describe who is responsible for supporting the meter including any and all subcontractors.	✓
c) The customer support help desk shall have the ability to collect and/or provide detailed information to the City via the hotline and/or via log in to the back-office software, including:	✓
i. Verify, log and dispatch reports of meter malfunctions in real time with online tracking	✓
d) Proposer shall provide the City with toll free telephone numbers enabling them to reach Proposer's staff during normal business hours.	✓
e) The system must be capable of providing remote off-site diagnosis and support via wireless access. The system must be capable of remote software upgrades via wireless access.	✓
Training	Comply

a) Proposer shall provide a proposed training outline with their response.	✓
b) Vendor shall provide all training at a location to be determined by the City or its designee.	✓
c) Vendor shall cover all travel costs.	✓
d) Proposer shall describe how upgrades to the MMS or other systems will be distributed, communicated, and implemented (e.g., training of appropriate staff) during the term of the contract.	✓
e) Vendor shall supply and keep current hard and digital copies of all operating, training, repair and user's manuals, which includes detailed instructions for system usage.	✓
Reporting/Maintenance Tracking/Enforcement	Comply
a) The MMS must provide secure, web-based back office reporting, including real time exception reporting for equipment downtime and data transmission issues.	✓
b) The MMS shall provide maintenance tracking with automated technical ticket generation.	✓
c) Identify existing integrated vendors with the MMS, including but not limited to mobile payment and enforcement infrastructure vendors.	✓
MacKay currently supports: for mobile payment - Passport, Pay by Phone, Parkmobile, Honk. For Enforcement - Passport, Gtechna, Genetec. For Sensors -	
d) Describe how access to real-time information regarding customer-generated reports of meter problems, and meter-generated warnings and alarms is available to support staff, including maintenance technicians.	✓
Alerts are immediately sent to Sentinel MMS where they are emailed to the maintenance staff who can access the details from Sentinel or Sentinel Mobile.	
e) The MMS shall provide a smartphone application to update, reassign and close out maintenance tickets.	✓
f) The MMS shall have the capability to track maintenance issues, completion of maintenance tasks and reports on meter uptime.	✓
g) The MMS shall provide scheduling capabilities for both preventive and non-recurring maintenance.	✓
h) The MMS shall provide a maintenance dispatch interface for the scheduling, recording and reporting of error/problem corrections.	✓
i) The MMS shall provide an online mapping module for parking spaces and meters to identify maintenance and enforcement areas/zones. The MMS shall provide real-time verification of parking spaces payment status for enforcement purposes.	✓

j) The MMS shall allow the remote download of all rate changes, display changes, other user interface changes and operating system changes and upgrades with no upcharge for wireless data usage.	✓
k) The web-based MMS reporting analytics tool shall allow for:	
i. custom filtering of data fields	✓
ii. drop & drag report capabilities	x
These features are not currently available as described.	
iii. table creation where reports can be saved for individual or global use	✓
This can be done in mkAnalytics; a report builder for Sentinel MMS	
l) The MMS shall allow for online scheduled reports to be exported as Excel, CSVs and/or	✓
Other Services	Comply
a) With the implementation of new paid parking equipment, please describe the public outreach/education campaign that will be included with your solution at no additional cost to the City. Provide examples of prior successful implementations, including sample images, emphasizing similar installations introducing new paid parking equipment.	✓
Both website images and documents are made available to the City as well as user help guides that can be distributed. Samples are included in the appendix. We would love to collaborate with the city to understand the best way for public outreach and education in San Leandro.	
b) Describe proposed installation plan and any costs associated with the installation. Proposer will be responsible for installation and all associated hardware/equipment required, including single space ADA-compliant poles and signage.	✓
The installation would be a phased approach, where poles would first be installed once locations are known, and then both the vault and meter mechanism will be installed on the pole. Costs for installation will be approx. \$300 for each pole/meter	
c) Describe the proposed hardware solution for dual and single parking space management along with how the equipment can be visually identified for short term parking. Provide any sample images to demonstrate the proposed hardware solution.	✓
The mkBeacon supports both single space and dual space configurations. For the 2 Bay Beacon, a left and right arrow are included on the keypad for the user to select their space. Instructions are included on the meter. Sample images included in the response.	
d) Describe other available service options, including integrated parking sensors and any associated pricing for these options.	✓

The mkBeacon supports several third-party sensors through Sentinel MMS. Pricing for sensors are approx. \$300/sensor. Pricing would be confirmed once selected, and discussions with the city are held.

WARRANTY COVERAGE

MacKay will provide a one (1) year warranty on all MacKay mkBeacon™ products to repair and/or replace any part or modular component determined to be defective in material or workmanship under normal use and service. MacKay's standard warranty terms will apply.

To maintain warranty coverage, City technicians are required to provide the prescribed regular maintenance for these products. MacKay will provide the City with all operating and maintenance manuals necessary to operate and maintain the product and software. Carrying out the prescribed maintenance procedures therein, and as instructed from time to time by MacKay in writing, is necessary to ensure that the warranty on all products and software purchased from MacKay is not voided.

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

DELIVERY AND IMPLEMENTATION

MacKay will be pleased to negotiate a delivery schedule that would be mutually agreeable to both parties. Typically orders this size are shipped within 4 – 6 weeks of receipt of all specifications. A sample delivery schedule for a larger shipment is as follows:

Selection/Contract	Date of signed agreement/PO
Preparation of order details and signoff	Approx. 7 – 14 days after contract signing
Delivery of product – 68 mkBeacons complete with housings and poles	Approx. 4 – 6 weeks from receipt of order details for full delivery, training and installation

TRAINING PROGRAM

MackKay will manufacture the mkBeacon™ meters, ship the product to the City, install the meters and train the City staff on operating and maintaining the meters. MackKay will also train the City staff on using the Sentinel™ Meter Management System to monitor the mkBeacon™ meters and the revenue generated by those meters.

Training will focus on the specific characteristics of the products, their capabilities, and user interface with the system. The training sessions can be divided into small groups of technicians/staff according to their respective tasks. Groups can be formed for collection, maintenance/repair and system reporting and management. Training shall be such that each trainee learns by significant 'hands on' experience under the guidance of an experienced trainer, assigned by MackKay to carry out an agreed list of first line fault corrections, maintenance and other operations.

The delivered training programs will enhance the capabilities of the operations and maintenance functions. All training will be supported by a variety of printed training materials, as well as a complete set of technical manuals. In addition, customer service or sales support staff can arrange Webex (internet/phone meetings) to further provide on-line training sessions/support.

As training will take place during the installation of the meters with City staff present, all normal customer and owner functions will be fully tested and operational by the end of the training session. This final testing will be witnessed by the City staff.

MAINTENANCE

For this submission, it is understood that City technicians will provide regular maintenance for purchased products. Since all of the equipment is made primarily of modular components, we believe the City will find that the maintenance requirements to keep it operational are minimal and easily managed with appropriate and thorough training of City staff by MackKay together with a few spare meters and spare parts inventory maintained by the City.

MackKay will provide all the required operation and maintenance manuals necessary to operate and maintain the product and software. Carrying out the prescribed maintenance procedures therein, and as instructed from time to time by MackKay in writing, is necessary to ensure that the warranty on all products and software purchased from MackKay is not void.

Proposed Training Schedule

The following is a proposed schedule for training MacKay will provide to designated City staff. Prior to the installation /activation of any mkBeacon meters on-street, MacKay will provide the training courses listed below during the installation of the meters. The below training schedule will be refined and approved in conjunction with MacKay and City staff after award of any meter procurement contract. (S=mkBeacon, M=Sentinel MMS).

Depending on the number of attendees, and size of the installation, most meter and MMS training can be scheduled and completed over a 1 week period. Ideally for knowledge retention training should be carried out during the installation weeks.

Course S01-1 – mkBeacon Meter Commissioning & Installation for Technicians Course S02-1 – mkBeacon Meter Service & Repair for Technicians

Course M03-1 – Introduction to Sentinel™ Meter Management System for Technicians

Course M06-1 – Advanced MMS Training I – Sentinel™ Meter Management System for Collections, Finance, Accounting, & Audit Staff, Supervisors and Managers

Course M07-1 – Advanced MMS Training II – Sentinel™ Meter Management System for Meter Shop Staff, Supervisors and Managers

Course M08-1 - Advanced MMS Training III – Sentinel™ Meter Management System for Managers & Administrators

All attendees who successfully complete the course curriculum covered shall be issued a MacKay Guardian™ mkBeacon and Sentinel™ Meter Management System Level I Technician Certificate. Attendees to all 3 courses will have completed up to four, 8-hour training days.

LIQUIDATED DAMAGES

The following are the proposed liquidated damages that would be incorporated into the final agreement. While it is not the intention of the City to seek a punitive relationship, we are seeking an integrated solution that performs to the standards described throughout your proposal.

Both parties will agree that the annual liquidated damages shall be limited to the amount paid or due to Vendor by the City during a one-year period except in the initial 12-month period of this Agreement where liquidated damages shall be limited to 30% of the amount paid or due to Vendor by the City during the initial 12-month period of this Agreement. The Vendor agrees to pay these amounts to the City as set forth:

- **Failure of Single Space Meter(s).** Failure of either Single Space Meter(s), as defined in this Exhibit A, that results in either no payment transaction being accepted by the Single Space Meter(s) (e.g. allow free parking during enforcement hours) or application of the wrong fee rates for parking shall result in damages of \$5.00 per day (each 24-hour period) per each affected Single Space Meter. City shall provide Vendor with 24 hours' notice to respond and repair the Single Space Meter(s) failure prior to being entitled to liquidated damages.
- **PCO Data Security Failure.** Failure of Vendor to maintain Payment Card Industry ("PCO") Data Security Standard Certification, defined as an information security standard of organizations that handle branded credit cards from the card schemes, shall result in damages of \$10,000 on the twenty-eight (28th) calendar day following non-compliance ("first assessment"). The twenty-eighth (28th) calendar day following the first assessment and every twenty-eight (28) calendar days thereafter shall constitute a "subsequent assessment". On each additional twenty-eighth (28th) calendar day following the first assessment and any subsequent assessments, the City shall be

entitled to liquidated damages of \$25,000 until the failure is cured. Damages during subsequent assessments shall be prorated by day.

- **Accuracy.** The City will issue a written warning to Vendor if either Single Space Meter(s), as defined in this Exhibit A, fails to maintain 99% accuracy in the City's audit of daily revenue as a result of a design defect with either Single Space Meter(s). The Vendor shall cure each failure within seven (7) days after receipt of the warning. If any failure is not cured within seven (7) days, the Vendor shall be subject to damages of \$25 per day per failure of each Single Space Meter(s) until the failure is cured.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Quantity	Description	Price Each	Extended
49	2-Space Solar Smart Meter Complete (includes new vaults and poles)	\$750.00	\$36,750.00
18	Single-Space Solar Smart Meter Complete (includes new vaults and poles)	\$525.00	\$9,450.00
	On-site training in meter use, collections, maintenance, best practices; set-up and use of cloud dashboard	\$5,000.00	\$5,000.00
67	Smart lock system, additional price per complete meter with housing	\$130.00	\$8,710.00
	Installation	\$25,000.00	\$25,000.00
67	Shipping	\$7.00	\$469.00
	TOTAL PROPOSAL with all options		\$85,379.00

Hosted Remote Monitoring and Notification Service for MacKay mkBeacon™ Including Credit Card Payment Gateway and Cellular Communications

MacKay will supply a hosted system for performing parking management functions. The Parking Management System will include:

- Sentinel™ MMS, used to remotely monitor the on-street status of the mkBeacon or mkBeacon 2-Bay operations and notify the City of any alerts. Also Sentinel can generate a variety of reports on the information downloaded periodically each day from the mkBeacon or mkBeacon 2-Bay over the wireless Cellular network.
- Cellular communications for each meter that allow for data to flow to Sentinel™ MMS or for credit card authorizations through CreditCall Ltd.
- Credit card transaction fees

The standard fee for these hosted services, including the cellular communications and the credit card gateway services is as follows:

Option	Description	Quantity	Monthly Fee per terminal	Fee per credit card transaction
1	Single Bay meter	1	\$5.00	\$0.11
2	2 Bay Meter	1	\$8.00	\$0.11

With the option to switch to an "All IN" Option

Option	Description	Quantity	Monthly Fee per terminal	Fee per credit card transaction
3	Single Bay meter	1	\$7.00	\$0.00
4	2 Bay Meter	1	\$12.00	\$0.00

Account Setup Fees Payable For Services

1. Client shall pay the following set up fees:
 - a. Merchant ID set up fee (including unlimited MacKay multi-space parking meters at time of Merchant ID set up and if applicable one WebMIS Login account):

\$295 per Merchant ID

(WebMIS Terms & Conditions can be found on WebMIS website)
 - b. Terminal set up fee (only applies when added to an existing Merchant ID):

\$15 per MacKay Terminal
 - c. Additional WebMIS Login account fee (only applies when added to an existing WebMIS Login):

\$100 per account

PAY BY CELL PRICING – ADD TIME TO METER

Pricing for Pay by Cell solutions (see Pay by Cell solutions) are outside of the scope of this response and are the City's choice and responsibility to negotiate. However, the mkBeacon™ / mkBeacon™ 2-Bay has the ability to show time on the meter when time is purchased from a cell phone. The fees for having Pay by Cell time shown on the meter are as follows:

Pay By Cell Time Added to Meter
\$0.10 per cell transaction

SPARE PARTS LIST

mkBeacon™ Recommended Spare Parts List (based on 68 meters)

MacKay Part #	Description	Recom. #	Unit Price
37MM0520100	mkBeacon - Rear Cover Assembly	1	\$74.95
15MM0000000	mkBeacon MCB	1	\$189.95
20GD0000025	Smart Chute Assembly	2	\$48.95
30MM0000100	1x6 Front Panel Keypad w/ ribbon cable assembly	1	\$99.95
30MM0000500	LCD Module - 128x64	1	\$34.95
37MM0520300	mkBeacon Solar Top Cap Assembly	2	\$34.95
15MM0520100	mkBeacon Cell Drawer Assembly	2	\$209.95
15MM0520275	mkBeacon Card Reader Assembly	2	\$74.95
30GD4000400	6XA-3.6V Lithium-Ion Rechargeable Battery Pack	4	\$29.95
37MM0000500	mkBeacon Vault Saddle (MKH4000)	1	\$12.95
50MM0510100	mkBeacon Lock Assembly	1	\$18.50

EXTENDED WARRANTY (OPTIONAL)

Warranty Description	Warranty Price
1 Year Standard Warranty	Incl.
2 Year Warranty	\$50.00
3 Year Warranty	\$50.00
4 Year Warranty	\$50.00
5 Year Warranty	\$50.00

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

EXHIBIT D

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their

obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.