



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

THIS AGREEMENT is made and entered into this 23rd day of July 2024, by and between the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, hereinafter referred to as "City", located at 65 Stone Street, Cocoa, Florida 32922, and **FERGUSON ENTERPRISES, LLC DBA FERGUSON WATERWORKS** a Virginia limited liability company, whose address is 7800 Ellis Road, Melbourne, Fl 32904-1517, hereinafter referred to as "Seller".

WITNESSETH:

WHEREAS, the City desires to engage Seller as a sole-source supplier of utility meters and meter reading equipment with associated software; and

WHEREAS, the City frequently has a need to purchase utility meters and meter reading equipment for its regional water utility, the specifications of which are attached hereto and incorporated by reference herein as **Exhibit A** (generally referred to herein as the "Equipment"), and desires to enter into this Master Agreement ("Agreement") to govern purchases, which will be made on an as-needed basis according to the procedure established herein; and

WHEREAS, Seller has provided a Cost Schedule, attached hereto and incorporated by reference herein as **Exhibit B**, for the Equipment; and

WHEREAS, Seller has further furnished manufacturer's warranty details for the Equipment, which are attached hereto and incorporated by reference herein as **Exhibit C** (generally referred to herein as the "Warranty" or "Warranties"); and

WHEREAS, Seller is willing to provide such services to the City under the terms and conditions stated herein and particularly agrees to honor the Equipment pricing provided in the Cost Schedule for the applicable term of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1.0 TERM, TERMINATION, AND DEFINITIONS

1.1 Unless sooner terminated by the City, this Agreement shall terminate on August 15, 2025. The Parties shall have the option to extend the term of this Agreement by mutual agreement for up to three additional one-year renewals. Such an extension shall only be by written amendment to this Agreement. Seller agrees that, should the Seller and City agree to extend this Agreement, the contract price may be adjusted to allow for consumer price increases based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U) (U.S. City Average; All items, not seasonally adjusted, 1982-1984=100 reference base), not



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

to exceed three percent (3%). Said increase shall, if approved by the City, become effective beginning with any purchase order issued after the commencement of the new renewal term.

1.2 The terms and conditions of any Purchase Order, as described in Section 2.0 hereof, shall be as set forth in such Purchase Order. Any Purchase Order in effect at the termination of this Agreement shall remain in effect until completion of said Purchase Order, and all of the terms and conditions of this Agreement shall survive until completion of all Purchase Orders.

1.3 Definitions. The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

a. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Agreement, as amended from time to time, which shall constitute authorization for the Seller to sell the goods approved in the Purchase Order to the City and is also sometimes referred to herein to include all Purchase Orders approved hereunder.

b. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

c. "Seller" shall mean Ferguson Enterprises, LLC dba Ferguson Waterworks, a Virginia limited liability company, and its principals, employees, resident project representatives (and assistants).

d. "Purchase Order" shall mean a written document approved by the parties pursuant to the procedure outlined in paragraph 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in the Purchase Order, which sets forth the goods or equipment to be sold by Seller under this Agreement, and shall include, without the necessity of a cross-reference, the terms and conditions of this Agreement.

1.4 Engagement. The City hereby engages the Seller and Seller agrees to sell the types of equipment outlined in this Agreement, specifically Exhibit A (the "Equipment"), upon the terms listed in this Agreement, including the Cost Schedule attached hereto as Exhibit B and with the warranties described in Exhibit C, and in accordance with any subsequent Purchase Order. No prior or present representations shall be binding upon any of the parties hereto unless incorporated in this Agreement.

1.5 This Agreement may be terminated by the City in whole or in part at any time upon thirty (30) days' written notice to the Seller for any reason. This Agreement may be terminated by the Seller only by mutual consent of the parties.

2.0 DESCRIPTION OF SERVICES; QUOTE PROCEDURE

2.1 The City may make request of Seller to sell Equipment on a "purchase order" basis.



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

When the City desires to place a specific order for Equipment, the City may communicate with Seller, verbally or in writing, a general description of the Equipment needed. The Seller will generate a detailed bid or quote document, including the schedule for delivery and price, and send the thus developed "Quote" to the City. For every Quote requested, at a minimum, Seller shall include a price for the Equipment that is no greater than the price included in its Cost Schedule included as Exhibit B. The City will review the Quote, and if the description is mutually acceptable, the City will issue a Purchase Order or, for purchases less than \$1,500.00 or as otherwise provided in the City's Financial Operations Manual policy, may use a purchase card to make the purchase. The Purchase Order will contain terms which are deemed supplemental to this Agreement. Upon receipt of the signed Purchase Order or payment via purchase card, the Seller shall deliver the Equipment ordered therein.

2.2 The City shall have no obligation to purchase Equipment from Seller during the term of this Agreement. The need to purchase Equipment shall be determined in the City's sole discretion. Further, the City shall have no obligation to purchase any particular quantity of Equipment in any Purchase Order or for the duration of this Agreement. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period.

2.3 In exchange for applying the prices contained in the Cost Schedule, the City will consider Seller a preferred vendor and may often request Quotes from Seller for the categories of equipment listed in the Cost Schedule.

3.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF SELLER.

3.1 Florida Prompt Payment Act. Payment shall be due and payable as provided by the Florida Local Government Prompt Payment Act s.218.70 et. seq., Florida Statutes.

3.2 Payment not Waiver. The City's payment of any invoice under this Agreement shall not be construed or operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement and Seller shall remain liable to the City in accordance with applicable law for all damages to the City caused by Seller's performance under this Agreement.

3.3 Acceptance of Payment. Acceptance of final payment by the Seller for a specific Purchase Order shall constitute a release of all claims for payment which the Seller may have against the City for that Purchase Order unless such claims are specifically reserved in writing and

transmitted to the City by the Seller prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the City may have against the Seller or to any remedies the City may pursue with respect to such claims.



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

4.0 COMPLIANCE WITH LAWS AND REGULATIONS

4.1 Seller shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this Agreement.

5.0 ASSIGNMENT

5.1 Seller shall not assign or subcontract this Agreement, any Purchase Order hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City.

5.2 If upon receiving written approval from City, any part of this Agreement is subcontracted by Seller, Seller shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

5.3 If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Seller who shall take immediate steps to remedy the situation.

6.0 INDEPENDENT CONTRACTOR

6.1 At all times during the term of this Agreement, Seller shall be considered an independent contractor and not an employee of the City.

7.0 NO JOINT VENTURE

7.1 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

8.0 ATTORNEY'S FEES

8.1 Should any litigation arise concerning this Agreement between the parties, the parties agree to bear their own costs and attorney's fees.

9.0 COUNTERPARTS



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

9.1 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

10.0 DRAFTING

10.1 City and Seller each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

11.0 NOTICE

11.1 Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid to:

For Seller:
FERGUSON WATERWORKS
Attention: Benjamin Jacobs
7800 Ellis Road
Melbourne, Fl 32904-1517

For City:
City of Cocoa
Attention: City Manager
65 Stone Street
Cocoa, Florida 32922
(321) 433-8686

11.2 Either party may change the notice address by providing the other party written notice of the change.

11.3 Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

12.0 SOVEREIGN IMMUNITY



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

12.1 The City intends to avail itself of the benefits of Section 769.28, Florida Statutes, and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Service Provider agrees that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person over two hundred thousand dollars (\$200,000.00), or any claim or judgment or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

13.0 CORPORATE REPRESENTATIONS BY SELLER

13.1 Seller hereby represents and warrants to the City that the undersigned representative of Seller has the power, authority, and legal right to execute and deliver this Agreement on behalf of Seller.

14.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

14.1 For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller expresses its willingness to enter into this Agreement with the knowledge that the Seller's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the sum of any Agreement amount that is owed by the City for services actually performed by the Seller to the City's complete satisfaction, and in no case shall exceed the amount provided in article 12.1 herein. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28 Florida Statutes; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

14.2 Seller shall fully indemnify, defend and hold City harmless from and against any and



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

all losses, damages, costs and expenses, and attorney's fees, that City incurs because of any and all

claims that use of Equipment infringes upon (i) any United States copyright or (ii) any trade secret or other proprietary right of any Person (collectively, "**IP Rights**"). Seller shall have no

obligation under this Section 14.2 unless City promptly gives notice to Seller within ten (10) days after the date City first receives notice of the applicable infringement claim (provided that later notice shall relieve Seller of its liability and obligations under this Section 14.2 only to the extent that Seller is prejudiced by such later notice) and allows Seller to have sole and reasonable control of the defense or settlement of the claim. City may monitor any such litigation or proceeding at its expense, using counsel of its choosing. If any Equipment is, or in Seller's opinion becomes or is likely to become the subject of a United States IP Rights infringement claim, then Seller, at its sole option and expense, shall provide the City, in addition to the aforementioned indemnity and hold harmless, with a full and complete remedy that will either:

(a) modify or replace all or the allegedly infringing part of the Equipment so that it is no longer allegedly infringing, provided that the functionality does not change in any material adverse respect; or

(b) procure for City the right to continue using the allegedly infringing part of the Equipment; or

(c) remove all or the allegedly infringing part of the Equipment, and (i) if City has paid a one-time upfront initial fee for the applicable Equipment, refund to City the corresponding portion of the fee paid by City to Seller for the applicable part of the Equipment, or (ii) if City is paying for the use of the Equipment on a recurring basis, refund to City the corresponding portion of the unused recurring fee(s) paid by City to Seller with respect to the applicable part of the Equipment, and in each such case this Agreement shall terminate with respect to the Equipment or part thereof removed. The foregoing shall not apply to the extent the Equipment: (i) was supplied in accordance with City's unique use, design or instructions; or (ii) was modified by City or was combined by City with items not furnished pursuant to this Agreement.

14.3 General Indemnity. To the extent permitted by law, and to the extent provided for under this Agreement, for claims related to bodily injury, death, and damage to real property and tangible personal property, as well as fines, assessments and penalties imposed by any authority, Seller shall indemnify and hold harmless the City from and against all direct damages and costs of any kind, including but not limited to reasonable attorney's fees, to the extent caused by the negligent acts, negligent omissions, or willful misconduct of Seller, its employees, or agents, arising out of or connected with this Agreement; , except to the extent of negligence, wrongful acts or omissions of the City or its agents, elected or appointed officials, employees, or representatives. . For purposes of this indemnification only, this includes claims made by the employees of Seller against the City,



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

and Seller hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

The indemnification provided above shall obligate Seller to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its mayor, councilmembers, officers, employees, attorneys, agents and representatives which may arise or result from this Agreement.

In no event shall either party be liable for any incidental, punitive, special or consequential damages hereunder.

15.0 ADDITIONAL ASSURANCES

15.1 The Seller for itself and its SubSellers, if any, certifies that:

a. No principal (which includes officers, directors, or executive) or individual performing under this Agreement, employee, or agent has employed or otherwise provided compensation to, any employee or officer of the City; and;

b. No principal (which includes officers, directors, or executive) or individual holding a performing under this Agreement, employee, or agent has willfully offered an employee or officer of the City any pecuniary or other benefit with the intent to influence the employee or officer's official action or judgment.

c. The undersigned is authorized to execute this Agreement on behalf of the Seller and said signature shall bind the Seller to this Agreement. No further action is required by the Seller to enter into this Agreement other than Seller's undersigned representative execution of the Agreement.

16.0 WARRANTIES

16.1 Seller hereby assigns to the City, effective as of the delivery date of each and every respective piece of Equipment any and all existing assignable warranties attached hereto as Exhibit C. The Seller will,



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

upon request by the City and at Seller's sole expense, cooperate with the City in the enforcement of any benefit provided in any such warranties. To the extent that such rights are not assignable, the City is hereby subrogated to all such rights of Seller.

16.2 Seller warrants to the City that Seller has the right to grant the City the right to use all third-party software and that Seller is an authorized distributor of the Equipment.

17.0 THIRD-PARTY SOFTWARE

17.1 All third-party software shall conform to published specifications and written representations of the manufacturer. Seller hereby agrees that Seller shall ensure all new releases and fixes for third-party software shall be promptly provided to the City at no additional charge.

18.0 METER READING SYSTEM SOFTWARE

18.1 All meter reading system software shall conform to published specifications and written representations of the manufacturer. Seller hereby agrees that Seller shall ensure that all hosted software updates and patches for meter reading software will be provided to the City at no additional charge during the term of each subscription agreement and that Seller shall provide customer support as described in the subscription agreement. In addition, the Seller shall endeavor to notify the City in advance of all suspensions in the meter reading system software service and to carry out necessary maintenance and upgrades outside of normal business hours. Interruptions to existing service can range in priority from urgent to low depending on the impact to the City. Incident priorities are defined as the following:

Priority Level	Impact	Description
1	Urgent	An Incident that (a) results in loss of City connectivity to all of the meter reading system software or (b) results in loss, corruption or damage to City's data.
2	Critical	An Incident that has an adverse material impact on the performance of the meter reading system software or materially restricts City's use of the software as part of City's day-to-day operations.
3	Non-Critical	An Incident that does not result in a failure of the meter reading system software, but a fault exists in the meter reading system software that restricts City's use of the same.



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

4	Minor	An Incident that does not affect or which has minimal adverse impact on the use of the meter reading system software.
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Seller will make commercially reasonable efforts to respond to meter reading system software incidents using the following guidelines:

Priority Level	Performance Target	Minimum Performance % Goal
Priority 1 (Urgent)	Seller will respond within 1 hour of the issue being reported.	95%
Priority 2 (Critical)	Seller will respond within 2 hours of the issue being reported.	95%
Priority 3 (Non-Critical)	Seller will respond within 4 hours of the issue being reported.	95%
Priority 4 (Minor)	Seller will respond within 24 hours of the issue being reported.	95%

The City may escalate any incidents to Utilities Department Director or Seller's Superintendent.

Further, if the City experiences service suspensions, interruptions or outages, excluding scheduled maintenance, that results in the service level uptime falling below 99% for three months in any rolling 12-month period (the “*Uptime Commitment*”), then the City may immediately terminate this Agreement, part thereof, or a subscription agreement, in which case Seller will refund any prepaid, unearned annual subscription fees.

18.2 Meter reading system software will be provided to the City per an annual subscription agreement. Manufacturer will provide correct file transfer layout to City and/or City’s Utility Billing Software provider at no charge to provide correct meter reading system software data transfer to City’s utility billing software. Meter Reading System Software will provide full functionality and reporting for all the manufacturer’s AMR and AMI systems.

19.0 INSURANCE

19.1 During the term of this Agreement, Seller shall be responsible for providing and maintaining the types of insurance and limits per claim as set forth below:



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

(a) Seller shall maintain commercial general liability insurance in the minimum amount of \$1,000,000 as the combined single limit for each occurrence to protect the Customer from claims of property damages and personal injury which are caused by any services performed under this Agreement whether such services are performed by Seller or by anyone directly employed by or contracting with Seller.

(b) Seller shall maintain adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing services for the City pursuant to this Agreement.

(c) Seller shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit bodily injury and minimum \$1,000,000 property damage as the combined single limit for each occurrence to protect the Seller from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which are caused from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Seller or by anyone directly or indirectly employed by the Seller.

19.2 During the term of this Agreement, current certificates of insurance shall be provided and kept on file with the City. A copy of a current Certificate of Insurance shall be provided to the City by Seller upon the Effective Date of this Agreement which satisfied the insurance requirements of this Paragraph 19.1. Renewal certificates shall be sent to the City 30 days prior to any expiration date. There shall also be a 30-day advance written notification to the City in the event of cancellation of any stipulated insurance coverage. **The City shall be an additional named insured on all stipulated insurance policies as its interest may appear, from time to time, excluding worker's compensation liability policies**

20.0 E-VERIFY

20.1 Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Seller shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all employees hired on and after January 1, 2021.

20.2 Subcontractors

(i) Seller shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.

(ii) Seller shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.



MASTER AGREEMENT FOR WATER METER AND METER READING EQUIPMENT PURCHASES

(iii) Seller shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement.

20.3 Seller must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the SELLER stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system.

20.4 Failure to comply with this provision is a material breach of the Agreement, and shall result in the immediate termination of the Agreement without penalty to the City. To the extent provided by Florida law, Seller shall be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

[SIGNATURE PAGE TO FOLLOW]



**MASTER AGREEMENT FOR
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IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY:
CITY OF COCOA *

SELLER:

By: _____

Print Name/Title: _____

Date: _____

By: _____

Print Name/Title: Jeff Kimbrough

Date: 7/12/2024

ATTEST:

By: _____

City Clerk

**THIS AGREEMENT IS ONLY VALID AGAINST THE CITY UPON APPROVAL BY
THE CITY COUNCIL OF COCOA AND SIGNATURE BY EITHER THE MAYOR OR
CITY MANAGER.**



**MASTER AGREEMENT FOR
WATER METER AND METER READING
EQUIPMENT PURCHASES**

**EXHIBIT A
EQUIPMENT PRODUCT SHEETS**



**MASTER AGREEMENT FOR
WATER METER AND METER READING
EQUIPMENT PURCHASES**

**EXHIBIT B
COST SCHEDULE**



**MASTER AGREEMENT FOR
WATER METER AND METER READING
EQUIPMENT PURCHASES**

**EXHIBIT C
PRODUCT WARRANTY**