

**City of Fayetteville Staff Review Form**

**2019-0506**

**Legistar File ID**

**9/3/2019**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Tim Nyander

8/16/2019

WATER SEWER (720)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends the approval of a Master Service Agreement with Badger Meters, Inc. and the approval of the purchase of 1,200 smart water meters from Henard Utility Products, Inc. in the amount of \$240,817.00 plus applicable taxes.

**Budget Impact:**

5400.720.1840-5811.00	Water and Sewer																														
Account Number	Fund																														
02065.1	Water Meters																														
Project Number	Project Title																														
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%;"><u>Yes</u></td> <td style="width: 30%;">Current Budget</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">883,324.00</td> </tr> <tr> <td></td> <td></td> <td>Funds Obligated</td> <td>\$</td> <td style="text-align: right;">32,664.18</td> </tr> <tr> <td></td> <td></td> <td><u>Current Balance</u></td> <td><b>\$</b></td> <td style="text-align: right;"><b>850,659.82</b></td> </tr> <tr> <td><b>Does item have a cost?</b></td> <td><u>Yes</u></td> <td>Item Cost</td> <td>\$</td> <td style="text-align: right;">264,296.66</td> </tr> <tr> <td><b>Budget Adjustment Attached?</b></td> <td><u>No</u></td> <td>Budget Adjustment</td> <td>\$</td> <td style="text-align: center;">-</td> </tr> <tr> <td></td> <td></td> <td><u>Remaining Budget</u></td> <td><b>\$</b></td> <td style="text-align: right;"><b>586,363.16</b></td> </tr> </table>	<b>Budgeted Item?</b>	<u>Yes</u>	Current Budget	\$	883,324.00			Funds Obligated	\$	32,664.18			<u>Current Balance</u>	<b>\$</b>	<b>850,659.82</b>	<b>Does item have a cost?</b>	<u>Yes</u>	Item Cost	\$	264,296.66	<b>Budget Adjustment Attached?</b>	<u>No</u>	Budget Adjustment	\$	-			<u>Remaining Budget</u>	<b>\$</b>	<b>586,363.16</b>	
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V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:** Taxes are estimated in the amount of \$23,479.66.



**MEETING OF SEPTEMBER 3, 2019**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Water & Sewer Committee

**FROM:** Tim Nyander, Utilities Director

**DATE:** August 16, 2019

**SUBJECT:** **Smart Metering Pilot Project – Approval for the Purchase of Badger Water Meters with Cellular Endpoints and a Master Service Agreement Between Badger Meter, Inc. and the City of Fayetteville**

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**RECOMMENDATION:**

Staff recommends the approval of a Master Service Agreement with Badger Meter, Inc. and the approval of the purchase of 1,200 smart water meters from Henard Utility Products, Inc. in the amount of \$240,817.00 plus applicable taxes.

**BACKGROUND:**

In the past year, the city has experienced an uptick in radio-read water meter “no reads” in several areas of town. The meter malfunctions are to be expected, as the meters, batteries and other appurtenances have outlived their expected life span by many years. However, many of these meters and the associated technology cannot be repaired or replaced as it is obsolete and not available for purchase.

**DISCUSSION:**

To supplement the proposed larger Automated Metering Infrastructure (AMI) study, City Staff recommends that a portion of our immediate purchasing needs for meter replacements be satisfied through a small-scale, smart-metering demonstration. This would include the purchase of 1,200 Badger Model M25 meters with associated service agreement to allow the meters to communicate to the “cloud”, upload billing data, and provide a user-interface for customers. The cost of the meters and software engagement fee from Henard Utility Products, Inc. is \$240,817.00 plus applicable taxes. This purchase is subject to Ordinance 3696, waiving the requirements of competitive bidding for the purchase of water meters. Currently, Badger Meter, Inc. is the sole provider of a cellular based AMI meter and is the City of Fayetteville’s current supplier of water meters.

Badger Meter, Inc. requires a Master Service Agreement to operate the smart meters. A monthly fee of \$0.58 per meter would also be charged directly from Badger Meter, Inc. for access and use of the cloud-based software. This will be funded later, but cost documentation from Badger Meter, Inc. is attached to estimate what those future costs will be for cellular service on the smart meters.

**BUDGET/STAFF IMPACT:**

Funds are available in the Water Meters account.

**Attachments:**

Badger Meter, Inc. Master Service Agreement

Henard Utilities Products, Inc. Quote

Badger Meter, Inc. Cellular Service Quote

City Ordinance 3696



**BADGER METER**  
**BEACON AMA MANAGED SOLUTION**  
**MASTER AGREEMENT**



This BEACON AMA MANAGED SOLUTION MASTER AGREEMENT (“**Agreement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”) by and between Badger Meter, Inc. , a Wisconsin corporation with offices located at 4545 W. Brown Deer Road, Milwaukee, Wisconsin 53223 (“**Badger Meter**”) , and the City of Fayetteville, with offices located at 113 W Mountain St, Fayetteville, AR 72701, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives (“**City**”).

**(1) SERVICE.** Badger Meter and its cellular service aggregator and data-hosting service providers (“**Suppliers**”) have developed a hosted, on-demand, web-based service website (“**Portal**”) accessible to its customers to provide metering and water usage service information, communicated through a cellular network, for its customers (“**Service**”), and documentation to assist customers in using the Portal and the Service (“**Documentation**”).

**(2) RIGHT TO ACCESS AND USE THE PORTAL AND SERVICE.** In consideration of the payment of the Service Fees as set forth in Section (5), Badger Meter grants to City, its employees and contractors that City approves as users of the Service (“**Authorized User**”) and City’s approved end-user water customers (“**Authorized Consumer**”) the right to remotely access and use the Service from the Portal (as currently configured) for City’s internal business use and for the benefit of its Authorized Consumers in accordance with this Agreement. Any rights and obligations in this Agreement relative to City and its Authorized Consumers will only be in effect when City affirmatively enables the EyeOnWater Service.

**(3) OWNERSHIP OF PORTAL AND SERVICE.**

**(a) Badger Meter Service.** Badger Meter owns all rights, title and interest in the Portal, Service and Documentation, including all associated intellectual property rights. Neither City, nor its Authorized Users or Authorized Consumers will obtain any rights, title or interest in the Portal, Service, or Documentation or any associated intellectual property rights, other than the right to access and use the Portal, Service and Documentation, subject to the terms of this Agreement.

**(b) Suggestions.** If City provides Badger Meter any suggested improvements (“**Suggestions**”) to the Portal, Service or Documentation, City agrees that Badger Meter will own all rights, title and interest in and to the Suggestions, even if City has designated the Suggestions as confidential. Badger Meter will be entitled to use the Suggestions without restriction. By entering into this Agreement, City irrevocably assigns, conveys and transfers to Badger Meter all right, title and interest in and to the Suggestions and agrees to provide Badger Meter with commercially reasonable assistance to document, perfect and maintain Badger Meter’s rights in the Suggestions.



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(4) **TERM.** The term of this Agreement begins on the Effective Date and continues for a one (1) year term unless earlier terminated in accordance with Sections (15) or (16) of the Agreement (the “Term”).

(5) **FEES.**

(a) **Service Fees.** In consideration for the right to access and use the Portal, Service and Documentation, City agrees to pay Badger Meter certain fees (“**Service Fees**”) to obtain enterprise-wide access to the Portal, Service and Documentation, authorizing all of its Authorized Users and Authorized Consumers to use the Portal and Service and Documentation in accordance with the terms of this Agreement, pursuant to the pricing set forth in **Exhibit 1 - Fees**.

(b) **Taxes and Surcharges.** City will be responsible to pay any sales, use, value added or excise taxes or surcharges resulting from use of the Portal, Service and Documentation by City, its Authorized Users or Authorized Consumers, excluding taxes due on Badger Meter’s income. City will not be responsible for payment of taxes or surcharges resulting from its use of the cellular service included as part of the Service, as those charges are included in the Service Fees.

(c) **Updated Schedule of Fees.** At least ninety (90) days prior to the expiration date of the Term (“**Anniversary Date**”), Badger Meter will provide City with an updated Schedule of Fees for the Service for the upcoming contract term.

(6) **RESTRICTIONS ON RIGHT TO USE.** City agrees that City, its Authorized Users and Authorized Consumers will not use or permit or assist another to use the Portal, Service or Documentation in violation of this Agreement and will not knowingly:

(a) Sell, license, resell, sublicense, or otherwise permit any third parties other than Authorized Users or Authorized Consumers to access or use the Portal, Service, or Documentation.

(b) Remove patent, copyright, trademark or other intellectual property markings from the Portal, Service or Documentation.

(c) Modify, alter, tamper with, repair or otherwise create derivatives from the Portal, Service or Documentation.

(d) Copy, reverse engineer, disassemble or decompile the Portal, Service or Documentation or apply any other process or procedure to derive the source code from any software included in the Portal or Service.

(e) Use the Portal or Service in a manner that violates any applicable international, federal, state or local laws, rules or regulations.



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- (f) Assert or authorize, assist or encourage any third party to assert against Badger Meter, its affiliates, customers, vendors, business partners, Servicers or licensors any intellectual property infringement Claim regarding the Portal, Service or Documentation.
- (g) Transmit content or messages that are illegal, fraudulent, threatening, abusive, defamatory, or obscene.
- (h) Make any unauthorized connection to Badger Meter’s information technology architecture (“**Network**”)
- (i) Communicate any unsolicited commercial, voice, SMS, or other message.
- (j) Upload or transmit any “virus,” “worm,” or malicious code or access, alter, or interfere with the communications of and/or information about another customer.
- (k) Take actions that could cause damage to or adversely affect Badger Meter, the Service, Portal, Suppliers, Network or the property or reputation of Badger Meter or its Suppliers.

City and Badger Meter agree to make good faith efforts to minimize abuse or fraudulent use of the Portal and Service, to promptly report to each other any such abuse or fraudulent use of which they become aware, and to fully cooperate in any investigation or prosecution initiated by Badger Meter, its Suppliers or City related to abuse or fraudulent use of the Portal and Service.

**(7) CUSTOMER SUPPORT.** Badger Meter will provide City the support services described in **Exhibit 2 - Service Level Agreement.**

**(8) CUSTOMER DATA.**

- (a) **Customer Data Defined.** City, its Authorized Users and Authorized Consumers may provide Badger Meter and its Suppliers certain, customer billing information, personally identifiable information or other content (“**Customer Data**”).
- (b) **Ownership.** The Parties agree that the Customer Data is and shall remain the sole and exclusive property of Customer and/or its licensors or Authorized Consumers, including but not limited to any intellectual rights in the Customer Data.
- (c) **Use of Customer Data by Badger Meter.** City, its Authorized Users and Authorized Consumers consent to Badger Meter and its Suppliers’ right to host, access, store, copy and use the Customer Data as reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation. Badger Meter may disclose certain Customer Data only to provide the Service to City, its Authorized Users and Authorized Consumers or to comply with the law or request of a governmental or regulatory body (including subpoenas or court orders as described in Section 9).





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**(d) City Responsibilities.** City is solely responsible for the development, content, operation and maintenance of the Customer Data, including but not limited to the technical operation of the Customer Data, and ensuring that calls made to the Service from City's network are compatible with then-current API's for the Service. City is responsible to ensure that City, its Authorized Users and Authorized Consumers comply with the Badger Meter Terms of Use Policy, the Badger Meter Privacy Policy or any other policies referenced in this Agreement and the law.

**(9) CONFIDENTIALITY.**

**(a) Confidential Information Defined.** For purposes of this Agreement, Confidential Information means all nonpublic information disclosed by one party to the other that is designated as confidential or that given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential, including but not limited to: (a) nonpublic information related to Badger Meter or its affiliates, Suppliers, business partners, technology, customers, business plans, intellectual property, promotional and marketing activities, finances and other business affairs; (b) third party information Badger Meter is obligated to keep confidential; (c) the content and existence of any discussions or negotiations between the parties; (d) Badger Meter's intellectual property used in providing the Portal, Service or Documentation; (e) Customer Data); and (f) Traffic Data, as defined below.

**(b) Protection of Confidential Information and Destruction of Records Upon Termination of Agreement.** To the extent permitted by law, the parties agree to hold the other party's Confidential Information in strict confidence and will not copy, reproduce, give, sell, assign, license, market, transfer or otherwise dispose of the Confidential Information of the other party to any third parties or use the Confidential Information for any purposes whatsoever other than as contemplated by this Agreement. The Parties will take commercially reasonable steps to avoid disclosure, dissemination or unauthorized access to or use of the Confidential Information during the Term and for a period of five (5) years after the end of the Term, except that Confidential Information which is designated as a trade secret which shall continue to be subject to these confidentiality obligations in perpetuity. City agrees it will not misrepresent or embellish the relationship between the Parties (including by expressing or implying that Badger Meter supports, sponsors, endorses or contributes to City or its business endeavors) or express or imply any relationship or affiliation between Badger Meter and City or any other person or entity except as expressly permitted by this Agreement.

Upon termination of this Agreement for any reason: (i) Badger Meter shall immediately cease providing Services to City, its Authorized Users and Authorized Consumers; (ii) Customer, its Authorized Users and Authorized Consumers will have no further right to use the Portal, Service or Documentation, will immediately cease using the Portal, Service and Documentation, and will receive no further Service; (iii) Customer will deliver to Badger Meter any Confidential Information of Badger Meter's in its possession or control, and (iv) Badger Meter shall



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immediately cease gathering data from Customer's endpoints. Within a reasonable time period not to exceed thirty (30) days after termination, Badger Meter will scrub the personally identifiable information from the Customer Data. Customer must immediately return, or at Badger Meter's option, destroy all Documentation provided to Customer by Badger Meter. Customer will remain liable for any Service Fees incurred prior to termination. Badger Meter shall not knowingly, recklessly, or negligently release or disseminate any Customer Data to any party, except its web services provider to provide the service, not specifically authorized by City in writing.

**(c) Traffic Information.** All de-identified data (generally, aggregated system data stripped of PII) generated or collected by Badger Meter through operation of the Portal and Service is referred to as the "Traffic Data." All Traffic Data shall be the Confidential Information of and owned exclusively by Badger Meter.

**(d) Third Party Requests for Confidential Information.** Neither party may disclose the other party's Confidential Information except to a Supplier subject to the restrictions in this Agreement or an Authorized User or Authorized Consumer except as otherwise required by law. If a party receives a request for access to the other party's Confidential Information from a third party, the receiving party agrees to inform the disclosing party in writing within three (3) business days of receipt of the request unless prohibited by law.

**(e) Exclusions from Confidential Information.** Confidential Information of a party shall not include information which: (i) is in or becomes part of the public domain through no fault of the receiving party; (ii) the receiving party can prove was known to it prior to its receipt from the disclosing party without reference to the Confidential Information; (iii) is independently developed by the receiving party outside of this Agreement without use of the disclosing party's Confidential Information; or (iv) is obtained by the receiving party from a third party which had no obligation of confidentiality to the disclosing party.

**(10) CITY'S REPRESENTATIONS AND WARRANTIES.** City represents and warrants to Badger Meter that:

**(a) Authority.** City has the right and authority to enter into this Agreement and to meet its financial and legal obligations under this Agreement.

**(b) Ownership.** City, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Data. City has all rights in the Customer Data necessary to grant the rights to Badger Meter contemplated under this Agreement.

**(c) Compliance with Badger Meter Policies.** None of the Customer Data or the use of the Customer Data, the Portal or Service by City, its Authorized Users or its Authorized Consumers will violate Badger Meter's BEACON Terms of Use <https://beaconama.net/termsfuse.html> or Privacy Policy <https://beaconama.net/privacy/privacy.html>. The parties hereby agree that the





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governing law and jurisdiction shall be the State of Arkansas regardless of any changes to the Terms of Use and Privacy Policy.

**(d) Compliance with the Law.** Neither City, the Authorized Users nor the Authorized Consumers will access or use the Portal, Service or Documentation in any manner that violates any applicable international, federal, state or local laws and/or regulations, including but not limited to all applicable data protection, intellectual property and privacy laws.

**(11) REPRESENTATIONS AND WARRANTIES OF BADGER METER.**

**(a) Authority.** Badger Meter represents and warrants to City that it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement.

**(b) Service Warranty.** Badger Meter represents and warrants to City that the Portal and Service will be provided pursuant to **Exhibit 2 – Service Level Agreement**. In providing the Portal and Service, Badger Meter will maintain sufficient data storage capacity to satisfy the technical requirements and required storage capacity to host the Portal and Service, in its reasonable discretion. If City allows unauthorized users to access the Portal, Service or Documentation, this express limited warranty will immediately become null and void.

**(c) Remedy for Breach of the Express Limited Warranty.** If the Portal, Service or Documentation fail to meet the terms of the express limited warranty set forth in Section 11(b), City is required to notify Badger Meter promptly as defined in **Exhibit 2 – Service Level Agreement**. City’s exclusive remedy for a breach of the express limited warranty is a Service credit to be calculated in accordance with **Exhibit 2 – Service Level Agreement**.

**(d) DISCLAIMER OF IMPLIED WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 11(b), BADGER METER MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE PORTAL, SERVICE OR DOCUMENTATION. BADGER METER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PORTAL, SERVICE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, INDUSTRY PRACTICE OR USAGE OF TRADE.**

**BADGER METER EXPRESSLY DISCLAIMS THAT THE PORTAL AND SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES AS TO THE RELIABILITY, QUALITY, SECURITY, CONDITION, DESIGN, SUITABILITY, INTER-OPERABILITY, AVAILABILITY, COMPLETENESS OF THE PORTAL OR SERVICE OR THAT ANY DATA, INCLUDING THE CUSTOMER DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.**



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(e) **ESSENTIAL TERMS. THE ENFORCEABILITY OF THIS SECTION (11) IS ESSENTIAL TO BADGER METER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT WITH CITY.**

**(12) LIMITATION OF LIABILITY**

(a) **DIRECT DAMAGES. IF ANY PARTY DEFAULTS IN ITS OBLIGATIONS UNDER THIS AGREEMENT, THE NON-BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON-BREACHING PARTY MAY INCUR AS A RESULT OF SUCH BREACH.**

(b) **CAP ON DAMAGES. NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES ANNUAL LIABILITY UNDER THIS AGREEMENT WILL EXCEED THE LESSER OF (A) THE AMOUNTS THE CUSTOMER ACTUALLY PAYS BADGER METER UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM, OR (B) US \$250,000. NOTHING IN THIS SECTION 12 WILL LIMIT CUSTOMER'S OBLIGATION TO PAY BADGER METER FOR USE OF THE SERVICES PURSUANT TO SECTION 5.**

(c) **LIMITS ON DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS ARISING UNDER SECTIONS (13) AND (14) (INDEMNIFICATION), NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED USER, AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY CLAIMS, DEMANDS, ACTIONS, LOSSES, DAMAGES, FINES, JUDGMENTS SETTLEMENTS, COSTS, EXPENSES, ATTORNEY'S FEES, AND COURT COSTS OR ANY OTHER LIABILITIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE PORTAL, SERVICE, DOCUMENTATION, OR THE SUBJECT MATTER OF THIS AGREEMENT ("CLAIM").**

**FURTHER, NEITHER PARTY NOR ANY OF EITHER PARTY'S RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST REVENUE OR PROFITS OR DIMINUTION OF VALUE, OR OTHER ECONOMIC ADVERSITY, CLAIMS RESULTING FROM LOSS OF CUSTOMER DATA, OR BREACH OF CONFIDENTIALITY, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.**

**NEITHER BADGER METER NOR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE PORTAL**

OR SERVICE, INCLUDING AS A RESULT OF ANY: (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE ; OR (ii) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON, INCLUDING BUT NOT LIMITED TO AS A RESULT OF A POWER OUTAGE, SYSTEM FAILURE OR OTHER INTERRUPTION; (B) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (C) ANY INVESTMENTS, EXPENDITURES OR COMMITMENTS MADE BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CUSTOMER'S DATA.

**(13) CITY'S INDEMNIFICATION OBLIGATIONS.**

**(a) Generally.** To the extent permitted by law, and without waiving its sovereign immunity, City agrees to defend, indemnify, and hold harmless Badger Meter as well as its parents, subsidiaries, affiliates, officers, employees, agents, licensors, Suppliers, representatives and customers and each of their respective employees, officers, directors, members and representatives (the "**Badger Meter Parties**"), against any and all Claims made against the Badger Meter Parties by any third party arising out of or related to: (i) Customers, Authorized Users or Authorized Consumers access and use of the Portal, Service, or Documentation; (ii) the subject matter of this Agreement ; (iii) violation of applicable law by Customer, its Authorized Users or Authorized Consumers; or (iv) a dispute between Customer and any Authorized User or Authorized Consumer.

**(b) Procedure for Indemnification.** Upon receipt of a Claim, Badger Meter will provide prompt written notice to City of the Claim for which the Badger Meter Parties seek indemnification. Badger Meter's failure to promptly notify City will only affect City's obligation to indemnify the Badger Meter Parties to the extent such failure causes actual prejudice to City's ability to defend the Claim. The notice must include a description of the Claim with reasonable detail of the facts giving rise to the Claim. Upon receipt of notice of a Claim, Customer shall be obligated to assume and control the defense of such Claim at its own expense. The Badger Meter Parties may retain their own counsel to cooperate in defending the Claim, at their own expense. The Badger Meter Parties agree to cooperate with City in defending the Claim and in making available to City all witnesses, records, materials and information in their possession or control to assist in the defense of the Claim, as is reasonably requested by City. City may not settle or compromise any Claim or consent to the entry of any judgment unless Badger Meter provides prior written consent and the Badger Meter Parties are given an unconditional written release from City with respect to the Claim. In the event City fails to defend, indemnify, and hold the Badger Meter Parties harmless, after notice of a request for indemnification, the Badger Meter Parties shall be entitled to assume the defense and seek



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reimbursement from City for all losses with regard to the Claim and all attorneys' fees and litigation costs expended by the Badger Meter Parties in defending the Claim.

**(14) BADGER METER'S INDEMNIFICATION OBLIGATIONS.**

**(a) Generally.** Subject to the limitations of liability provisions set forth in Section (12) of this Agreement, Badger Meter agrees to indemnify, defend and hold harmless City, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("**City Parties**") from and against any legal proceedings filed against the City Parties by a third party based upon the allegations that the Portal, Service or Documentation infringes or violates a third party's patent, copyright or other intellectual property rights ("**Intellectual Property Dispute**").

**(b) Mitigation.** If the Portal, Service or Documentation becomes the subject of an Intellectual Property Dispute and is enjoined, Badger Meter will have the right to (i) procure for City the right to continue using the Portal and Service; (ii) modify the Portal and Service to avoid allegations of infringement, provided the modification does not materially change the functionality of the Portal and Service; (iii) replace the Portal and Service with an equally suitable, functionally equivalent, non-infringing Portal and Service; or (iv) immediately terminate this Agreement and provide City with a refund of any unused pre-paid portion of the Service Fees.

**(c) Exclusions.** Badger Meter assumes no liability for and City will not be entitled to receive indemnification from Badger Meter for any Intellectual Property Dispute which results directly and solely from (i) City's failure to use the Portal or Service in conformity with the Documentation; (ii) City's actions in combining the Service with any third party software, technology, hardware or data; or (iii) City's violation of access granted in Section (2).

**(d) Procedure for Indemnification.** Upon receipt of an Intellectual Property Dispute, City will provide prompt written notice to Badger Meter of the Intellectual Property Dispute for which the City Parties seek indemnification. City's failure to promptly notify Badger Meter will only affect Badger Meter's obligation to indemnify the City Parties to the extent such failure causes actual prejudice to Badger Meter's ability to defend the Claim. The notice must include a description of the Intellectual Property Dispute with reasonable detail of the facts giving rise to the Intellectual Property Dispute. Upon receipt of notice of an Intellectual Property Dispute, Badger Meter shall be obligated to assume and control the defense of such Intellectual Property Dispute at its own expense. City may retain its own counsel to cooperate in defending the Intellectual Property Dispute, at its own expense. City agrees to cooperate with Badger Meter in defending the Intellectual Property Dispute and in making available to Badger Meter all witnesses, records, materials and information in City's possession or control to assist in the defense of the Intellectual Property Dispute as is reasonably requested by Badger Meter. Badger Meter may not settle or compromise any Intellectual Property Dispute or consent to the entry of any judgment unless City provides prior written consent and the City is given an unconditional





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written release from Badger Meter with respect to the Intellectual Property Dispute. In the event Badger Meter fails to defend, indemnify, and hold the City Parties harmless, after notice of a request for indemnification, City shall be entitled to assume the defense and seek reimbursement from Badger Meter for all losses with regard to the Intellectual Property Dispute and all attorneys' fees and litigation costs expended by City in defending the Intellectual Property Dispute.

**(15) TERMINATION.**

**(a) Termination for Convenience.** City may terminate this Agreement for any reason by providing Badger Meter written notice of termination at least ninety (90) days in advance of the effective date of such termination. Badger Meter shall be entitled to receive just and equitable compensation for any services performed hereunder through the date of the termination. After receipt of a notice of termination for convenience, Badger Meter will exercise reasonable diligence to accomplish the cancellation or diversion of related services and settle all outstanding liabilities associated with the cancellation of such commitments.

**(b) Termination for Cause.** A party is in default under this Agreement if it materially breaches or materially fails to perform its obligations under this Agreement, which includes any failure to make undisputed payments pursuant to Section (5) ("**Event of Default**").

**(c) Opportunity to Cure.** Upon the occurrence of an Event of Default, the non-defaulting party shall deliver a written notice describing the Event of Default (the "**Cure Notice**"). If the receiving party has not cured the Event of Default within thirty (30) days after receipt of the Cure Notice, then the non-defaulting party shall have the right to terminate this Agreement, at its option, by delivering to the defaulting party a written notice of termination (the "**Termination Notice**").

**(d) Immediate Right to Terminate.** Badger Meter shall have the right to immediately terminate this Agreement: (i) in order to protect its Confidential Information, or its Intellectual Property Rights in the Portal or Service; (ii) in order to comply with applicable law (iii) if City makes any representation or warranty which is materially untrue as of the Effective Date or at any time during the Term; or (iv) upon an assignment for the benefit of creditors, if City suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under any statute relating to insolvency or for the protection of creditor rights or if a party becomes insolvent or technically bankrupt.

**(e) Reserved.**

**(f) Post - Termination Assistance.** At either the expiration of the Term without renewal, or upon termination for any reason, Badger Meter will, within ten (10) days, provide to City, at no cost, an export of Customer Data that will include, at a minimum, account number, full name,



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email address, street address, and phone number in a comma delimited .txt file. If City desires data beyond this list, Badger Meter can assist at the invoice rate of \$200/hour.

**(g) Reinstatement Fee.** If City desires to reinstate access to the Portal and Service after termination, a reinstatement fee of \$7.50 per endpoint reinstated will apply.

**(16) SUSPENSION OF SERVICES.**

**(a) Nonpayment.** Badger Meter may suspend the Service and access to the Portal and shall not be obligated to provide access to the Portal and Service to City, its Authorized Users or Authorized Consumers until all outstanding undisputed invoices for the Service have been paid in full, including any fees associated with suspension of the Service.

**(b) Network Protection.** City acknowledges that Badger Meter (and any of its Suppliers) may restrict, or suspend all or a portion of the Service or limit the Service as may be reasonably necessary to prevent or limit suspected fraud or any problem that materially and adversely affects the performance of the Service and/or is likely to do substantial damage to Badger Meter, Badger Meter's customers or Suppliers. Some of these actions may interrupt or prevent legitimate communications and usage. Such situations may arise: (a) if a device deployed on the Service is materially out of compliance with the technical requirements; (b) in case of actual or suspected fraudulent use; or (c) in case of disruptive or damaging operation.

**(c) Notification.** In the event that Badger Meter or one of its Suppliers restricts, suspends or cancels any portion of the Service or limits the operation of the Service, Badger Meter shall (i) notify City in advance or within thirty (30) minutes of the discovery of any issue that affects either Service or access to the Portal by displaying the notification on the portal; (ii) provide reasonable information regarding its identification of the issue that resulted in the actions taken; and (iii) reinstate Service upon resolution of the issue as soon as practicable and in any case within a reasonable timeframe.

**(d) Immediate Suspension.** Badger Meter may suspend City's or an Authorized Users or Authorized Consumers right to access or use the Service immediately upon notice to City if Badger Meter determines:

**(i)** Use of the Service poses a security risk to the Service, the Network or any third party, adversely impacts the Service, the Network or data of any other Badger Meter customer, or subjects Badger Meter or any third party to liability or fraud.

**(ii)** City or one of its Authorized Users or Authorized Customers is in breach of this Agreement or is delinquent on its payments for more than thirty (30) days.





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(iii) Badger Meter ceases to operate in the ordinary course, has an assignment for the benefit of creditors or similar disposition of its assets or becomes the subject of any bankruptcy, reorganization, liquidation dissolution or similar proceeding.

(e) **Reinstatement.** Badger Meter will use commercially reasonable efforts to restore City's rights to use and access those portions of the Service or accounts that gave rise to the suspension promptly after City has resolved the problem giving rise to the suspension.

(f) **Effect of Suspension.** If Badger Meter suspends City's right to access or use all or any portion of the Service or the Portal:

(i) City remains responsible for all Service Fees and undisputed charges incurred through the date of suspension.

(ii) City remains responsible for any applicable Service Fees and charges for any Services to which City has continued access as well as applicable fees and charges.

(iii) City will not be entitled to any service credits under the Service Level Agreement for any period of suspension.

(iv) Badger Meter's right to suspend the Services is in addition to Badger Meter's right to terminate this Agreement.

**(17) COMPLIANCE WITH REGULATIONS; DATA PRIVACY.** Each party is responsible for complying with industry standards and such applicable laws and regulations, including, but not limited to, the generally accepted practices in the information technology service management industry for providing secure data handling and management, including meeting or exceeding Information Technology Infrastructure Library (ITIL) standards for logical and physical security and all requirements regarding the protection of data in its possession or under its control. A party will not be liable for any failure of the other party to comply with this requirement.

**(18) DATA SECURITY AND RECOVERY.**

(a) **Data Security.** In order to protect the Customer Data and prevent unauthorized access to or use of the Customer Data, Portal or Service, Badger Meter has implemented commercially reasonable internal procedures and systems designed to protect the privacy and security according to the requirements set forth in **Exhibit 3 - BEACON AMA Managed Solution Security Policy** ("Security Standards"), consistent with applicable international, federal, state and local laws. The purpose of the security policy is to identify reasonably foreseeable and internal risks to security and unauthorized access to Badger Meter's Network and minimize security risks, including through risk assessment and regular testing. Badger Meter will designate one or more employees to coordinate and be accountable for the security program.

**(b) Protection of Customer Data.** Badger Meter will implement reasonable and appropriate measures for the Badger Meter Network designed to help City secure the Customer Data against accidental or unlawful loss, access or disclosure in accordance with Badger Meter’s Security Standards. Badger Meter may modify its Security Standards from time to time but will continue to provide at least the same level of security as described in the Security Standards as of the Effective Date. The security and data privacy provisions in this Section contain Badger Meter, and its Suppliers entire obligation regarding the security, privacy and confidentiality of the Customer Data.

**(c) Data Storage.** Badger Meter will employ commercially reasonable storage (including backup, archive and redundant data storage) and commercially reasonable precautions to prevent the loss of or alteration of Customer Data, but does not guarantee against any such loss or alteration. Badger Meter will not serve as City’s official record keeper. City will maintain source documents of the Confidential Information (such as billing information) hosted by Badger Meter under this Agreement.

**(d) City Responsibilities.** City is responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup of the Customer Data, including but not limited to the use of encryption technology to protect Customer Data from unauthorized access and will perform routine archiving of the Customer Data. Further, City is responsible for regularly auditing its Authorized Users, and will enact internal procedures to remove Authorized Users from the Service if their job duties change and access is no longer appropriate, or if an Authorized User separates from City.

**(e) Data Transmission Risks.**

**(i) Cellular Transmissions.** Badger Meter cellular endpoints conform to the AES256 encryption standards or the latest AES standard in effect. City acknowledges that neither Badger Meter nor its Suppliers can guarantee the privacy or security of any cellular transmissions as part of the Service. City acknowledges that cellular transmissions are capable of being intercepted by third parties without the knowledge or permission of Badger Meter or its Suppliers. Badger Meter and its Suppliers shall not be liable to City, the Authorized Users, the Authorized Consumers or any third party for interception or unauthorized use of any data transmitted through the cellular network, as part of the Service.

**(ii) Internet Transmissions.** City acknowledges that security of transmissions over the Internet cannot be guaranteed. Badger Meter is not responsible for: (i) City’s access to the Internet; (ii) interception, unauthorized use or interruptions of communications through the Internet; or (iii) changes or losses of data through the Internet, in each case other than to the extent caused solely by Badger Meter. In order to protect Customer Data, Badger Meter may suspend City, City’s Authorized Users or Authorized Consumers access to or use of



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the Badger Meter Portal or Service via the Internet immediately, without prior notice, pending an investigation of any potential security breach.

**(f) Coverage Availability.** The Service is provided using a wireless network. Actual signal availability in the Service Area will depend on the device used to access the Service as well as coverage for the applicable wireless network provided in specific geographic regions. Coverage may be refused, interrupted or limited by environmental factors such as signal strength, buildings, weather, geography, topography, or by factors affecting the Suppliers, such as usage concentration or by facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the Supplier's facilities. Any such factors may result in dropped and blocked connections or slower data speeds. Neither Badger Meter nor any of its Suppliers will be responsible to City or any of City's Authorized Users or Authorized Consumers for any such lapses in or obstructions to coverage. The Service Area is subject to change from time to time. Should Badger Meter receive notice from its Supplier that such Supplier intends to discontinue its support for the Badger Meter Service in all or part of the Service Area, Badger Meter will provide City with as much advance notice as practicable under the circumstances.

**(g) Password Protection.** City, its Authorized Users and Authorized Consumers will be required to select and use certain user names, passwords or codes to access and use the Service and Portal. City assumes sole responsibility for the selection, management and use of any codes or passwords as may be permitted or required for the access to and use of the Portal and Service by City, its Authorized Users and its Authorized Consumers. City agrees to maintain the privacy of usernames and passwords associated with the Badger Meter Portal and Service. City shall remain responsible for all activities that occur under City's password or Internet account. City will immediately notify Badger Meter of any unauthorized use of City's password or Internet account or any other breach of security, and ensure that City exits from City's Internet account at the end of each session. Badger Meter shall not be liable for any damages incurred by City or any third party arising from City's failure to comply with this Section.

**(h) Third Party Access.** To the extent that City requests that Badger Meter provide any Customer Data to Authorized Users, Authorized Consumers or third parties or any non-U.S. location, City represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

**(i) Security Breach.** If Badger Meter becomes aware of a security breach or that compromises the security, confidentiality or integrity of the Customer Data ("Breach"), Badger Meter will promptly notify City in writing and take appropriate actions to resolve the Breach. Badger Meter will reasonably cooperate with City to investigate the nature and scope of any Breach. In its initial notification to City, Badger Meter will provide City with: (i) a description of the Breach; (ii) the estimated impact of the Breach on City's Data; (iii) the name and contact information of the person at Badger Meter who will be primarily responsible for resolving the

issues for City; and (iv) the investigation taken and the suggested corrective action. Badger Meter will provide commercially reasonable cooperation to City in investigating, assisting with notification of the Breach and taking corrective action as requested by City.

**(j) Notification of Breach.** In the event that applicable law requires notification to individuals of an Breach or if requested by City, Badger Meter will take additional mitigation steps for the benefit of City, including, but not limited to, providing reasonable assistance with drafting and sending of required notifications.

## **(19) CHANGES.**

**(a) Right to Make Changes.** Badger Meter may from time to time make changes, without City's approval, to the Terms of Use, the Privacy policies, the Portal, Service or Documentation, provided that such changes: (i) do not increase City's total costs of accessing and using the Portal and Service during the Term of this Agreement ; (ii) do not require City to make any material changes to its systems, software, equipment, policies or procedures ; (iii) do not have a material adverse impact on the functionality, interoperability, performance, reliability, security or resource efficiency of the Portal and Service ; (iv) do not materially reduce the scope of the Portal and Service; and (v) are otherwise consistent with this Agreement. Badger Meter will publicize any changes by a notice given to City or by a prominent announcement on the Portal. Any such changes will not take effect until thirty (30) days after posting of notice on the Portal. By continuing to use the Service after the effective date of the modification to a policy, City agrees to be bound by the modified policies. It is City's responsibility to check the Badger Meter site regularly for modifications to the policies.

**(b) Emergency Changes; System Improvement.** Notwithstanding the foregoing, Badger Meter and its Suppliers may make temporary changes to the Portal and Service required by an emergency or threat to the security or integrity of the Portal or Service, to respond to Claims, litigation or loss of license rights related to third party intellectual property rights or to comply with the law or requests of a government entity, as well as take actions deemed reasonably necessary to protect or optimize the Service. Some of these actions may interrupt or prevent legitimate communications and usage, including, for example, use of message filtering/blocking software to prevent SPAM or viruses, limitations on throughput, and scheduled maintenance. Badger Meter will provide notice by sending a message to the email address then associated with City's account and by posting it on Badger Meter's Portal. Badger Meter will provide City with: (i) at least thirty (30) days' advance notice of planned maintenance by Badger Meter; and (ii) as much advance notice as reasonably possible of emergency changes or maintenance by Badger Meter or its Suppliers. Any actions resulting in permanent changes shall only be made in compliance with Section (19) (a).

**(20) RIGHT TO SUBCONTRACT.** Badger Meter may subcontract the performance of any of its cellular or web-services duties or obligations under this Agreement, and will use commercially





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reasonable efforts to subcontract only with subcontractors that have the requisite skills to perform any subcontracted obligations in accordance with the terms of this Agreement.

**(21) GENERAL.**

**(a) Binding Agreement.** This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**(b) Affiliates.** This Agreement covers only the employees and agents of City. If City wishes to have any entity that directly or indirectly controls, is controlled by or is in common control with City to access the Portal and use the Service, City's Affiliate must execute a separate agreement with Badger Meter.

**(c) Assignment.** Either party may assign its rights and obligations under this Agreement with the express written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, Badger Meter may assign its rights and obligations under this Agreement without the consent of City: (i) upon a sale of a majority of its outstanding capital stock to an affiliate or third party; (ii) if it sells all or substantially all of its assets; (iii) in the event of a merger; or (iv) in the event of a similar change of control.

**(d) No Waiver.** The waiver or failure of either party to exercise any right or remedy provided under this Agreement will not be deemed a waiver of any further right or remedy. All waivers must be in writing to be effective.

**(e) Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions of this Agreement will be interpreted to effectuate the intent of the original Agreement. If such construction is not possible, the invalid or unenforceable portion of the Agreement will be severed from this Agreement, and the remainder of the Agreement will remain in full force and effect.

**(f) Independent Contractors.** The Parties agree that they are independent contractors and that neither party nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

**(g) Savings Clause.** The invalidity of any provision of this Agreement shall not affect the validity and binding effect of the remaining provisions.

**(h) No Third Party Beneficiaries.** Nothing express or implied in this Agreement shall confer any rights, remedies, obligations or liabilities whatsoever to third parties which are not signatories to this Agreement.



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(i) **Governing Law.** To the extent permitted by law, the terms of this Agreement are governed by the laws of the State of Arkansas, without reference to its conflict of laws principles. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

(j) **No Claims Against or Liability of Badger Meter Suppliers.** City acknowledges that the Service utilizes services that are furnished to Badger Meter and one or more Suppliers pursuant to agreements between Badger Meter and its Suppliers. Neither City nor any Authorized Users or Authorized Consumers has a contractual relationship with Badger Meter's Suppliers and neither City nor its Authorized Users or Authorized Consumers is a third party beneficiary of or will have any claim against Badger Meter's Suppliers in the event any such agreement expires or is terminated. City further acknowledges that the Suppliers disclaim all liability of any nature, whether legal or equitable, to City, its Authorized Users or Authorized Consumers, whether direct, indirect, incidental or consequential, arising out of the use of Badger Meter Portal or Service by City, its Authorized Users or Authorized Consumers, including any liability for personal injury or death, failure to be able to use the Service or otherwise. City agrees that neither it nor any Authorized Users or Authorized Consumers shall have any Claim against the Supplier of any kind with respect thereto, whether arising out of breach of contract, warranty, negligence, and tort or otherwise. Badger Meter agrees that it is responsible for all claims and liability arising out of, or that could arise out of, breach of contract, warranty, negligence, tort or otherwise with respect to Badger Meter's suppliers.

(k) **Dispute Resolution and Initial Resolution Efforts.** The parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "**Dispute**") between the parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby. Thereafter, any claims, disputes, or suits shall be submitted to a court of competent jurisdiction in Washington County, Arkansas. Neither party waives its right to a jury trial.

(22) **INJUNCTIVE RELIEF:** Notwithstanding the provisions of Section 21, to the extent permitted by law, Badger Meter shall have the right to pursue injunctive, declaratory or other relief by the state and federal courts sitting in Fayetteville, Arkansas and waive any objection that they would otherwise have to venue in such courts.

(23) **NOTICES.** All notices shall be in writing and delivered to the other party by means of: (a) personal delivery set forth below; (b) courier (signature required upon delivery); (c) recognized overnight courier, at the following address; (d) fax with proof of delivery; or (e) via electronic mail with proof of delivery: Notices sent by email will be effective when sent and notices posted on Badger Meter's Portal will be effective upon posting. All notices must be provided in the English language.





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If to Badger Meter:  
Legal Department, Attn: Assistant General Counsel  
4545 W. Brown Deer Road  
Milwaukee, WI 53223

If to City:  
City of Fayetteville  
113 W Mountain St.  
Fayetteville, AR 72701

**(24) SURVIVABILITY.** Any provision of this Agreement which by its nature should survive termination or expiration of this Agreement shall survive its expiration or termination.

**(25) LIMITATION OF CLAIMS.** No action arising under or in connection with this Agreement, regardless of the form, may be brought by City more than five (5) years after City becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

**(26) FORCE MAJEURE.** Neither party shall be liable to the other or any third party by reason of any failure or delay of its obligations under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God, fires, storms, floods or other acts of nature, explosions, systemic electrical telecommunications or other utility failures, earthquakes, hurricanes, tornados, natural disasters, strikes, shortage of materials, work stoppage or other labor dispute, embargoes, riots, insurrections, acts of war or terrorism, or any action or restraint by court order or public or governmental authority ("**Force Majeure Event**"). The party subject to the Force Majeure Event agrees to use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the other party.

**(27) AMENDMENT.** This Agreement may only be amended by a written document signed by both parties. Badger Meter will not be bound by and specifically objects to any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by City in any receipt, acceptance, confirmation, agreement, purchase order, correspondence or other documentation. If the terms of this Agreement are not consistent with the terms contained in any policy, the terms contained in this Agreement will control, except that the Service Terms will control over this Agreement.

**(28) ENTIRE AGREEMENT.** This Agreement, including all applicable Exhibits and policies, constitutes the entire agreement between the parties with regard to its subject matter. This Agreement supersedes all prior or contemporaneous agreements, discussions, negotiations, undertakings, communications, representations or proposals, whether written or oral.

**(29) ORIGINALS, COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together will be deemed to constitute one



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and the same document. This Agreement may be executed and delivered by facsimile signature or portable document format (.pdf) by electronic mail.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties to this BEACON AMA Managed Solution Master Agreement by signing below:

BADGER METER, INC

CITY OF FAYETTEVILLE

**Kim K. Stoll** Digitally signed by Kim K. Stoll  
Date: 2019.08.16 12:42:50  
-05'00'

\_\_\_\_\_  
Signature

Kimberly K Stoll

\_\_\_\_\_  
Printed Name

VP - Sales and Marketing

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



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**EXHIBIT 1**

**FEES**

1. **Service Fees.** City agrees to pay the following Service Fees, as consideration for the right to access and use the Portal, Service and Documentation during the Term, as well as applicable Taxes.
2. **Invoicing.** Badger Meter shall issue invoices to City for Service and Support Fees on a monthly basis. Undisputed payments are due within thirty (30) days of the date of the invoice.
3. **Interest and Costs.** City agrees that it will be responsible to pay Badger Meter for any collection expenses incurred by Badger Meter permitted by law, and reasonable attorneys' fees and court costs incurred by Badger Meter in enforcing its rights under this Agreement.

BEACON Monthly Endpoint Subscription Fee

15-minute interval data; 22 scheduled communications per week: Badger Meter's standard price for service units is \$.89; Badger Meter will provide quantity discounted pricing to Fayetteville via a 1-year quote that will match the term of this agreement.

Invoicing for monthly endpoint subscription fee starts at time of endpoint activation or six (6) months from date of shipment, whichever comes first.



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**EXHIBIT 2**

**SERVICE LEVEL AGREEMENT**

This Service Level Agreement (“SLA”) will go into effect upon completion of Endpoint Provisioning, which is the point during meter installation when the endpoint is installed and verified to provide data to the BEACON AMA Managed Solution.

**1. CUSTOMER SUPPORT.**

Service Levels. Within one (1) hour after a request for Customer Support Services from City, Badger Meter will respond to such request in accordance with the procedures set forth below. City may report the problem by phone, email or website provided by Badger Meter to City. Badger Meter will use commercially reasonable efforts to meet the response and resolution times set forth below:

Severity Level	Response Time	Resolution Time
Level 1 - Service is unavailable	one (1) hour	six (6) hours
Level 2 - certain interruptions but service is still available	twenty-four (24) hours	twenty-four (24) hours
Level 3 - minor intermittent malfunction	twenty-four (24) hours	three (3) days
Level 4 - suggestions for new features or enhancements to BEACON Portal and Service	twenty-four (24) hours	Evaluated, scheduled and prioritized for potential inclusion in upcoming releases.



2. BEACON PORTAL AND SERVICE AVAILABILITY PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- BEACON Portal and Service Availability of 99% within each calendar month, excluding any Emergency Downtime, Scheduled Downtime, any unavailability of the Portal and Service due to any Force Majeure Event and any unavailability of the Portal and Service less than fifteen (15) minutes in duration following written notice thereof.

*Definitions*

“**Availability**” is the monthly uptime percentage with normal functionality of the Portal and the Service, calculated as described below.

“**Emergency Downtime**” means any unavailability of the Portal or Service due to a temporary suspension by Badger Meter to perform maintenance to address any, urgent and unexpected issue with the Portal or Service.

“**Scheduled Downtime**” means any unavailability of the Portal or Service due to scheduled maintenance. Scheduled maintenance may occur between 10:00 p.m. on Saturday to 4:00 a.m. on Sunday (Pacific Time) every week. Badger Meter shall have the right to change the scheduled maintenance times upon notice to City posted on the BEACON Portal.

*CALCULATION of BEACON Portal and Service Availability:*

Availability is measured by Badger Meter through standard monitoring software that tests the application availability at least every five (5) minutes and logs unavailability incidents (date and UTC time) for each monitored component.

Availability is calculated as the percentage of uptime in the applicable calendar month, excluding scheduled downtime:

$$1 - \frac{\text{Total Unavailability Minutes}}{\text{Total Minutes of Service Month} - \text{Total Minutes of Approved Downtime}}$$

Where:

“**Total Unavailability Minutes**” is the cumulative unavailability time in minutes in the applicable month where the Portal and Service are not available due to unplanned outages or from systematic errors on the part of Badger Meter,

“**Total Minutes of Service Month**” is the cumulative time in minutes in the month in question, calculated by taking the number of days in month x 24 hours/day x 60 minutes/hour, and



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“**Total Minutes of Approved Downtime**” is the cumulative time in minutes in the applicable month where the Supplier applications are not available due to scheduled downtime ; other planned scheduled outages, or approved exclusion conditions as defined in this Agreement.

In order to be included within the Total Unavailability Minutes: (a) City shall notify Badger Meter, in writing, via email(techsupport@badgermeter.com) of the unavailability of the Portal or the Service; (b) such unavailability shall be greater than fifteen (15) minutes in duration following Badger Meter’s receipt of such notice; and (c) City shall notify Badger Meter, in writing, via email within twenty-four (24) hours of such unavailability that it should be included within the Total Unavailability Minutes unless such unavailability is due to any Emergency Downtime, Scheduled Downtime, or any unavailability of the Services due to any Force Majeure Event.

***Service Credits***

If Badger Meter fails to meet the BEACON Portal and Service Availability Promise, the following Service Credits will be calculated as follows:

Service Credit = Endpoint Service Units Consumed in the Month \* (1 - Availability) rounded to the next whole number

For example;

<b>Availability</b>	<b>Service Credit (Service Units per 1,000 Service Units consumed in the month)</b>
95%	50
90%	100
80%	200
70%	300
60%	400
50%	500

Service Credit will be added to City’s account in the form of pre-paid Service Units for the same endpoint type(s).





3. MONTHLY BILLING DATA SERVICE PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- The BEACON AMA Managed Solution will successfully provide Monthly Billing Data for at least 97.0% of provisioned accounts at the time of billing request to the BEACON AMA Managed Solution.

*Definitions*

“**Managed Solution**” is a system that consists of a network deployment using fixed network and/or cellular endpoints, where Badger Meter maintains the responsibility for managing the reading hardware and software for system operation over the Term of the Agreement.

“**Provisioned Accounts**” are accounts with cellular or fixed network endpoints that are discovered by the network, fully able to communicate with the network, and completely entered correctly in the BEACON AMA Managed Solution.

“**Monthly Billing Data**” is a valid meter reading obtained within three (3) days of the billing as performed through the BEACON AMA Managed Solution to provisioned accounts.

*CALCULATION of Monthly Billing Data Service Promise for Provisioned Accounts:*

Monthly Billing Data success rate is calculated by the count of accounts in the billing cycle with meter read data within three (3) days (“**Count of Billing Reads**”) divided by the number of active and Provisioned Accounts in the billing cycle (“**Count of Total Billing Cycle**”).

$$\frac{\text{Count of Billing Reads}}{\text{Count of Total Billing Cycle}}$$

Where:

“Count of Billing Reads” is the total number of accounts in the billing file with valid data that a billing quality reading is supplied for managed solution endpoints.

“Count of Total Billing Cycle” is the total number of accounts with valid data in the billing file being processed for managed solution endpoints.



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If City suspects that the Monthly Billing Data Service Promise has not been met for a particular Billing Cycle, (a) City shall notify Badger Meter, in writing, within twenty-four (24) hours of the occurrence, via email ([techsupport@badgermeter.com](mailto:techsupport@badgermeter.com)) of the Count of Billing Reads and Count of Total Billing Cycle of managed solution endpoints; (b) the specific time and date when the billing read file was generated.

***Service Credits***

If Badger Meter fails to meet the Monthly Billing Data Service Promise, Service Credits will be calculated as follows:

Service Credit = Managed Solution Endpoint Service Units Consumed in the Month \* (1 - Monthly Billing Data Success Rate) rounded to the next whole number

For example;

<b>Monthly Billing Data Success Rate</b>	<b>Service Credit (Service Units per 1,000 Service Units consumed in the month)</b>
95%	50
90%	100
80%	200
70%	300
60%	400
50%	500

Service Credit will be added to City’s account in the form of pre-paid Service Units for the same endpoint type(s).



4. MISCELLANEOUS.

**Exclusions**

The BEACON Portal and Service Availability Promise and Monthly Billing Data Service Promise do not apply to any of the following performance issues, in addition to other exclusions herein:

- (i) Resulting from any actions or inactions of City, its Authorized Users or Authorized Consumers;
- (ii) Resulting from City or its suppliers equipment, software, or other technology and/or City's third party equipment, software, or other technology outside of Badger Meter's control;
- (iii) Caused by failures, including, but not limited to, internet connectivity, port availability, firewall configuration, or cellular networks at City's location;
- (iv) Resulting from City's breach of any term or condition under the Agreement;
- (v) Caused by unexpected or unintentional RF interference or signal obstruction caused by sources not present or not in use during endpoint installation;
- (vi) Caused by intentional RF interference or signal obstruction not present during endpoint installation, caused by third parties;
- (vii) Caused by City, an Authorized User's or an Authorized Consumer's misuse or abuse of the Portal or Service;
- (viii) During an event triggering a declared disaster recovery and for a twenty-four (24) hour period after the resumption of the Service following such an event to allow for the system to return to normal operating ranges;
- (ix) Arising from Badger Meter's suspension or termination of City's right to use the BEACON Managed Solution in accordance with the Agreement;
- (x) Arising from failure of City to follow Badger Meter's published installation, operation and maintenance instructions and Clarifications from Badger Meter's Preliminary Network Design;
- (xi) When outdoor temperatures either exceed or are below the endpoint operating temperature range as described in the applicable product data sheet.
- (xii) Accounts read using manual, touch read, handheld and mobile technology are not included as part of the Monthly Billing Data Service Promise, as these reading technologies are outside of Badger Meter's control.

In the event Badger Meter does not meet a Service Promise hereunder, Badger Meter will conduct a commercially reasonable root cause analysis of the Service promise failure. If Badger Meter's analysis is inconclusive, or if Badger Meter concludes that circumstances outside of Badger Meter's control caused the Service promise failure, or if Badger Meter concludes that a failure falls under any other exclusions described hereunder, City will not be entitled to a Service Credit. If Badger Meter's analysis is conclusive and that circumstances within Badger Meter's control caused the Service failure, City will be eligible to receive a Service Credit as described above.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SLA, THE SERVICE CREDITS SPECIFIED IN THIS SLA WILL BE CITY'S SOLE AND EXCLUSIVE REMEDY FOR BADGER METER'S FAILURE TO MEET THE SERVICE PROMISE SPECIFIED IN THIS SLA.



*BADGER METER  
BEACON AMA MANAGED SOLUTION  
MASTER AGREEMENT*



Badger Meter will report Service Promises and applicable Service Credits upon request and upon a commercially reasonable frequency. Following each report, upon City request, the parties will discuss such performance and the extent to which any Service Credits either are appropriate or should be modified due to circumstances not captured by the reporting methodology.

Upon agreement concerning the Service Credits due, such Service Credits will be applied against Badger Meter's charges in the months following the month in which the credits were incurred.

**EXHIBIT 3**

**BEACON AMA MANAGED SOLUTION SECURITY POLICY**

1. **BEACON AMA Portal and Service Information Security Program.** Badger Meter maintains an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) support the BEACON AMA Managed Solution, (b) identify reasonably foreseeable and internal risks to the BEACON Portal and Service security and unauthorized access to the Badger Meter Network, and (c) minimize security risks. The BEACON Portal and Service information security program includes the following measures:
  - 1.1 **Network Security.** The Badger Meter Network is electronically accessible to employees, and contractors necessary to provide the Portal and Service. Badger Meter maintains access controls and policies to manage what access is allowed to the Badger Meter Network from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. Badger Meter maintains corrective action and incident response plans to respond to potential security threats.
  - 1.2 **Physical Security.**
    - 1.2.1 **Physical Access Controls.** Physical components of the Badger Meter Network are housed in nondescript facilities (the “**Facilities**”). Physical barrier controls are used to prevent unauthorized entrance to the Facilities both at the perimeter and at building access points. Passage through the physical barriers at the Facilities requires either electronic access control validation (e.g., card access systems, etc.) or validation by human security personnel (e.g., contract or in-house security guard service, receptionist, etc.). Employees and contractors are assigned photo-ID badges that must be worn while the employees and contractors are at any of the Facilities. Visitors are required to sign in with designated personnel, must show appropriate identification, and are assigned a visitor ID badge that must be worn while the visitor is at any of the Facilities, and are continually escorted by authorized employees or contractors while visiting the Facilities.
    - 1.2.2 **Limited Employee and Contractor Access.** Badger Meter provides access to the Facilities to those employees and contractors who have a legitimate business need for such access privileges. When an employee or contractor no longer has a business need for access privileges, the access privileges are promptly revoked, even if the employee or contractor continues to be an employee of Badger Meter or its affiliates.
    - 1.2.3 **Physical Security Protections.** All major access points (other than main entry doors) are maintained in a secured (locked) state. Access points to the Facilities are monitored by video surveillance cameras designed to record all individuals accessing the Facilities. All physical access to the Facilities by employees and contractors is logged and routinely audited.
    - 1.2.4 **Pre-Employment Screening.** Badger Meter conducts criminal background checks, as permitted by applicable law, as part of pre-employment screening practices for



*BADGER METER  
BEACON AMA MANAGED SOLUTION  
MASTER AGREEMENT*



employees commensurate with the employee's position and level of access to the Facilities. Badger Meter will not permit an employee to have access to the non-public Customer Data or perform material aspects of the Service if such employee has failed to pass such background check.

2. **Continued Evaluation.** Badger Meter will conduct periodic reviews of the security of its Badger Meter Network and adequacy of its information security program as measured against industry security standards and its policies and procedures. Badger Meter will continually evaluate the security of its Badger Meter Network and associated Service to determine whether additional or different security measures are required to respond to new security risks or findings generated by the periodic reviews.
3. **City Responsibilities.** System security is a shared responsibility between Badger Meter and City. City shall assign a systems service administrator to be responsible for establishing access and usage policies. City shall develop commercially reasonable policies and procedures to insure physical security, establishing account access approvals and procedures, conduct regular reviews of access rights, and provide security awareness training for staff using the Service. The administrator shall also be responsible for policies and procedures related to Authorized Consumers access to their individual data resident on the Network.

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# QUOTATION

**FROM**  
**HENARD UTILITY PRODUCTS, INC.**  
**P.O. Box 9238**  
**SEARCY, ARKANSAS 72145**  
**PHONE (501)268-1987 FAX (501)268-7437**  
 www.henardutility.com

**INQUIRY NO:** 07292019-1

**DATE** 29 July 2019

**TERMS** Net 30 Days

**DELIVERY** TBD

**PRICES ARE QUOTED F.O.B.**  
Fayetteville, AR

**TO** Fayetteville Water & Sewer

Attn: Harlan Henson

Email: hhenson@ci.fayetteville.ar.gov

**WE ARE PLEASED TO QUOTE AS FOLLOWS:**

QTY.	DESCRIPTION	PRICE EA.	AMOUNT
1,200	Badger Model M25 – 5/8x3/4 Low Lead Bronze Positive Displacement Meter – Plastic Bottom – HR-E 8 Dial Encoder – LTE-M Beacon Cellular Endpoint - US Gallons – Twist Tight Connector. Serial Number to be Stamped on Outside of Lids.	\$196.96	\$236,352.00
1	Beacon Engagement Fee. Covers up to 50K Customers	\$4,465.00	\$4,465.00
1	Eye-On-Water Customer Portal is Included.	\$0.00	<u>\$0.00</u>
	Subtotal		\$240,817.00
	Sales Tax @ 9.75%		<u>\$23,479.66</u>
	Total		\$264,296.66
	<b><u>Billed Directly by Badger Meter</u></b>		
	Beacon LTE Service Units – \$0.58 Per Month. Per Endpoint.		
	Quote is good for 1 year from 7/26/2019 to 7/26/2020 Quote does not limit you to only 1,200 meters. It is on an as needed basis.		

**QUOTED BY:** George Clayton [georgec@henardutility.com](mailto:georgec@henardutility.com)



# Badger Meter

QUOTATION

Quotation No. 426832

4545 W Brown Deer Road Milwaukee WI 53223  
PO Box 245036 Milwaukee WI 53224-9536  
Phone: 800-876-3837 Fax: 888-371-5982

Customer Service Rep:

Revised Date: 08-08-2019

To Harlan Henson  
CITY OF FAYETTEVILLE  
WATER & SEWER DEPT 113 W MOUNTAIN ST  
FAYETTEVILLE Arkansas 72701  
Email: hhenson@fayetteville-ar.gov

CUSTOMER ID:00020123

EFFECTIVE DATES:8/8/2019 - 8/7/2020

SALESPERSON	PROPOSAL SUBJECT	SHIPPING TERMS / INCO TERMS	PAYMENT TERMS
007304 Brent Bennett	BEACON Service Fees	PREPAY/NO CHARGE CPT DESTINATION	NET 30 DAYS

LINE #	DESCRIPTION	QTY	UNIT NET PRICE USD	LINE TOTALS USD
1	ORION CELLULAR LTE SERV UNIT 68886-104 Cellular reads passed through BEACON AMA - per month, per endpoint	1200	\$0.58	\$696.00

**Notes and Assumptions:**

8/8/19 Modified effective end date of this quote for one year from today.

~

At the expiration of each quote term, Badger Meter reserves the right to increase the subscription fee price no greater than the increase in the Producers Price Index for Totalizing Fluid Meters and Counting Devices as reported by the U.S. Department of Labor. The date of the previous quote shall be used to determine the base index. --- Due to continuous improvements and redesign of our products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternate to the proposed products provided they are in conformance with the requirements of the specifications and do not exceed the prices quoted.

If applicable, sales tax and freight charges will be added at time of invoice.

Actual lead time to be provided at time of order.

## THANK YOU FOR YOUR BUSINESS!

This quotation is an offer, made subject to the terms & conditions found on our website: [www.badgermeter.com/Company/Legal/Sales-Terms.aspx](http://www.badgermeter.com/Company/Legal/Sales-Terms.aspx)

Quoted prices are firm for acceptance, via an order, within the effective dates provided, shipping within 60 calendar days past the expiration of this quotation.



**Badger Meter**

QUOTATION

Quotation No. 426832

If you would like to place an order, please contact your Customer Service Rep at [utilityorders@badgermeter.com](mailto:utilityorders@badgermeter.com) or call 1-800-876-3837.

If you have questions, please contact your Account Manager Brent Bennett 225-305-3079 [bbennett@badgermeter.com](mailto:bbennett@badgermeter.com)

**THANK YOU FOR YOUR BUSINESS!**

**This quotation is an offer, made subject to the terms & conditions found on our website: [www.badgermeter.com/Company/Legal/Sales-Terms.aspx](http://www.badgermeter.com/Company/Legal/Sales-Terms.aspx)**

Quoted prices are firm for acceptance, via an order, within the effective dates provided, shipping within 60 calendar days past the expiration of this quotation.

ORDINANCE NO. 3696

AN ORDINANCE AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE PURCHASE OF CAST IRON PIPE AND FITTINGS, DUCTILE IRON PIPE, SOIL PIPE, WATER METERS, CLAY PIPE AND FITTINGS, BRASS WATER AND SEWER ITEMS, COPPER PIPE AND FITTINGS, PLASTIC PIPE AND FITTINGS AND STRONG SEAL MS2A FOR THE WATER AND SEWER DEPARTMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the Council hereby waives the requirements of competitive bidding for the purchase of cast iron pipe and fittings, ductile iron pipe, soil pipe, water meters, clay pipe and fittings, brass water and sewer items, copper pipe and fittings, and plastic pipe and fittings for the Water and Sewer Department for the reason that said requirements are not feasible because manufacturers and suppliers will not confirm contract prices for a one year period and the aforesaid items are priced on very short term.

Section 2. If possible, competitive quotations shall be taken before any of the aforesaid materials are purchased.

Section 3. The Council hereby determines that the Water and Sewer Department of the City of Fayetteville is in immediate need of the materials enumerated in Section 1 above and will continue to need said materials on a periodic basis; that the requirements of competitive bidding for the purchase of said materials is not feasible for the reasons stated in Section 1 above; and that the passage of this ordinance is necessary to enable the immediate and continuing purchase of said materials without undue cost to the City. Therefore, an emergency is hereby declared to exist and this ordinance being necessary for the public welfare shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED this 6th day of April, 1993.

APPROVED:

By: *Fred Hanna*  
Fred Hanna, Mayor

ATTEST:

By: *Sherry L. Thomas*  
Sherry L. Thomas, City Clerk



**CERTIFICATE OF RECORD**

State of Arkansas                    { SS  
City of Fayetteville                {  
I, Sherry Thomas, City Clerk and Ex-  
Officio recorder for the City of  
Fayetteville, do hereby certify that the  
annexed or foregoing is of record in my  
office and the same appears in  
Ordinance & Resolution book XXVI at  
page 401. Witness my hand and  
seal this 6th day of April  
19 93  
Sherry L. Thomas  
City Clerk and Ex-Officio Recorder





STATE of ARKANSAS }  
County of Washington } ss.

I, George Smith hereby certify that I am the publisher of THE NORTHWEST ARKANSAS TIMES, a daily newspaper having a second class mailing privilege, and being not less than four pages of five columns each, published at a fixed place of business and at a fixed (daily) intervals continuously in the City of Fayetteville, County of Washington, Arkansas for more than a period of twelve months, circulated and distributed from an established place of business to subscribers and readers generally of all classes in the City and County for a definite price for each copy, or a fixed price per annum, which price was fixed at what is considered the value of the publication, based upon the news value and service value it contains, that at least fifty percent of the subscribers thereto have paid cash for their subscriptions to the newspaper or its agents or through recognized news dealers over a period of a least six months; and that the said newspaper publishes an average of more than forty percent news matter.

I further certify that the legal notice hereto attached in the matter of

Ordinance # 3696

was published in the regular daily issue of said newspaper for 1 consecutive insertions as follows:

The first insertion on the 14 day of April 19 93  
the second insertion on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
the third insertion on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
and the fourth insertion on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Publisher / General Manager

RECEIVED

APR 19 1993

born to and subscribed before me on this 19 day of April 19 93

FINANCE DEPT

Notary Public

My Commission Expires:

9-01-01

Fees for Printing \$ 87.28  
Cost of Proof \$ \_\_\_\_\_  
Total \$ 87.28

**ORDINANCE NO. 3696**  
AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE PURCHASE OF CAST IRON PIPE AND FITTINGS, DUCTILE IRON PIPE, SOIL PIPE, WATER METERS, CLAY PIPE AND FITTINGS, BRASS WATER AND SEWER ITEMS, COPPER PIPE AND FITTINGS, PLASTIC PIPE AND FITTINGS AND STRONG SEAL MS2A FOR THE WATER AND SEWER DEPARTMENT.

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Water and Sewer Department of the City of Fayetteville is in immediate need of the materials enumerated in Section 1 above and will continue to need said materials on a periodic basis; that the requirements of competitive above; and that the passage of this ordinance is necessary to enable the immediate and continuing purchase of said materials without undue cost to the City. Therefore, an emergency is hereby declared to exist and this ordinance being necessary for the public welfare shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** this 6th day of April, 1993.

**APPROVED:**  
By: Fred Hanna, Mayor  
**ATTEST:**  
By: Sherry L. Thomas, City Clerk