ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 05/27/15
ITEM FROM FINANCE COMMITTEE MEETING OF 05/18/15

ISSUE:

52. Request for Approval of Change Order No. 1 – Expansion Couplings and Installation under EPA Lead Free Requirements for Utility Billing Division; Badger Meter, Inc. and Approval of Budget Increase in the Amount of $626,041 from Water Cash Reserves. (Diana Catanach)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of change order no. 1 for expansion couplings and installation under EPA Lead Fee requirements for utility billing division with Badger Meter, Inc. in the amount of $626,041.32 from water cash reserves.

FUNDING SOURCE: 52353.570550

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 5/6/15

ISSUE NO. 24

Request for approval of Change Order No. 1 to the contract with Badger Meter, Inc. for expansion couplings and installation of couplings to meet EPA Lead Free Requirements for the amount of $626,041.32 inclusive of NMGRT. (Diana Catanach)

Public Utilities Committee – 5/6/15
Finance Committee – 5/18/15
City Council – 5/27/15

PUBLIC UTILITES COMMITTEE ACTION: Pulled by Councilor Maestas. Approved move forward

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	Excused		
COUNCILOR MAESTAS	X		
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	Excused		
COUNCILOR IVES	X		

City of Santa Fe, New Mexico

memo

DATE: April 21, 2015

TO: **Public Utilities Committee**

FROM: **Diana Catanach, Utility Billing Division Director**

VIA: **Nick Schiavo, Public Utilities Department Director**

Subject: **Request Approval for Contract Amendment to Badger Meter, Inc. for Expansion Couplings**

Summary

On December 10, 2014, Badger Meter, Inc. was awarded the contract for a Meter Reading Infrastructure System and Implementation Services. (Contract Item #14-1237). The contract amount of $8,320,606.80 which will be spread over the next ten (10) years included service and maintenance fees for the beacon software.

During the time of the contract negotiation it was believed that the existing expansion connectors could be reused. After reviewing the EPA's requirements for lead free fittings, staff has concerns that the vast majority of the existing expansion connectors will not be EPA compliant. Therefore, staff recommends that new expansion connectors be purchased from Badger Meter, Inc. at a cost of $16.25/meter for the standard 5/8" and 3/4" meter; $28.50/meter for a 1" meter. Because the fitting needs to be replaced, there is an installation fee of $2.22/meter.

The total cost of the contract amendment is $626,041.32; the breakdown of meters and expansion couplings is listed below:

- 31,164-5/8" and 3/4" meters - $16.25/each for a total of $506,415.00
- 1,642-1" meters - $28.50/each for a total of $46,797.00
- 32,806 - Installation/replacement - $2.22/each for a total of $72,829.32
- Total cost = $626,041.32

It should be noted that staff contacted two other vendors who supply expansion connectors. Both vendors quoted higher prices than Badger Meter, Inc.

Budget to fund change order #1 is available in the Water Revenues Cash Balance. Staff is requesting approval of the attached Budget Adjustment Request increasing the CIP project fund 52353.570550.

Recommended Action:

Staff recommends Public Utilities, Finance and City Council approval of the contract change order and BAR in order to abide by EPA standards for lead free pipes, fixtures and fittings.

CHANGE ORDER
for:
AMI Implementation

TO: Badger Meter Inc.
4545 West Brown Deer Road
Milwaukee, WI 53224-9536

Change Order #: 01
Date: April 21, 2015

You are hereby directed to make the following changes in this contract:

Perform the various modifications/or changes of Scope as described in the attached Change Order Schedule	$	626,041.32

The work covered by this order shall be performed under the same terms and conditions as that which is included in the original contract

Original Contract Sum	$	8,320,606.32
Contract sum will be increased by this Change Order	$	626,041.32
New contract sum including this change order	$	**8,946,647.64**

CHANGES APPROVED:

Contractor:
By: _____
Title: _____
Date: _____

Owner: City of Santa Fe
Water Division Director / Public Utilities Director
By: _____ Date: _____

Finance Director
By: _____ Date: _____

City Attorney
By: _____ Date: 4/24/15

Mayor
By: _____
Date: _____

City Clerk
By: _____

Badger Meter

Santa Fe, NM Schedule of Values

Item #		Item Description	Qty	Unit	Itemized $	Item. Ext $	Total Price	June 2015 % Complete	June 2015 Qty	June 2015 $ Complete	Total to Date % Complete	Total to Date Qty	Total to Date $ Complete	Bid Item Total
1		**Mobilization**					$35,000.00							-
	1.1	Mobilization of Personnel, Resource Procurement, and Site Preparation	1	LS	$35,000.00	$35,000.00				-	0.00%	0	-	
2		**BEACON AMA Managed Solution**					$2,606,566.80							-
	2.1	*BEACON Software Maintenance (Year 1) -Includes Monthly Endpoint Price of $0.7125 -Price Assumes Hypothetical Year 1 Installation Projection of 13,100 Endpoints -Refer to Installation Projections for Monthly Breakdown	1	Each	$41,992.61	$41,992.61				-	0.00%	0	-	
	2.2	*BEACON Software Maintenance (Year 2) -Includes Monthly Endpoint Price of $0.7125 -Price Assumes Hypothetical Year 2 Installation Projection of 20,577 Endpoints in Addition to 13,100 Endpoints in Year 1 -Refer to Installation Projections for Monthly Breakdown	1	Each	$230,758.09	$230,758.09				-	0.00%	0	-	
	2.3	*BEACON Software Maintenance (For Each Year, Years 3 thru 5) -Includes Monthly Endpoint Price of $0.7125 -Price Assumes Total of 33,677 Endpoints Installed	3	Each	$287,938.35	$863,815.05				-	0.00%	0	-	
	2.4	*BEACON Software Maintenance (For Each Year, Years 6 thru 10) -Includes Monthly Endpoint Price of $0.7275 -Price Assumes Total of 33,677 Endpoints Installed	5	Each	$294,000.21	$1,470,001.05				-	0.00%	0	-	
	2.5	BEACON Software Installation and Updates -Includes Customer Engagement Software	1	LS	$0.00	$0.00				-		0	-	
	2.6	BEACON Software Configuration	1	LS	$0.00	$0.00				-		0	-	
	2.7	BEACON Software Testing	1	LS	$0.00	$0.00				-		0	-	
	2.8	BEACON Software Integration -Includes Integration with Customer's Billing Software	1	LS	$0.00	$0.00				-		0	-	
	2.9	BEACON Software Reporting	1	LS	$0.00	$0.00				-		0	-	
	2.10	BEACON Software Data Hosting	1	LS	$0.00	$0.00				-		0	-	
	2.11	BEACON Cellular Communications	1	LS	$0.00	$0.00				-		0	-	
	2.12	Installation & Maintenance of Gateways (if required)	1	LS	$0.00	$0.00				-		0	-	
	2.13	BEACON Smartphone Installation Application	1	LS	$0.00	$0.00				-		0	-	
	2.14	BEACON Software Training -2 Days Onsite and Community-Based Web Training	1	LS	$0.00	$0.00				-		0	-	
	2.15	BEACON Subscription Fee for Each Endpoint in Excess of 34,231 -Includes Hourly Data	TBD	Per Month	$0.75					-		0	-	
3		**Project Management**					$160,773.00							-
	3.1	Project Management Services	2	Each	$80,386.50	$160,773.00				-	0.00%	0	-	
4		**Handheld Installation Units**					$12,903.20							-
	4.1	Trimble Ranger 3 Handheld, Includes Year 1 Maintenance	2	Each	$6,451.60	$12,903.20				-	0.00%	0	-	
5		**Water Meters**					$5,495,583.80							-
	5.1	Badger RCDL M25 (5/8"), Plastic Bottom, HRE-LCD, ORION Endpoint	30,354	Each	$135.00	$4,097,790.00				-	0.00%	0	-	
	5.2	Badger RCDL M35 (3/4"), Bronze Bottom, HRE-LCD, ORION Endpoint	143	Each	$164.70	$23,552.10				-	0.00%	0	-	
	5.3	Badger RCDL M55 (1"), Bronze Bottom, HRE-LCD, ORION Endpoint	1,598	Each	$200.00	$319,600.00				-	0.00%	0	-	
	5.4	Installation Services for 5/8" - 1" Water Meters -Includes Lid Drilling if Required	32,095	Each	$32.86	$1,054,641.70				-	0.00%	0	-	
6		**ORION Endpoints**					$0.00							-
	6.1	HRE-LCD w/ORION Endpoint Compatible with M25 Badger Disc Meters	TBD	Each	$108.50					-		0	-	
	6.2	HRE-LCD w/ORION Endpoint Compatible with M35 Badger Disc Meters	TBD	Each	$108.50									
	6.3	HRE-LCD w/ORION Endpoint Compatible with M55 Badger Disc Meters	TBD	Each	$108.50									
	6.4	HRE-LCD w/ORION Endpoint Compatible with M70 Badger Disc Meters	TBD	Each	$108.50									
	6.5	HRE-LCD w/ORION Endpoint Compatible with 1 1/2" - 2" Badger Disc Meters	TBD	Each	$113.80					-		0	-	
	6.6	HRE-LCD w/ORION Endpoint Compatible with 1 1/2" - 2" Badger Disc Meters	TBD	Each	$113.80									
	6.7	HRE-LCD w/ORION Endpoint Compatible with Turbo & FSM Badger Meters	TBD	Each	$127.80					-		0	-	
	6.8	HRE-LCD w/ORION Endpoint Compatible with Badger Compound Meters -Includes 2 Units	TBD	Each	$193.20					-		0	-	

5

Badger Meter	Santa Fe, NM Schedule of Values						June 2015			Total to Date			
Item #	Item Description	Qty	Unit	Itemized $	Item. Ext $	Total Price	% Complete	Qty	$ Complete	% Complete	Qty	$ Complete	Bid Item Total
6.9	Endpoint for Compatible Register Supplied by Utility for Competitive Water Meters -Does not include meter register	TBD	Each	$169.40					-		0	-	
6.10	Installation Services for Retrofit and No Lid Swap of <=1" Disc Meters -Includes Lid Drilling if Required	TBD	Each	$22.86								-	
6.11	Installation Services for Retrofit of 1 1/2" - 10" Disc & Turbine Meters -Includes Lid Drilling if Required	TBD	Each	$22.86					-		0	-	
6.12	Installation Services for Retrofit of 1 1/2" - 10" Compound Meters -Includes Lid Drilling if Required	TBD	Each	$34.29					-		0	-	
7	**Meter Valves**					$0.00							-
7.1	Supply of 5/8"-1" Meter Valve	TBD	Each	Cost+15%					-		0	-	
7.2	Supply of 1 1/2" Meter Valve	TBD	Each	Cost+15%					-		0	-	
7.3	Supply of 2" Meter Valve	TBD	Each	Cost+15%					-		0	-	
7.4	Installation Services for 5/8"-1" Meter Valve	TBD	Each	$61.11					-		0	-	
7.5	Installation Services for 1 1/2" Meter Valve	TBD	Each	$138.89					-		0	-	
7.6	Installation Services for 2" Meter Valve	TBD	Each	$161.11					-		0	-	
8	**Expansion Connectors**					$626,041.32							-
8.1	Supply of 5/8"x3/4" w/ GT-117 Gasket (no lead) Expansion Connectors	31,164	Each	$16.25	$506,415.00				-	0.00%	0	-	
8.2	Supply of 1" w/ GT-122 Gasket (no lead) Expansion Connectors	1,642	Each	$28.50	$46,797.00				-	0.00%	0	-	
8.3	Installation/Replacement-Only of 5/8"-1" Expansion Connectors	32,806	Each	$2.22	$72,829.32				-	0.00%	0	-	
9	**Pit Lids**					$9,780.00							-
9.1	Supply of New Frost Lid	2,000	Each	$4.89	$9,780.00				-	0.00%	0	-	
9.2	Supply of 11.5" Lid	TBD	Each	$22.22					-		0	-	
9.3	Supply of 20" Lid	TBD	Each	$65.00					-		0	-	
9.4	Installation-Only of 11.5" Lid	TBD	Each	$5.56					-		0	-	
9.5	Installation-Only of 20" Lid	TBD	Each	$7.22					-		0	-	
9.6	Installation-Only of Frost Lid	TBD	Each	$2.22					-		0	-	
10	**Meter Box Leveling**					$0.00							-
10.1	Leveling of Box in Soil/Dirt	TBD	Each	$38.89					-		0	-	
10.2	Leveling of Box in Concrete	TBD	Each	$177.78					-		0	-	
11	**Pipe Replacement**					$0.00							-
11.1	Supply for Exposed Pipe	TBD	Foot	$5.55					-		0	-	
11.2	Supply for Soil-Covered Pipe	TBD	Foot	$5.55					-		0	-	
11.3	Supply for Asphalt-Covered Pipe	TBD	Foot	$11.10					-		0	-	
11.4	Supply for Concrete-Covered Pipe	TBD	Foot	$16.66					-		0	-	
11.5	Installation/Replacement of Exposed Pipe	TBD	Foot	$5.56					-		0	-	
11.6	Installation/Replacement of Soil-Covered Pipe	TBD	Foot	$27.78					-		0	-	
11.7	Installation/Replacement of Asphalt-Covered Pipe	TBD	Foot	$33.34					-		0	-	
11.8	Installation/Replacement of Concrete-Covered Pipe	TBD	Foot	$33.34					-		0	-	
12	**GPS Coordinate Collection**					$0.00							-
12.1	Consumer-Grade Accuracy (3+ Meters) Lat/Longs -Included with Each Endpoint Installation	TBD	Each	$0.00					-		0	-	
12.2	Sub Meter Accuracy (< 1 Meter) Lat/Longs	TBD	Each	$5.00					-		0	-	
13	**Non-Scoped Materials**					$0.00							-
13.1	Non-Scoped Materials	TBD	Each	Cost+15%					-		0	-	
14	**Labor Rate**					$0.00							-
14.1	Labor for Confined Space and Misc. Services	TBD	Hour	$50.00					-		0	-	
					Total:	$8,946,648.12	0.00%		$0.00	0.00%		$0.00	$0.00

*BEACON Software Maintenance Pricing is Estimated Based Upon Monthly Installation Projections.

The information contained herein is to be considered confidential & proprietary to the extent allowable by law.

BadgerMeter, Inc.

AMI Implementation Change Order

Customer:	City of Santa Fe, NM	Date Issued:	04/21/2015
Project:	Santa Fe, NM AMI	Revision:	1
Project #:	0901165-SFE01	Change #:	SFE01-001

CHANGE ORDER DETAILS

Initiated By:	City of Santa Fe
Prepared By:	Wade Glanek
Description of Change:	City Request to Replace Expansion Couplings for Each Meter Exchange <=1"

PROJECT IMPACTS

Scope	☒ Increase ☐ Reduction ☐ Clarification ☐ No Change	Customer has requested replacement of all expansion couplings with low-lead expansion couplings for every meter exchange. Customer will acquire expansion connectors from Badger Meter at the beginning of the project and will store the connectors in the city's inventory. The city will supply Badger Meter with connectors as needed.
Schedule	☐ Increase ☐ Reduction ☐ Clarification ☒ No Change	
Cost	☒ Increase ☐ Reduction ☐ Clarification ☐ No Change	Supply of each 5/8"x3/4" expansion connector will be $16.25 Supply of each 1" expansion connector will be $28.50. It is estimated that there will be 31,164 5/8"x3/4" expansion connectors and 1,642 1" expansion connectors. There will be a $2.22 installation charge for each expansion connector installed.

APPROVALS

Badger Meter		Customer	
Project Manager:	Wade Glanek	Project Sponsor:	Diana Catanach
	☒ Approved ☐ Rejected		☐ Approved ☐ Rejected
wglanek@badgermeter.com 04/21/2015 11:25 AM CST			
Legal:	Theresa Szafranski		
	☒ Approved ☐ Rejected		
tszafranski@badgermeter.com 04/21/2015 11:46 AM CST			

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☐ or CONTRACT AMENDMENT ☑

2 Name of Contractor Badger Meter

3 Complete information requested ☐ Plus GRT ☑ Inclusive of GRT

Original Contract Amount: $8,320,606.80

Termination Date: 2 years from approval

☑ Approved by Council Date: December 10, 2014

☐ or by City Manager Date:

Contract is for: 2 year contract

Amendment # CO#1 to the Original Contract# 14-1237

Increase/(Decrease) Amount $ $ 626,041.32

Extend Termination Date to: na

☑ Approved by Council Date: Pending

☐ or by City Manager Date:

Amendment is for: Increase comp and scope

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☑ Inclusive of GRT

Amount $ 8,320,606.80 of original Contract# 14-1237 Termination Date: 10 y 2 y

Reason: AMI installation

Amount $ 626,041.32 amendment # change order #1 Termination Date: na

Reason: Increase scope and comp to include new equipment

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ 8,946,648

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# 14/14/P Date: October 1, 2014

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 **Procurement History:** 7 months of year 1
example: (First year of 4 year contract)

7 **Funding Source:** Utility Billing Section **BU/Line Item:** 52353.57055

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

Going to committee for approval for FY 10/11 budget.

m

City of Santa Fe, New Mexico
BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME	DATE
Public Utilities/Water	04/21/2015

ITEM DESCRIPTION	B.U. / LINE ITEM	SUBLEDGER (Finance Dpt. Use Only)	INCREASE	DECREASE
Water Division	5313.52353.570550		626,041	
		TOTAL	$ 626,041	

JUSTIFICATION: *(use additional page if needed)*

Increase from the Water Cash Reserves to the CIP Equipment & Replacement Fund

for Exapnsion couplings for the AMI project

Maya Martinez
Prepared By — Date

Division Director — Date

Department Director 4/24/15 — Date

CITY COUNCIL APPROVAL
City Council Approval Required ☐
City Council Approval Date
Agenda Item #:

5/12/15
Budget Officer — Date

5-14-2015
Finance Director — Date

City Manager — Date

ITEM # 14-1237

Badger Meter

BEACON AMA MANAGED SOLUTION AND TURNKEY INSTALLATION AGREEMENT

City of Santa Fe

This BEACON AMA MANAGED SOLUTION MASTER AGREEMENT ("**Agreement**") is entered into as of the 10th day of December, 2014 (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 Santa Fe, New Mexico, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("**Customer**").

(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 Customer, its employees and contractors that Customer approves as users of the Service ("**Authorized User**") and Customer's approved end-user water customers ("**Authorized Consumer**") the right to remotely access and use the Service from the Portal (as currently configured) for Customer's internal business use and for the benefit of its Authorized Consumers in accordance with this Agreement.

(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 Customer, 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 Customer provides Badger Meter any suggested improvements ("**Suggestions**") to the Portal, Service or Documentation, Customer agrees that Badger Meter will own all rights, title and interest in and to the Suggestions, even if Customer has designated the Suggestions as confidential. Badger Meter will be entitled to use the Suggestions without restriction. By entering into this Agreement, Customer 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.

(4) **TERM.** The term of the Agreement for the Portal, Service and Documentation begins on the Effective Date and continues for a ten (10) year term unless earlier terminated in accordance with Section (16) of the Agreement (the "**Term**"). The term for the turnkey installation project begins on the Effective Date and continues for a two (2) year term.

(5) **FEES.**

(a) **Service Fees.** In consideration for the right to access and use the Portal, Service and Documentation, Customer 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.** Customer 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 Customer, its Authorized Users or Authorized Consumers, excluding taxes due on Badger Meter's income. Customer 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 Customer with a proposed updated Schedule of Fees for the Service for the upcoming contract term, which the Customer may accept or the parties may negotiate further.

(6) **RESTRICTIONS ON RIGHT TO USE.** Customer agrees that Customer, 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:

(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 creative 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) Provide Customer Content which infringes on the intellectual rights of any person or entity or use the Portal, Service or Documentation in violation of the intellectual property rights of Badger Meter, its Suppliers or any third party.

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

(g) 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.

(h) Transmit content or messages that are illegal, fraudulent, threatening, abusive, defamatory, or obscene.

(i) Make any unauthorized connection to Badger Meter's information technology architecture ("**Network**")

(j) Communicate any unsolicited commercial, voice, SMS, or other message.

(k) Upload or transmit any "virus," "worm," or malicious code or access, alter, or interfere with the communications of and/or information about another customer.

(l) 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.

Customer 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 Customer related to abuse or fraudulent use of the Portal and Service.

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

(8) CUSTOMER CONTENT.

(a) **Customer Content Defined.** Customer, its Authorized Users and Authorized Consumers will provide Badger Meter and its Suppliers certain text, audio, video, images, Customer Data, customer billing information, personally identifiable information or other content ("**Customer Content**").

(b) **Ownership.** The Parties agree that that the Customer Content 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 Content.

(c) **Use of Customer Content by Badger Meter.** Customer, its Authorized Users and Authorized Consumers consent to Badger Meter and its Suppliers' right to host, access, store, copy and use the Customer Content as is reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation. Badger Meter may disclose certain Customer Content only to provide the Service to Customer, 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.) Badger Meter will give Customer reasonable notice of a request from a governmental entity to allow Customer to seek a protective order or other appropriate remedy (except to the extent such notice would violate a court order or other legal requirement).

(d) **Customer Responsibilities.** Customer is solely responsible for the development, content, operation and maintenance of the Customer Content, including but not limited to the technical operation of the Customer Content, and ensuring that calls made to the Service from Customer's network are compatible with then-current API's for the Service. Customer is responsible to ensure that Customer, 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. Customer will respond to any Claims related to the Customer Content and is responsible for properly handling and processing notices sent to Customer by any person claiming that the Customer Content violates such person's legal rights, including notices pursuant to the Digital Millennium Copyright Act.

(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) the Customer Content, but only to the extent that Customer Content contains proprietary information, billing information or other personally identifiable information ("**Customer Data**"); and (f) Traffic Data.

(b) Protection of Confidential Information. To the extent permitted by law and subject to the New Mexico Inspection of Public Records Act, NMSA 1978, 14-2-1 et. seq., 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. The Parties will not issue any press release or make any other public communication with respect to this Agreement or Customer's use of the Portal or Service. Customer 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 Customer or its business endeavors) or express or imply any relationship or affiliation between Badger Meter and Customer or any other person or entity except as expressly permitted by this Agreement.

(c) Ownership of Customer Data. All Customer Data pertaining to Customer or its Authorized Consumers is considered Confidential Information of Customer and owned by Customer. Customer grants Badger Meter and its Suppliers the right to host, access, store, copy, and use the Customer Data as is reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation.

(d) Traffic Information. All de-identified data 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.

(e) 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.

(f) 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) CUSTOMER'S REPRESENTATIONS AND WARRANTIES. Customer represents and warrants to Badger Meter that Customer:

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

(b) Ownership. Customer, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Content, including but not limited to the Customer Data. Customer has all rights in the Customer Content necessary to grant the rights to Badger Meter contemplated under this Agreement.

(c) Compliance with Badger Meter Policies. None of the Customer Content or the use of the Customer content, the Portal or Service by Customer, its Authorized Users or its Authorized Consumers will violate Badger Meter's Terms of Use Policy or Privacy Policy.

(d) No Infringement. To Customer's knowledge, none of the Customer Content infringes the Intellectual Property Rights of any third party or is the subject matter of any pending or threatened lawsuit, legal proceeding or Claim.

(e) Compliance with the Law. The Customer, the Authorized Users or the Authorized Consumers will not 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 Customer 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 Customer 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 Customer 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), Customer is required to notify Badger Meter promptly and in no event later than thirty (30) days from the date of the breach, in writing, of any alleged failure and provide information to support its warranty claim. Customer's exclusive remedy for a breach of the express limited warranty is detailed in **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 CONTENT, INCLUDING THE CUSTOMER CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

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

(12) LIMITATION OF LIABILITY. IF ANY PARTY DEFAULTS IN ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUBJECT TO THE LIABILITY CAP SET FORTH IN SECTION (14):

(a) DIRECT DAMAGES. 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) LIMITS ON DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS (i) ARISING UNDER SECTIONS (11), (14) AND (15) (INDEMNIFICATION), (ii) DAMAGES FOR GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OR CLAIMS FOR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, 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 AND ANY OTHER LIABILITIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE PORTAL, SERVICE, DOCUMENTATION OR THE SUBJECT MATTER OF THIS AGREEMENT ("CLAIM").

(c) NO CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL BADGER METER BE LIABLE TO CUSTOMER, AN AUTHORIZED USER, AN AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF; (B) ANY CLAIMS RESULTING FROM LOSS OF DATA, CUSTOMER CONTENT, CUSTOMER DATA, BREACH OF CONFIDENTIALITY, LOST REVENUE, LOST PROFITS, LOSS OF CONTRACT OR OF OTHER ECONOMIC ADVERSITY; OR (C) ANY CLAIM ARISING IN CONTRACT, TORT, OR OTHERWISE.

NEITHER BADGER METER OR 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; (ii) BADGER METER'S DISCONTINUATION OF THE SERVICE IN WHOLE OR IN PART, OR (iii) 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 CONTENT OR OTHER DATA.

(d) INDEPENDENT LIMITATIONS. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND WILL APPLY NOTWITHSTANDING THAT A REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND IRRESPECTIVE OF THE MANNER IN WHICH THE CLAIM IS MADE.

(e) Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq.

NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

(13) CAP ON DAMAGES. Notwithstanding anything to the contrary contained in this Agreement, Badger Meter's total liability during the previous twelve month period from the date of the Claim for Claims made by Customer or any third party against Badger Meter arising from or related to the Portal, Service or Documentation may not exceed the amount charged by Badger Meter to Customer for the previous twelve (12) month period prior to the date of the claim which relates to the affected Badger Meter Portal or Service.

(14) CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. To the extent permitted by law, Customer 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; (iv) the Customer Content or the combination of the Customer Content with other applications, content or processes, including any claim involving alleged infringement or misappropriate of third party rights related to the Customer Content or by the use, development, design, producing, advertising or marketing of Customer Content; or (v) a dispute between Customer and any Authorized User or Authorized Consumer. CUSTOMER'S INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN PART BY THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, OR BREACH OF CONTRACT BY ANY BADGER METER PARTIES, OR CONDUCT BY ANY OF THE BADGER METER PARTIES THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Customer's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Badger Meter Parties' proportionate share of the negligence or gross negligence, or conduct that would give rise to strict liability of any kind, that caused the Claim. Likewise, Customer's liability for the Badger Meter Parties' defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to the Badger Meter Parties' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind that caused the loss.

(b) Procedure for Indemnification. Upon receipt of a Claim, Badger Meter will provide prompt written notice to Customer of the Claim for which the Badger Meter Parties seek indemnification. Badger Meter's failure to promptly notify Customer will only affect Customer's obligation to indemnify the Badger Meter Parties to the extent such failure causes actual prejudice to Customer'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 Customer in defending the Claim and in making available to Customer all witnesses, records, materials and information in their possession or control to assist in the defense of the Claim, as is reasonably requested by Customer. Customer 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 Customer with respect to the Claim. In the event Customer 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 reimbursement from Customer 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.

(c) Third Party Subpoenas: If Badger Meter is obligated to respond to a third party subpoena or other compulsory legal order or process, Customer will reimburse Badger Meter for reasonable attorney's fees as well as its employees or subcontractors time and materials spent responding to the third party subpoena or other compulsory legal order or process, at Badger Meter's then current hourly rate.

(15) BADGER METER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. Badger Meter shall indemnify, hold harmless and defend the Customer, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("Indemnified Parties") from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Badger Meter's willful misconduct or negligent acts or omissions under this Agreement as well as the willful misconduct or negligent acts or omissions of Badger Meter's employees, agents, representatives and subcontractors. SUCH INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY INDEMNIFIED PARTIES, OR CONDUCT BY ANY INDEMNIFIED PARTIES THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Badger

Meter's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Indemnified Parties' proportionate share of the negligence or gross negligence, or conduct that would give rise to strict liability of any kind that caused the Claim. Likewise, Badger Meter's liability for the Indemnified Parties' defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to the Indemnified Parties' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind that caused the loss.

(b) IP Dispute Indemnification. Subject to the limitations of liability provisions set forth in Section (12) of this Agreement, Badger Meter agrees to indemnify, defend and hold harmless Indemnified Parties from and against any legal proceedings filed against the Indemnified 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").

(c) 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 Customer 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 Customer with a refund of any unused pre-paid portion of the Service Fees.

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

(e) Procedure for Indemnification. Upon receipt of an Intellectual Property Dispute, Customer will provide prompt written notice to Badger Meter of the Intellectual Property Dispute for which the Customer Parties seek indemnification. Customer's failure to promptly notify Badger Meter will only affect Badger Meter's obligation to indemnify the Customer 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. Customer may retain its own counsel to cooperate in defending the Intellectual Property

Dispute, at its own expense. Customer 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 Customer'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 Customer provides prior written consent and the Customer is given an unconditional written release from Badger Meter with respect to the Intellectual Property Dispute. In the event Badger Meter fails to defend, indemnify, and hold the Customer Parties harmless, after notice of a request for indemnification, Customer 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 Customer in defending the Intellectual Property Dispute.

(16) TERMINATION.

(a) 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 payment pursuant to Section (5) ("**Event of Default**").

(b) 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**").

(c) 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 Customer 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 by Customer for the benefit of creditors, if Customer 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 Customer becomes insolvent or technically bankrupt

(d) Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Customer for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Customer, this Agreement shall terminate upon written notice being given by the Customer to Badger Meter. The Customer's decision as to whether sufficient appropriations are available shall be accepted by the Badger Meter and shall be final.

(e) Termination. 30 days from delivery of the Termination Notice to Customer by Badger Meter: (i) Badger Meter may cease providing Services to Customer, 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 may cease gathering data from Customer's endpoints, within a reasonable time, up to one hundred twenty (120) days after termination. Within a reasonable time after termination, at Badger Meter's discretion, 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.

(f) Post-Termination Assistance. At either the expiration of the Term without renewal, or upon a default by Customer and subsequent termination, Badger Meter will provide post-termination data retrieval assistance to Customer for an additional fee, which shall be invoiced at the rate of $200/hour, with the number of hours required determined by the amount of data Customer wishes to extract from the Service, performed within a reasonable time frame.. Any additional post-termination assistance from Badger Meter is subject to mutual agreement by the parties.

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

(17) 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 Customer, its Authorized Users or Authorized Consumers until all undisputed invoices for the Service have been paid in full, including any fees associated with suspension of the Service.

(b) Network Protection. Customer 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: (i) if a device deployed on the Service is materially out of compliance with the technical

requirements; (ii) in case of actual or suspected fraudulent use; or (iii) 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 use reasonable efforts to (i) promptly notify Customer in advance; (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 Customer's or an Authorized Users or Authorized Consumers right to access or use the Service immediately upon notice to Customer 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 content of any other Badger Meter customer, or subjects Badger Meter or any third party to liability or fraud.

(ii) Customer or one of its Authorized Users or Authorized Customers is in breach of this Agreement or is delinquent on any undisputed payments for more than forty-five (45) days.

(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 Customer's rights to use and access those portions of the Service or accounts that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension.

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

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

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

(iii) Customer 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.

(18) 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 ETIL 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.

(19) DATA SECURITY AND RECOVERY.

(a) **Data Security.** In order to protect the Customer Content and prevent unauthorized access to or use of the Customer Content, 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 Content.** Badger Meter will implement reasonable and appropriate measures for the Badger Meter Network designed to help Customer secure the Customer Content 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 Content.

(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 Content, but does not guarantee against any such loss or alteration. Badger Meter will not serve as Customer's official record keeper.

Customer will maintain source documents of the Confidential Information (such as billing information) hosted by Badger Meter under this Agreement.

(d) Customer Responsibilities. Customer is responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup of the Customer Content, including but not limited to the use of encryption technology to protect Customer Content from unauthorized access and will perform routine archiving of the Customer Content.

(e) Data Transmission Risks.

(i) Cellular Transmissions. Badger Meter cellular endpoints conform to the AES256 encryption standards or the latest AES standard in effect. Customer acknowledges that neither Badger Meter nor its Suppliers can guarantee the privacy or security of any cellular transmissions as part of the Service. Customer 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 Customer, 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. Customer acknowledges that security of transmissions over the Internet cannot be guaranteed. Badger Meter is not responsible for: (i) Customer'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 Content, Badger Meter may suspend Customer, Customer's Authorized Users or Authorized Consumers access to or use of the Badger Meter Portal or Service via the Internet immediately, without prior notice, pending an investigation of any potential security breach. Badger Meter will notify the Customer of any breach within three (3) business days of a breach or per the New Mexico state statute, which results in a suspension of use.

(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 Customer or any of Customer'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 Customer with as much advance notice as practicable under the circumstances.

(g) Password Protection. Customer, 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. Customer 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 Customer, its Authorized Users and its Authorized Consumers. Customer agrees to maintain the privacy of usernames and passwords associated with the Badger Meter Portal and Service. Customer shall remain responsible for all activities that occur under Customer's password or Internet account. Customer will immediately notify Badger Meter of any unauthorized use of Customer's password or Internet account or any other breach of security, and ensure that Customer exits from Customer's Internet account at the end of each session. Badger Meter shall not be liable for any damages incurred by Customer or any third party arising from Customer's failure to comply with this Section.

(h) Third Party Access. To the extent that Customer requests that Badger Meter provide any Customer Content to Authorized Users, Authorized Consumers or third parties or any non-U.S. location, Customer 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 any other event that compromises the security, confidentiality or integrity of the Customer Content ("**Incident**"), Badger Meter will promptly notify Customer in writing and take appropriate actions to resolve the Incident. Badger Meter will reasonably cooperate with Customer to investigate the nature and scope of any Incident. In its initial notification to Customer, Badger Meter will provide Customer with: (i) a description of the Incident; (ii) the estimated impact of the Incident on Customer's Content; (iii) the name and contact information of the person at Badger Meter who will be primarily responsible for resolving the issues for Customer; and (iv) the investigation taken and the suggested corrective action. Badger Meter will provide commercially reasonable cooperation to Customer in investigating,

assisting with notification of the Incident and taking corrective action as requested by Customer.

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

(k) Disclosure of Customer Content. Badger Meter will only use the Customer Content to provide the Service to Customer and its Authorized Users and Authorized Consumers in accordance with this Agreement or to comply with the law or any governmental or regulatory body (including subpoenas or court orders). Badger Meter will give Customer reasonable notice of the request to allow Customer to seek a protective order or seek any other appropriate relief except to the extent required for Badger Meter to comply with a court order or other legal requirement.

(20) CHANGES.

(a) Right to Make Changes. Badger Meter may from time to time make changes, with notice, to this Agreement, including, but not limited to, changes to the Terms of Use, the policies, the Portal, Service or Documentation, provided that such changes: (i) do not increase Customer's total costs of accessing and using the Portal and Service during the Term of this Agreement ; (ii) do not require Customer 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 Customer 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.

(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 a party intellectual property rights of 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 Customer's account and by posting it on Badger Meter's Portal. Badger Meter will provide Customer 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 (20)(a).

(21) PRIVACY POLICY. When accessing and using the Service, Customer agrees that Customer, its Authorized Users and Authorized Consumers will comply with the Badger Meter Privacy Policy located at https://beaconama.net/privacy/privacy.html.

(22) RIGHT TO SUBCONTRACT. Badger Meter may subcontract the performance of any of its duties or obligations under this Agreement, and will use commercially 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.

(23) 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 Customer. If Customer wishes to have any entity which directly or indirectly controls, is controlled by or is in common control with Customer to access to the Portal and use the Service, Customer'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 Customer: (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, but only if the assignee in such assignment expressly in writing agrees to assume all rights and obligations of the assignor pursuant to this Agreement. No assignment made by a Party as authorized by this Section (23)(c) shall be enforceable against the other Party until written notice of the assignment is delivered to the non-assigning Party.

(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 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.

(i) Badger Meter, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Customer's vehicles, or any other benefits afforded to employees of the Customer as a result of this Agreement.

(ii) Badger Meter shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Badger Meter in the performance of the services under this Agreement.

(iii) Badger Meter shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

(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.

(i) Governing Law. The terms of this Agreement are governed by the laws of the State of New Mexico, 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. Customer 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 Customer nor any Authorized Users or Authorized Consumers has a contractual relationship with Badger Meter's Suppliers and neither Customer 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. Customer further acknowledges that the Suppliers disclaim all liability of any nature, whether legal or equitable, to Customer, its Authorized Users or Authorized Consumers, whether direct, indirect, incidental or consequential, arising out of the use of Badger Meter Portal or Service by Customer, its Authorized Users or Authorized Consumers, including any liability for personal injury or death, failure to be able to use the Service or otherwise. Customer 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.

(k) Dispute Resolution.

(i) 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.

(ii) Mediation. If the parties cannot resolve the Dispute within ten (10) days after initial notice of the Dispute, the Dispute shall be submitted for resolution to the Judicial Arbitration and Mediation Services ("**JAMS**"), or its successor ("**Mediation**") in Santa Fe, New Mexico. If the mediator is unable to amicably resolve the Dispute, then the mediator will refer the matter to a JAMS arbitrator to resolve the Dispute. Neither party shall seek, nor shall be entitled to seek, binding outside resolution of the Dispute unless and until the parties have been unable to amicably resolve the dispute as set forth in this Section, and then only in compliance with the procedures set forth in this Section. Except for Disputes relating to issues of (i) proprietary rights, including, but not limited to, intellectual property and confidentiality, and (ii) any provision of this Agreement which expressly or implicitly provides for the parties to reach mutual agreement as to certain terms, any Dispute not resolved by amicable resolution as set forth in this Section shall be governed exclusively and finally by arbitration described below.

(iii) Arbitration. Either party may initiate arbitration with respect to a Dispute by submitting a written demand at any time following Mediation.

- Arbitration shall be administered by JAMS, or its successor, pursuant to the Comprehensive Arbitration Rules and Procedures.

- Either party may commence arbitration by notifying the other in writing that arbitration is desired and setting forth the topics to be arbitrated. Within thirty (30) days of mailing a notice of arbitration, the party receiving the notice may specify additional topics of arbitration in writing to the other party. Within forty-five (45) days of the mailing of the notice of arbitration, the parties will confirm and attempt to identify an arbitrator associated with JAMS to resolve the Dispute. If the parties cannot agree, JAMS will appoint an arbitrator who is a lawyer familiar with software as a service and information technology support services agreements.

- Except to the extent, if any, that law applicable to the dispute requires that arbitrators retain authority to award punitive damages, the arbitrators shall not have such authority.

- Each party will bear its own costs of the arbitration. The resulting award may be confirmed and reduced to judgment in any court of competent jurisdiction. With respect to any such post-arbitral judicial proceedings, the parties consent to the exercise of personal jurisdiction over them by the state and federal courts sitting in Santa Fe, New Mexico and waive any objection that they would otherwise have to venue in such courts.

- The duty to arbitrate does not preclude either party from pursuing interlocutory or provisional relief pending arbitration in any court of competent jurisdiction if such relief is necessary in order to preserve the practical ability of the arbitrator to make an effective award or to avoid a genuine and substantial risk of injury that cannot be adequately remedied by an eventual arbitral award. Neither the pursuit of nor the failure to provide any such interlocutory or provisional remedy in court, however, shall relieve either party of the duty to pursue ultimate resolution of the dispute through arbitration as provided for herein.

- The arbitration shall be governed by and construed and interpreted in accordance with the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

(24) INSURANCE

(a) Badger Meter, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Customer, with limits of coverage in the maximum amount which the Customer could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall

provide that the Customer is named as an additional insured. The Customer is to be notified if Badger Meter does not renew required insurance for any reason. Badger Meter shall furnish the Customer with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

(b) Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Badger Meter's employees throughout the term of this Agreement. Badger Meter shall provide the City with evidence of its compliance with such requirement.

(c) Badger Meter shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Badger Meter shall furnish the City with proof of insurance of Badger Meter's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

(25) INJUNCTIVE RELIEF: Notwithstanding the provisions of Section 23, Badger Meter shall have the right to pursue injunctive, declaratory or other relief by the state and federal courts sitting in Santa Fe, New Mexico and waive any objection that they would otherwise have to venue in such courts.

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

If to Badger Meter:

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

If to Customer:

Diana Catanach
Utility Billing Division Director
801 W. San Mateo Road
Santa Fe, NM 87505

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

(28) LIMITATION OF CLAIMS. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Customer more than three (3) years after Customer becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

(29) 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.

(30) AMENDMENT. This Agreement may only be amended by a written document signed by both parties. Neither Badger Meter nor the Customer will 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 Customer 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.

(31) POLICIES. Badger Meter reserves the right to modify the policies at any time by posting a revised version on the Portal or otherwise providing notice to Customer. The modified terms will become effective upon posting or notice. By continuing to use the Service after the effective date of the modification to a policy, Customer agrees to be bound by the modified policies. It is Customer's responsibility to check the Badger Meter site regularly for modifications to the policies.

(32) 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.

(33) 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 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 parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE

MAYOR
DATE: 1/7/15

BADGER METER, INC

Kimberly K. Stoll, V.P. Sales and Marketing
DATE: 10-27-2014

CRS# 0160407008

City of Santa Fe Business
Registration # 14-124590

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK
ccmtg 12/10/14

APPROVED AS TO FORM:

11/5/14
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

FINANCE DIRECTOR

Business Unit Line Item

EXHIBIT 1

FEES

1. **Service Fees.** Customer 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 Customer for Service and Support Fees on a monthly basis. Payment is due within thirty (45) days of the date of receipt of an itemized invoice.

Pricing is on next page, and also as part of Exhibit 5.

PRICING REVISED 8/20/2014 - BEST AND FINAL PRICING - City of Santa Fe - Software

Name of Module	Unit Cost	Quantity	Total One Time Cost	Annual Maintenance Costs Year 1**	Year 2***	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
AMI Software	$ -		$ -										$ -	$ -
Others (Note 2)Endpoint Subscription*			$ -	$ 83,482.50	$ 237,402.00	$ 308,979.00	$ 308,979.00	$ 308,979.00	$ 308,979.00	$ 308,979.00	$ 308,979.00	$ 308,979.00	$ 2,785,618.50	
Others (Note 2) Discount fee of 5% years 1-5			$ -	$ 79,279.88	$ 225,417.40	$ 293,530.05	$ 293,530.05	$ 293,530.05					$ 1,185,287.43	
Others (Note 2) Annual Discount Savings			$ -											
Others (Note 2)			$ -					$ 259,536.53	$ 308,836.83	$ 308,836.83	$ 308,836.83	$ 308,836.83	$ 1,494,183.15	
Others (Note 2) Discount fee of 5% years 6-10			$ -											
Others (Note 2) Annual Discount Savings			$ -	$ 4,172.47	$ 11,874.60	$ 15,453.95	$ 15,453.95	$ 15,453.95	$ 8,242.37	$ 8,242.37	$ 8,242.37	$ 8,242.37	$ 108,470.97	
Others (Note 2)			$ -										$ -	
Total	$ -		$ -	$ 79,279.88	$ 225,417.40	$ 293,530.05	$ 293,530.05	$ 293,530.05	$ 300,736.63	$ 300,736.63	$ 300,736.63	$ 300,736.63	$ 2,577,165.58	

(Note 2) If any other components of the software are priced separately, please include it here.
Includes: BEACON AMA Software
Data Hosting
Cellular Communications
Consumer Engagement Software
Billing Software Interface
Installation/Maintenance of Gateways
Training
Installation APP

"Year One (1) includes monthly endpoint subscription fee for the deployment of approximately 17,115 endpoints May 2014 - April 2015 the actual number will be determined by actual deployment;
"" Year Two (2) includes deployment of the balance of the endpoints May 2015 - April 2016 plus the endpoints deployed in Year 1(the actual number will be determined by actual deployment);
Note: Compared to the original prices submitted, these revised prices reflect an annual discount savings in years 1 through 10
The annualized estimated pricing above is calculated based on an installation rate of 1,426 endpoints per month, starting in May 2014 and ending in April 2015. The monthly charge after full deployment will be $25,673.25
Note: An additional eight (8) endpoints will be installed in month 6 to complete the installation of 34,231 endpoints
Managed solution + Hosting, which includes hourly data and consumer engagement, is invoiced after endpoint installation is complete
For every endpoint installed above quantity of 34,231 for hourly data, the subscription fee will be $.75 per endpoint per month

8/12/2014 REVISION - CHANGES TO THE ORIGINAL PRICING ARE SHOWN IN RED
8/20/2014 REVISION - CHANGES TO THE BEST AND FINAL OFFER OF 8/12/2014 ARE SHOWN IN GREEN

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 Customer, Badger Meter will respond to such request in accordance with the procedures set forth below. Customer may report the problem by phone, email or website provided by Badger Meter to Customer. 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	1 hour	Six (6) hours
Level 2 – certain interruptions but service is still available	24 hours	24 hours
Level 3 – minor intermittent malfunction	24 hours	3 days
Level 4 – suggestions for new features or enhancements to BEACON Portal and Service	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 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 Customer posted on the BEACON Portal. In no event should the maintenance down time exceed eight(8) hours.

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:

$$\left(1-\frac{TotalUnavailiabiltyMinutes}{TotalMinutesofServiceMonth-TotalMinutesofApprovedDowntime}\right)-$$

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

"**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) Customer 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) Customer 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 apply:

% of Availability in the Month	Service Credit(% of annual recurring fees)
≥99%	0%
≥98% and <99%	.416 %
≥96.5% and <98%	.83 %
≥95.0% and <96.5%	1.25 %
<95.0%	2.08 %

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 at least 97.0% at the time of billing request to the BEACON AMA Managed Solution.

Definitions

"**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 meters.

Provisioned accounts are accounts with endpoints that are discovered by the network, fully able to communicate with the network, and completely entered correctly in the BEACON AMA Managed Solution.

CALCULATION of Monthly Billing Data Service Promise:

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**").

$$\frac{\textit{Count of Billing Reads}}{\textit{Count of Total Billing Route}}$$

Where:

Count of Total Billing Cycle

"Count of Billing Reads" is the total number of accounts is the billing file with valid data that a billing quality reading is supplied

"Count of Total Billing Cycle" is the total number of accounts with valid data in the billing file being processed.

Service Credits

If Badger Meter fails to meet the Monthly Billing Data Service Promise, the following Service Credits apply:

% of Successful Billing Reads in the Applicable Billing Cycle	**Service Credit**(% of monthly recurring fees)
≥97.0%	0%
≥95.0% and <97.0%	.416 %
≥90.0% and <95.0%	.83 %
≤90.0%	2.08 %

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:

(i) Resulting from any actions or inactions of Customer, its Authorized Users or Authorized Consumers;

(ii) Resulting from Customer or its Suppliers equipment, software, or other technology and/or Customer'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 Customer's location;

(iv) Resulting from Customer'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 Customer, an Authorized Users or an Authorized Consumers misuse or abuse of the Portal or Service;

(viii) During an event triggering a 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 Customer's right to use the BEACON Managed Solution in accordance with the Agreement;

(x) Arising from failure of Customer to follow Badger Meter's published installation, operation and maintenance instructions;

(xi) When outdoor temperatures either exceed or are below the endpoint operating temperature range as described in the applicable product data sheet.

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 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, Customer 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, Customer 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 CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BADGER

METER'S FAILURE TO MEET THE SERVICE PROMISE SPECIFIED IN THIS SLA.

Badger Meter will report Service Promises and applicable Service Credits upon request and upon a commercially reasonable frequency. Following each report, upon Customer 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 year following the year 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 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 Content 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. **Customer Responsibilities.** System security is a shared responsibility between Badger Meter and Customer. Customer shall assign a systems service administrator to be responsible for establishing access and usage policies. Customer 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.

EXHIBIT 4

TURNKEY INSTALLATION SCOPE OF WORK