

AGREEMENT FOR THE PURCHASE OF GOODS

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Badger Meter, Inc., a Wisconsin Corporation, whose address of record is P.O. Box 88223, Milwaukee, Wisconsin 53288, (hereinafter referred to as "Vendor").

WHEREAS, City requires the supply and delivery of replacement endpoints ; and,

WHEREAS, Vendor represents that it possesses the ability to supply said goods and/or materials to the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. SCOPE OF PURCHASE. Vendor shall supply the goods and/or materials described in Exhibit "A" attached hereto.
2. TIME OF PERFORMANCE. Vender shall provide the goods and materials as soon as reasonably possible after receipt of an order from City.
3. TERM OF AGREEMENT. The term of this Agreement shall commence upon the day first above written and end on June 30, 2023.
4. COMPENSATION. Payment by the City to the Vendor for actual services and supplies delivered to City pursuant to this Agreement shall be made upon presentation of an invoice detailing the supplies and services delivered under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Vendor agrees to provide all supplies and services required under the Scope of Services in Exhibit "A"..
5. METHOD OF PAYMENT. Compensation to Vendor shall be paid by the City after submission by Vendor of an invoice delineating goods and/or materials supplied and quantities of all goods, products, and materials.

6. INDEPENDENT CONTRACTOR. It is expressly understood that Vendor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Vendor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Vendor desire any insurance protection, the Vendor is to acquire same at its expense.

In the event Vendor or any employee, agent, or subcontractor of Vendor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Vendor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Vendor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

7. INDEMNITY. Vendor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Vendor or Vendor's officers, employees, volunteers, and agents during performance of this Agreement; Vendor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Vendor or its employees, subcontractors, or agents, or by the quality or character of Vendor's work.

8. WARRANTY. Vendor warrants and represents to City that each of the goods and/or materials provided to the City herein shall be free from defects in material and workmanship and will conform to the manufacturer's specifications. Additional warranties are set forth in Vendor's standard warranty attached hereto as Exhibit "B".

9. INSURANCE. During the term of this Agreement, Vendor shall obtain and maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation and Employer's Liability. Vendor shall obtain and keep in full force Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Vendor shall provide a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

b. Commercial General Liability. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Vendor's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. Any failure to comply with reporting provisions of the policies by Vendor shall not affect coverage provided the City. Coverage shall state that Vendor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage shall contain a waiver of subrogation in favor of the City.

c. Certificate of Insurance. Vendor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance, including all required endorsements, evidencing coverage as set forth above. Vendor shall provide at least thirty (30) days written notice to City prior to the cancellation or expiration of any such policy.

d. Notwithstanding any language in this Agreement to the contrary, Vendor shall not be entitled to payment pursuant to the terms of this Agreement until Vendor has obtained the insurance required by this Section 9 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Vendor's insurance policies are not current.

10. PREVAILING WAGES.

A. Labor Code Compliance. As this Agreement contemplates the purchase of goods and materials only, it is not anticipated to fall within Labor Code Section 1729(a)(1) for purposes of prevailing wages. Vendor agrees to comply with all applicable provisions of the Labor Code. The Vendor further

agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution or performance of this Agreement.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Vendor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Vendor under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Vendor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further goods shall be provided by Vendor. If the Agreement is so terminated, the Vendor shall be paid for those goods previously delivered to the City at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Vendor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Vendor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Vendor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Vendor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Vendor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Vendor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall

be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly Mader 4/8/22
City Attorney Date

ACCOUNT DATA:


BY: _____
Verified by Finance Officer

VENDOR
BADGER METER, INC.,
A Wisconsin Corporation

BY: 
(Signature)

Jennifer A. Dunk
(Typed Name)

Its: Assistant Secretary & Proposal Lead
(Title)

BY: 
(Signature)

Pamela Stoffke-Ceci
(Typed Name)

Its: Assistant Secretary & Assistant general counsel
(Title)

Taxpayer I.D. No. 39-0143280

ADDRESS: P.O. Box 88223
Milwaukee, WI 53288

TELEPHONE: (800) 876-3837

FAX: (414) 371-5952

E-MAIL: _____



Badger Meter

Domestic Quotation
Quotation No. 3238223

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

Revised Date

To

Customer ID 00040147

CITY OF MERCED
678 W 18TH STREET
MERCED
California 953404708

Effective Dates 05-11-2021 - 09-30-2021

Salesperson	Proposal Subject	Shipping Terms / INCO Terms	Payment Terms
005307 KATHY RICHARDS	ORI-MP-03322-EN	PREPAY/NO CHARGE FCA FACTORY	NET 30 DAYS

Line #	Description	Qty	Unit Net Price USD	Line Totals USD
1	BMI Part No.: 103-6667 Description: E4 - Endpoint Only, For Encoder, AM - ORION CELLULAR C Pit/Remote Thru Lid Kit, NA - NICOR - 8 IN (EP) AA - Ground/Ocean (Paused), B0A - BADGER METER STANDARD (ID=B0A) Cat String: E4-4E-AM-AG-NAAA-B0A	11748	45.00	528,660.00
2	BMI Part No.: 68886-104 Description: ORION CELLULAR LTE SERV UNIT	23147	0.720	16,665.84

Notes and Assumptions

City of Merced must submit a single PO identifying "ORION Cellular Endpoint Upgrade Marketing Program (ORI-MP-03322-EN)" with the total number of eligible endpoints for trade in clearly noted, and a 1:1 quantity of the latest generation of cellular endpoints for order. Qualification will be verified by Badger Meter. This quote is confidential.

If applicable, sales tax and freight, if included on the proposal, is an estimate and will be recalculated based on rates and tax status in effect at the time of invoicing.

Actual lead time to be provided at time of order.

To aid in processing your order, please include the Quote number on the PO that is submitted for this proposal.

Badger Meter provides certification files to help manage meter and endpoint inventory and to maintain meter accuracy data. The standard method of delivery for this format is via electronic mail. Any deviations from our standard format, or any custom file formats, will be considered on a time and material basis.

Due to continuous improvements and redesign of Badger Meter products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternative to the proposed products provided they are in conformance with the requirements of the specifications and do not exceed the prices quoted.

Thank you for your business!

This quotation is an offer made subject to the terms & conditions found on our website: www.badgermeter.com/Company/Legal/Sales-Terms.aspx
Quoted prices are firm for acceptance, via an order, within the effective dates provided, shipping within 60 calendar days past the expiration of this quotation.



Domestic Quotation
Quotation No. 3238223

If you would like to place an order, please contact us at Utilityorders2@badgermeter.com or by calling 1-800-876-3837.

Thank you for your business!

This quotation is an offer made subject to the terms & conditions found on our website: www.badgermeter.com/Company/Legal/Sales-Terms.aspx
Quoted prices are firm for acceptance, via an order, within the effective dates provided, shipping within 60 calendar days past the expiration of this quotation.



Badger Meter

ORION® Cellular Water Endpoints Network as a Service (NaaS)

PRODUCTS

This warranty shall apply to Badger Meter ORION® Cellular water endpoints, including the ORION Cellular LTE-M, LTE-MS, C and HLA water endpoints sold on or after August 4, 2021.

This warranty is not transferable and is extended only to utilities, municipalities and authorized distributors selling to utilities and municipalities within the United States or Canada, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original Customer of Badger Meter or its authorized distributors.

MATERIAL AND WORKMANSHIP

Badger Meter warrants all ORION Cellular water endpoints, including battery (configured to the standard mode of operation set by the factory at time of shipment), hereafter referred to as "Product(s)" as listed below, to be free from defects in material and workmanship for the time period stated.

ORION Water Endpoints	20 years and 6 months after shipment
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Products are warranted to be free from defects in material and workmanship for twenty (20) years and six (6) months after shipment from Badger Meter. Badger Meter will repair or replace, at its discretion, a non-performing Product at no cost during the first ten (10) years, and at a prorated price during the last ten (10) years of the warranty. Badger Meter will apply these prorated price discounts to the Product list prices at the time of Product return and according to the following prorated price discount schedule:

Year	Discount %	Year	Discount %
11	70	16	45
12	65	17	40
13	60	18	35
14	55	19	30
15	50	20	25
		>20	0

Replacement Products are warranted for and under the balance of the original applicable Product warranty.

GUARANTEE OF NETWORK PERFORMANCE

If the communication network that supports any ORION Cellular water endpoint in the Customer's meter service area ("Network") explicitly and publicly discontinues operation during the Product warranty time period stated herein, thereby rendering any endpoint unable to successfully transmit meter reading data ("Shut Down"), then for each Shut Down endpoint, as confirmed in writing by the Network operator and verified in writing by Badger Meter, Badger Meter will provide the following guarantee in exchange for applicable fees and minimum purchase commitments as described in the most current BEACON® AMA Solution with ORION NaaS Pricing Terms and Conditions document from Badger Meter.

Badger Meter will supply a replacement endpoint that is supported by the most current technology readily available for full-scale use in the Customer's meter service area affected by Shut Downs ("Replacement endpoints") at no charge to the Customer for such Replacement endpoints during the first ten (10) years of the Product warranty time period, and according to the prorated price discount schedule

stated herein, during the last ten (10) years of the Product warranty time period. Replacement endpoints are warranted for and under the balance of the original applicable endpoint warranty.

The Customer shall be responsible for all other direct and indirect costs associated with the Replacement endpoints, including but not limited to costs associated with installation and maintenance. If the Customer agrees to pay for shipping and the most current Badger Meter published disposal fee per Replacement endpoint, Badger Meter will properly dispose of returned Shut Down endpoints.

PRODUCT RETURNS

Product failures must be proven and verified to the satisfaction of Badger Meter. The Badger Meter obligation hereunder shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any asserted defect within 10 (ten) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace the defective Product for the Customer within a reasonable time, after receipt of proof that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing the Product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to any Product repaired or altered by any Party other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with Badger Meter instructions. The warranty shall not apply and shall be void with respect to Products exposed to conditions other than those detailed in Product technical literature or which have been subject to vandalism, negligence, accident, acts of God, improper installation, operation or repair, alteration or other circumstances which are beyond the reasonable control of Badger Meter. With respect to products not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of Title).

Any description of the Product, whether in writing or made orally by Badger Meter or its agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with any Customer's order are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or its agents regarding use, application or suitability of the Product shall not be construed as an express warranty unless confirmed to be such, in writing, by Badger Meter.

EXHIBIT B

Badger Meter Warranty

Exclusion of Consequential Damages and Disclaimer of Other Liability

The liability of Badger Meter with respect to breaches of the foregoing warranty shall be limited as stated herein. Badger Meter liability shall in no event exceed the contract price. BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

SMART WATER IS BADGER METER

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