

## **INDEPENDENT CONTRACTOR AND SOFTWARE LICENSE AGREEMENT**

**WHEREAS** at a Webb County Commissioner’s Court Meeting held on the 28<sup>th</sup> day of January, 2019, the Court approved and awarded a one year (1yr.) automated water meter infrastructure project and software licensing agreement pursuant Request for Proposal (RFP 2018-008), entitled “Advanced Metering Analytics Software for Water Utilities”, to Badger Meter Inc., d/b/a National Meter & Automation in accordance with Badger Meter Inc.’s responsive proposal/bid thereto.

**NOW, THEREFORE, IT IS AGREED** by, and between Webb County and Badger, Inc., d/b/a National Meter & Automation, hereinafter referred to as “Badger Meter, Inc.” shall provide “County” with the following license agreement, goods and/or services pursuant to Webb County’s RFP 2018-008 entitled “Advanced Metering Analytics Software for Water Utilities” together with the responsive proposal and bid submitted by and awarded to Badger, Inc., d/b/a National Meter & Automation on January 28, 2019 by the Webb County Commissioner’s Court; 1.) Software licensing agreement and/or 2.) scope of services, including providing up to 2000 water meters at fixed pricing, endpoints, cellular registers, and related services, to provide the following services as an Independent Contractor, in accordance therewith, and as set for herein-below;

### **Effective Date, Term, Services Provided/Completion Date and/or Termination Date**

The term of this Agreement is for One Year (1yr.) commencing January 28, 2019, thru December 28, 2019 and shall terminate upon completion, review and written acceptance of the Independent Contractor services provided as described herein by “COUNTY”.

This Agreement may not be modified unless done so, dated and in writing, executed by both parties, and expressly conditioned upon approved by a majority of a quorum of the Webb County Commissioner’s Court.

### **1. Independent Contractor/Professional Services Provided**

It is hereby covenanted and agreed by the parties that the services to be provided to “County” by the Independent Contractor and/or Professional shall incorporate the scope of work and requirements as set forth in the Request for Proposal (RFP 2018-008, entitled “Advanced Metering Analytics Software for Water Utilities” attached hereto as Exhibit “A”, and incorporated by reference for all intents and purposes.

“Badger Inc.” shall provide “County” with the following pursuant to Webb County’s RFP 2018-008 entitled “Advanced Metering Analytics Software for Water Utilities”; 1.) Software licensing agreement and/or 2.) Scope of services, including providing up to 2000 water meters at fixed pricing, endpoints, cellular registers, and related services, being more particularly described in Webb County Request for Proposal (RFP 2018-008), entitled “Advanced Metering Analytics Software for Water Utilities”.

The responsive proposal and bid submitted by and awarded to Badger Meter, Inc., d/b/a National Meter & Automation on January 28, 2019 by the Webb County Commissioner’s Court to

provide the services set forth in Request for Proposal (RFP 2018-008, entitled “Advanced Metering Analytics Software for Water Utilities “as an Independent Contractor, in accordance therewith, and as set for herein and attached hereto as Exhibit “B”.

The parties hereby agree that the actual quantities of water meters and/or registers and the s are merely an estimate of the total number of water meters and/or registers that may actually be used and/or needed for use by Webb County once the project is implemented and therefore, Webb County is not obligated to purchase all 2000 meters and/or registers.

**2. Payment & Compensation/Requests for Payment/Purchase Order Requests**

Webb County shall pay “Badger Meter”, for such software licensing agreement, and/or water meters, registers, endpoints, and/or related goods/services in an amount not to exceed the total sum of FOUR HUNDRED FIFTEEN THOUSAND SIX-HUNDRED NINETY-SEVEN DOLLARS AND 86/100 CENTS (\$415,697.86) for the above described software license, goods, and/or services, after submission of invoice for goods and/or services provided to the billing address or billing e-mail provided on an official Webb County Purchase Order and after completion, review and acceptance of these services by “County”.

The County Auditor will only authorize payment for the goods/services described on an Official Webb County Purchase Order unless otherwise permitted by law or the Webb County Purchasing Policy.

Further, compensation for unauthorized change orders will not be paid by Webb County. Only written change orders authorized by the Webb County Commissioner’s Court and/or the Webb County Purchasing Agent through an Official Purchase Order will be paid upon submission of invoices and once all goods are received and/or services completed.

No other Webb County Official, employee, officer or Elected Official is authorized to approve purchases and/or changes to purchase orders unless approved by the Webb County Purchasing Agent and/or a majority of a quorum of the Webb County Commissioner’s Court.

**3. Billing Address**

All invoices must be submitted to the Webb County Business Office in electronic format and/or delivered to the following address:

Webb County  
1110 Washington Street, Ste. 203  
Laredo, Texas 78040  
Attn: Business Office

Or email to: [apinvoices@webbcountytexas.gov](mailto:apinvoices@webbcountytexas.gov)  
**ALL** invoices must reference Purchase Order #

**4. Independent Contractor**

In the performance of work, duties, and obligations required of “Badger Meter, Inc.”, as the Independent Contractor, whether one or more, under this Agreement, it is mutually understood,

and agreed, that “Badger Meter, Inc.” is, at all times, acting and performing as an independent contractor. Webb County’s sole interest is to assure that “Badger Meter, Inc.” services be performed and rendered in a competent, efficient, and satisfactory manner. “Badger Meter, Inc.” hereby agrees to perform the services in strict accordance with approved methods, and practices, in the general field of his or field of experience and/or qualifications.

**5. Ethical Standards**

“Badger Meter Inc.”, warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by “Badger Meter Inc.”, for the purpose of securing business. For breach or violation of this warranty, the County shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**6. No Conflicts**

“Badger Meter Inc.”, represents and warrants that it has no actual or potential conflicts of interest in providing services to County under this contract and the provision of services under this contract would not reasonably create an appearance of impropriety.

**7. Change Orders/Additional Services and Expenses**

Any and all Change Orders, additional services, parts, costs, fees or expenses, not included in this agreement, shall require both a written request by “Badger Meter Inc.”, to the County and prior formal approval by a quorum of the Webb County Commissioner’s Court at either a regular, special and/or emergency called meeting of the “County”. The County shall not be responsible for and/or shall not compensate “Badger Meter Inc.”, for these costs without both a written request and prior approval by the County.

**8. Terms and Conditions**

“Badger Meter Inc.”, hereby certifies, and affirms, that he/she/company is not legally or professionally disqualified from the performance of the duties under this Agreement. “Badger Meter Inc.” shall advise the County, in writing, of any change in status their status as “Independent Contractor”, which may materially affect the ability of Independent Contractor to legally carry out the duties herein.

**9. Access to Criminal History Record and Termination of Contract or Disqualification of Bid for Cause**

Please be advised that Webb County is entitled to obtain the criminal history information of any person and/or business owner who contracts with the County in accordance with Section 411.1295 of the Texas Government Code. In the event that any criminal history of a person or business owner who contracts with Webb County is discovered, then it that event, Webb County at its sole discretion reserves the exclusive right and shall be entitled to immediate termination of the contract and/or immediate disqualification of bid submittal in the event that such criminal history is discovered, by providing notice to the person and/or business owner of such termination and/or disqualification of bid submittal in accordance with the Notice provisions set forth in Section 12 herein-below.

## **10. Termination for Convenience**

Termination for convenience, also known as a no-fault termination, allows the County to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that the termination is in the best interest of the County. As notified by the Purchasing Agent through a 15 day written notice / via email of such intent to terminate contract for convenience.

Purchasing Agent shall provide “Badger Meter Inc.” a written notice specifying the extent of termination and the effective date, providing as much notice as possible. “Independent Contractor” is generally paid for allowable costs incurred up to the effective date of termination. The County is not liable for payment to “Independent Contractor” related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.

## **11. Termination for Default**

A contract may be terminated for default when (a) the County concludes that “Badger Meter Inc.” fails to perform, make progress, or in any way breaches the contract and continues to do so after receiving written notice/email notice of such default/issues and fails to cure such default/issues within 10 working days (b) Termination for default should be used as the last resort. The County should do everything practicable to assist “Badger Meter Inc.” in curing a default.

Factors to consider before making a decision to terminate for default include: (1) The provisions of the contract and applicable regulations, (2) The specific contractual failure(s) and the explanation provided for the failures, (3) The urgency of the need for the contracted supplies or services, (4) Actions the County may have taken that aggravated the problems, (4) The availability of the supplies or services from other sources and the time required to obtain them, and (5) Availability of funds or resources to re-purchase if the costs cannot be recovered from the defaulting Independent Contractor.

## **12. Notices**

Any notices required to be sent hereunder shall be sent as follows; via hand delivery, First Class U.S. Certified Mail, postage pre-paid, Return Receipt Requested, and/or via e-mail to the following individuals:

TO: Adrian Montemayor, Utilities Director  
Webb County Utilities Dept.  
513 Martha Dr.  
Rio Bravo, Texas 78046  
(956) 523-5590  
E-Mail; [agmontemayor@webbcountytexas.gov](mailto:agmontemayor@webbcountytexas.gov)

TO: Badger Meter, Inc. c/o  
Chip Woods, Acct. Mgr.  
Attn: Bids and Contracts  
4545 W. Brown Deer Rd.  
Milwaukee, WI., 52324  
(414) 355-0400  
E-Mail; [bids@badgermeter.com](mailto:bids@badgermeter.com) &  
[rwoods@nationalmeter.com](mailto:rwoods@nationalmeter.com)

## **13. Severability**

Each paragraph, and provision, hereof is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

**14. Prohibitions against Assignment.**

No assignment or transfer of this Agreement may be made without written consent of both parties, hereto and approval by a majority of a quorum of the Webb Commissioner’s Court at a regular, special and/or emergency open meeting.

**15. Hold Harmless**

Badger Meter shall indemnify and hold Webb County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from independent contractor’s performance. Independent contractor shall procure and maintain, with respect to the subject matter of Webb County’s Request for Proposal (RFP 2018-008), appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover Bidder's liability as may arise directly or indirectly from work performed and goods or services sold and under the terms of this ITB. Certification of such coverage must be provided to the County upon request.

**16. Venue/Laws of Texas**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and the exclusive venue for any and all legal disputes between the parties shall be in Webb County, Texas.

**17. Entire Agreement**

This Agreement incorporates all the agreements, covenants, and understandings between the parties herein concerning the subject matter hereof; and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement, or understandings, verbal or otherwise, of the parties, or their agents, shall be valid, or enforceable, unless signed by both parties, and attached hereto, and/or embodied herein.

**18. Amendment**

This Agreement may be modified, only in writing, executed by both parties, and approved by a majority of a quorum of the Webb County Commissioner’s Court.

**19. Confidentiality**

Any confidential information provided to, or developed by, Independent Contractor in the performance of the Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual, or organization without the prior approval of COUNTY.

**20. Headings**

The headings used herein are for convenience only, and shall not constitute a part hereof, or affect the construction or interpretation hereof.

**21. Counterparts**

This Agreement may be executed in any number or, and by, the different parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same document.

**22. Terminology and Definitions**

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.

**EXECUTED in duplicate originals this \_\_\_\_ day of MAY, 2019.**

**WEBB COUNTY, TEXAS**

**BADGER METER, INC., D/B/A  
NATIONAL METER & AUTOMATION**

\_\_\_\_\_  
**TANO E. TIJERINA  
WEBB COUNTY JUDGE**

\_\_\_\_\_  
**CHARLA D. DRURY, Asst. Secretary  
Project Manager/Bid & Contract Administration**

**ATTEST:**

\_\_\_\_\_  
Margie Ramirez Ibarra  
Webb County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ray Rodriguez, Asst. General Counsel  
Webb County Civil Legal Division

\*By law, the Webb County Civil Legal Division office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

**Presented for Approval at the Webb County  
Commissioner's Court meeting held on the 28th  
day of January 2019**

**Exhibit A – Statement of Work**

**FORM A**  
Price Schedule

COST PROPOSAL				
QTY	SIZE	Product Description	UNIT PRICE	EXTENDED AMOUNT
2000	5/8" x 3/4"	Badger Meter Recordall® Disc Meters M25, HRE-LCD, Orion Cellular LTE	\$ 189.10	\$ 378,200.00
5	1"	Badger Meter Recordall® Disc Meters M55, HRE-LCD, Orion Cellular LTE	\$ 266.26	\$ 1,331.30
3	2"	Badger Meter Recordall® Disc Meters M170, HRE-LCD, Orion Cellular LTE	\$ <del>627.92</del>	\$ 1,883.76
2	6"	Badger Meter Recordall® Compound Series Meter, (2)HRE-LCD, Orion Cellular LTE	\$ 4,090.97	\$ 8,181.94
1	Software	BEACON® AMA Software - includes BEACON engagement fee, 1 year service units	\$ 24,500.86	\$ 24,500.86
1	Training	On-site Training	\$ 1,800.00	\$ 1,800.00
TBD	5/8" x 3/4" Alternate option	*E-Series® Ultrasonic Plus Meter with Integrated Shutoff Valve      *Available upon release	\$425.00	\$425.00

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

<b>Managed Solution Subscription Fee</b>			
<b>Service Units</b>			
<b>Purchase Increment</b>			
<b>Up to 25,000</b>	<b>25,001 - 50,000</b>	<b>50,001 - 75,000</b>	<b>75,001+</b>
<b>0.89</b>	<b>0.86</b>	<b>0.83</b>	<b>0.81</b>