

HIGHLINE WATER DISTRICT King County, Washington

Resolution 16-9-7B

RESOLUTION AUTHORIZING AN EQUIPMENT AND SERVICES AGREEMENT WITH BADGER METER, INC. TO PURCHASE AN AUTOMATED METER READING SYSTEM ("AMR SYSTEM")

WHEREAS, Highline Water District ("District") is a water special purpose district existing pursuant to Title 57 Revised Code of Washington ("RCW") owning and operating a water system within its corporate and service area boundaries in King County, Washington for the benefit of its customers; and

WHEREAS, pursuant to RCW 57.08.050 (3), the District is authorized to purchase equipment, supplies and materials in accordance with the procedures set forth therein; provided, as an alternative to RCW 57.08.050(3), the District is also authorized by RCW 57.08.050 (4) to purchase equipment, supplies and materials from suppliers designated on current state agency, county, city or town purchasing rosters at the price and terms as described on the applicable roster when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city or town; and

WHEREAS, RCW 39.34.030 (1) authorizes the joint and cooperative exercise of shared powers, privileges and authority between public agencies of the State of Washington and public agencies of any other state; and, pursuant to RCW 39.34.030 (5)(b), with respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency(s) that awarded the bid, proposal or contract complied with its own statutory requirements; and

WHEREAS, the District must acquire an automated meter reading system ("AMR System"), and such systems may be procured through the competitive negotiation procedure set forth in RCW 39.04.270; and the Alderwood Water and Wastewater District ("Alderwood") previously complied with such statute and procured an AMR System from Badger Meter, Inc. ("Badger"), a vendor of AMR Systems ("Vendor"), through a request for proposal ("Request for Proposals"), a competitive negotiation process, and a procurement contract ("Procurement Contract") in accordance with the requirements of RCW 39.04.270; and

WHEREAS, both the Request for Proposal and Procurement Contract that Alderwood used to purchase an AMR System from Badger contained provisions allowing for other governmental entities like Highline to avail themselves of Alderwood's purchase of an AMR System from Badger for similar purchases at the same price and terms; and Northshore Utility District ("NUD") and Mukilteo Water and Wastewater District ("Mukilteo"), both water-sewer districts existing pursuant to Title 57 RCW under the laws of the State of Washington, previously entered into intergovernmental cooperative purchasing agreements with Alderwood to utilize Alderwood's research work and the executed purchase contract with Badger for the purchase of an AMR System, and both entities subsequently executed purchase contracts with Badger for the purchase of AMR Systems; and

**HIGHLINE WATER DISTRICT
King County, Washington**

Resolution 16-9-7B

WHEREAS, pursuant to authorization set forth in Resolution 16-4-6B adopted by the District Board of Commissioners on April 6, 2016, the District entered into an Interlocal Cooperative Purchasing Agreement dated April 7, 2016, with Alderwood wherein Alderwood agreed to allow the District to utilize Alderwood's research and its executed AMR System purchase contract with Badger to allow the District to execute its own AMR System procurement contract with Badger under similar prices and terms as those secured by Alderwood through its Request for Proposals process; and

WHEREAS, the District now desires to acquire an AMR System and related services from Badger, and Badger has represented to the District that it has the specialized expertise and experience necessary to properly provide the Equipment and Services required by this Contract in a timely manner and that its proposal includes all of the functions and features required for the Equipment and Services; and

WHEREAS, the District has accepted Badger's offer to provide the Equipment and Services in accordance with the Contract Documents.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners authorizes the General Manager or designee to enter into an agreement (Exhibit A, attached and incorporated herein) with Badger for the purchase of an AMR System and related services for implementation.
2. The General Manager and/or the District's Legal Counsel are authorized to make minor changes to the agreement if required.

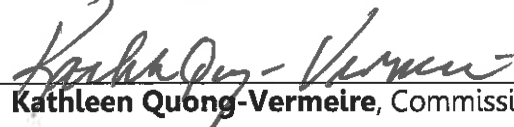
ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **7th** day of **September 2016**.

BOARD OF COMMISSIONERS

Vince Koesfer, President



Daniel Johnson, Commissioner



Kathleen Quong-Vermeire, Commissioner

Todd Fultz, Secretary



George Landon, Commissioner

AUTOMATED METER READING SYSTEM EQUIPMENT AND SERVICES CONTRACT

This contract ("Contract") is made and entered into by and between **Highline Water District**, a Washington municipal corporation ("District"), and **Badger Meter, Inc.**, a Wisconsin corporation, with its principal place of business at 4545 W. Brown Deer Rd., Milwaukee, Wisconsin 53223 ("Badger") (individually a "Party" and collectively the "Parties") for the purposes set forth below.

RECITALS

WHEREAS, Highline Water District ("District") is a water special purpose district existing pursuant to Title 57 Revised Code of Washington ("RCW") owning and operating a water system within its corporate and service area boundaries in King County, Washington for the benefit of its customers; and

WHEREAS, pursuant to RCW 57.08.050 (3), the District is authorized to purchase equipment, supplies and materials in accordance with the procedures set forth therein; provided, as an alternative to RCW 57.08.050(3), the District is also authorized by RCW 57.08.050 (4) to purchase equipment, supplies and materials from suppliers designated on current state agency, county, city or town purchasing rosters at the price and terms as described on the applicable roster when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city or town; and

WHEREAS, RCW 39.34.030 (1) authorizes the joint and cooperative exercise of shared powers, privileges and authority between public agencies of the State of Washington and public agencies of any other state; and, pursuant to RCW 39.34.030 (5)(b), with respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency(s) that awarded the bid, proposal or contract complied with its own statutory requirements; and

WHEREAS, the District must acquire an automated meter reading system ("AMR System"), and such systems may be procured through the competitive negotiation procedure set forth in RCW 39.04.270; and the Alderwood Water and Wastewater District ("Alderwood") previously complied with such statute and procured an AMR System from Badger Meter, Inc. ("Badger"), a vendor of AMR Systems ("Vendor"), through a request for proposal ("Request for Proposals"), a competitive negotiation process, and a procurement contract ("Procurement Contract") in accordance with the requirements of RCW 39.04.270; and

WHEREAS, both the Request for Proposal and Procurement Contract that Alderwood used to purchase an AMR System from Badger contained provisions allowing for other governmental entities like Highline to avail themselves of Alderwood's purchase of an AMR System from Badger for similar purchases at the same price and terms; and Northshore Utility District ("NUD") and Mukilteo Water and Wastewater District ("Mukilteo"), both water-sewer districts existing pursuant to Title 57 RCW under

the laws of the State of Washington, previously entered into intergovernmental cooperative purchasing agreements with Alderwood to utilize Alderwood's research work and the executed purchase contract with Badger for the purchase of an AMR System, and both entities subsequently executed purchase contracts with Badger for the purchase of AMR Systems; and

WHEREAS, pursuant to authorization set forth in Resolution 16-4-6B adopted by the District Board of Commissioners on April 6, 2016, the District entered into an Interlocal Cooperative Purchasing Agreement dated April 7, 2016, with Alderwood wherein Alderwood agreed to allow the District to utilize Alderwood's research and its executed AMR System purchase contract with Badger to allow the District to execute its own AMR System procurement contract with Badger under similar prices and terms as those secured by Alderwood through its Request for Proposals process; and

WHEREAS, the District now desires to acquire an AMR System and related services from Badger, and Badger has represented to the District that it has the specialized expertise and experience necessary to properly provide the Equipment and Services required by this Contract in a timely manner and that its proposal includes all of the functions and features required for the Equipment and Services; and

WHEREAS, the District has accepted Badger's offer to provide the Equipment and Services in accordance with the Contract Documents;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties herein contained and to be performed:

1. Badger agrees to provide the Services, furnish all tools, services, materials, equipment and incidentals as necessary on the terms and conditions specified in the Contract Documents. Badger further agrees to assume and perform all of the covenants and conditions required of Badger pursuant to the Contract Documents, for a Not-To-Exceed Price of Thirty Three Thousand and 00/100 Dollars (\$33,000.00), plus applicable sales tax for the initial purchase of the BEACON Mobile AMA system as identified in Attachment B incorporated herein in full by this reference.
2. The Parties acknowledge that the District reserves the right to purchase District Equipment, as defined herein, in accordance with the unit prices set forth in Terms and Conditions, and Attachment B incorporated herein in full by this reference.
3. The effective date of this contract shall be the date that this Contract has been signed by an authorized representative of the District.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following Contract Documents, each of which is attached hereto and are made part of the Contract by this reference in the following order of precedence: (1) Contract Amendments/Change Orders; (2) this Contract, including Attachments; (3) any proposals to the District from Badger; and (4)

The Recitals set forth above are hereby incorporated in this Contract in full by this reference.

BADGER: Badger Meter, Inc.

By: _____

Printed Name: _____

Its: _____

Dated: _____

Federal Tax ID: 39-0143280

DISTRICT: Highline Water District

By: _____

Printed Name: _____

Its: _____

Dated: _____

APPROVED AS TO FORM:
ATTORNEY FOR THE DISTRICT

By: _____

John W. Milne

AUTOMATED METER READING SYSTEM EQUIPMENT AND SERVICES CONTRACT

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DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the District's determination that Badger's Services have been completed in accordance with the Contract.

AMR: Automated Meter Reading System.

Badger: The corporation contracting with the District to provide the Equipment and Services and perform the Work under this Contract.

Badger Services: Furnishing of labor, time or effort by Badger including software maintenance or support, custom software, consulting, design, operation assistance, training services and other on-call services that may be required by the District.

Change Documentation: A written document agreed upon by Badger and the District, which if it creates a material change to the Contract terms or Specifications shall be executed as a Change Order.

Change Order: A written change to the Contract modifying, deleting or adding to the terms, conditions, or scope of Services, signed by the District with or without notice to the sureties.

Commissioning Period: The period beginning with training and concluding with performance testing to the District's satisfaction.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the District and Badger for completion of the Services under the Contract.

Contract Price: The total amount payable by the District to Badger for performance of the Services in accordance with the Contract.

Contract Schedule: The schedule for Badger's provision of the Equipment and Services and attached as Attachment C.

Contract Time: The total time for Badger to perform the Services as set out in the Contract Schedule.

Day: Calendar day.

District Equipment: Any equipment that the District may purchase based on the unit pricing contained in Attachment B.

Documentation: Technical publications relating to the use of the software or services to be provided by Badger under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by Badger to the District.

Effective Date: The date this Contract is effective defined as the date by which an authorized representative of each Party has executed the Contract.

Equipment and Services during Installation: The furnishing of materials, equipment, custom software, consulting, design, labor, and effort by Badger during the installation and operation of the supplied AMR system.

Final Acceptance: The date the District acknowledges that Badger has provided the Services through installation as defined in Section 2.1 1 herein.

Final Payment: Total monies payable to Badger under terms and conditions of contract documents

Force Majeure: means an event that is unforeseeable as of the Effective Date and that is beyond the reasonable control of Badger and the District and is limited to:

- Natural disasters declared by the governor of Washington or President of the United States, including but not limited to earthquakes;
- Acts or omissions of any government entity acting within its governmental capacity;
- Fire or other casualty for which Badger or its Subcontractors and/or Suppliers are not responsible;
- Quarantine or epidemic;
- Strike or defensive lockout; and,
- Unusually Severe Weather Conditions.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the District or Badger, as applicable, to manage the project on a daily basis and who may represent the District or Badger respectively for Contract administration.

Proposal: Badger's direct proposal to the District and all submissions by Badger relating to such proposal.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

RFP: Request for Proposals - the solicitation documents issued by Alderwood to select Badger, including any addenda.

Services: Everything to be provided and done for the fulfillment of the Contract and shall include all Equipment, software, hardware and services specified under this Contract, including Change Orders, also referred to as "Services" or "Services and Equipment." Badger's Scope of Services is found in Attachment A.

Subcontractors: A subcontractor shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with Badger, or with any Subcontractor of any tier for the performance of any part of the Contract. When the District refers to Subcontractor(s) in the Contract Documents, for the purposes of the Contract Documents and unless otherwise stated herein, the term 'Subcontractor(s) includes, at every level and/or tier, all subcontractors, sub- consultants, suppliers, and materials men.

Specifications: A section of the Contract consisting of written descriptions of Services to be performed, or the Equipment to be provided or the technical requirements to be fulfilled under this Contract and the Contract Documents.

WAC: the Washington Administrative Code

SECTION 1. STANDARD CONTRACTUAL TERMS AND CONDITIONS

1.1. Contract Administration and Contract Assignment

This Contract is between the District and Badger who shall be responsible for providing the Services described herein. The District is not party to defining the division of Services between Badger and its Subcontractors, if any - the Scope of Services and Specifications have not been written with this intent.

Badger represents that it has or shall obtain all personnel, materials and equipment required to perform Services hereunder, including but not limited to that set forth in the Scope of Services, attached as Attachment A.

The District may purchase any supplemental units pursuant to the Pricing Matrix found in Attachment B. Such additional units will be purchase using purchase order in accordance with Subsection 2.5.(2)b.

1.2. Contract Changes

A. Change Orders.

At any time during the performance of the Services, the District shall have the right to order in writing the omission or addition of the Services, or order changes or alterations in the Services required to be performed by Badger, and reasonable deductions or increases shall be made in Contract Price for such omissions, additions, changes or alterations in the Services, time for completion or Contract Price; but no such omissions, additions, changes or alterations shall be made by Badger, or paid for by the District, unless and until authorized by the District in writing by Change Order. If Badger objects to or otherwise disagrees with such Change Order, Badger shall so notify the District's Project Manager in writing within ten (10) days of the date of such modification, submitting with such notification a claim of equitable adjustment. If Badger fails to so notify the District such modification becomes final and accepted by Badger and becomes part of the Contract between the parties. The District will ordinarily respond within ten (10) days. However, absent a response the request for equitable adjustment shall be deemed denied and Badger may make a claim pursuant to Subsection 1.7.

B. Requests for Equitable Adjustment.

For the purposes of this Subsection 1.2, the written request for equitable adjustment must include sufficient detail to enable the District to ascertain the basis and the amount of any time or price increase requested, including the event or condition which causes Badger to submit its request for the adjustment; and the nature of the impacts which causes an increase to the Contract time or Contract Price.

Failure to timely provide the written notice and documentation as required by the District to support the request for equitable adjustment shall constitute a waiver of Badger's right to an adjustment. Discussion between Badger and District after the time period for notification of claim has expired shall not waive the ten (10) day requirement in Subsection I .2A.

Pending a final resolution of any request for adjustment, Badger shall diligently proceed with its performance of the Services.

1.3. Taxes, Licenses, and Certificate Requirements

Badger agrees to comply with all applicable federal, state and local laws, regulations, ordinances, and orders and to promptly pay when due all applicable taxes, fees and charges. The District may require certificates from federal, state, local or private bodies showing that all obligations are current and not delinquent and, in the event the District is held liable to pay any such taxes or contributions, Badger agrees to supply the District with all records necessary to compute the same and shall fully reimburse the District upon demand for the amount (including penalties and interest) paid by the District, and the District shall have the right to offset any amount so paid against any sums due Badger hereunder.

1.4. Assignment

Either party may assign its rights and obligations under this Contract with the express prior 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 may, upon at least thirty (30) prior written notice to the District, assign its rights and obligations under this Contract without the consent of District: (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; or (iii) in the event of a merger.

1.5. Indemnification and Hold Harmless

Badger's Obligations.

- (1) Badger shall defend, indemnify and hold harmless the District, its elected and appointed officers, officials, employees, agents and volunteers from and against any and every claim and risk and all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind, on account of injury to or death of any and all persons and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with the Services performed, or the materials and equipment supplied, under this Contract, or caused or occasioned in whole or in part by reason of activities performed by Badger or its Subcontractors, except only for those losses

resulting solely from the negligence of the District, its officers, officials, employees and agents.

- (2) Should a court of competent jurisdiction determine that this Section 1.5 is subject to RCW 4.24 115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Badger and the District, its officials, officers, employees and agents, Badger's liability hereunder shall be only to the extent of Badger's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Badger's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification, Badger represents that this waiver was mutually negotiated by the Parties.
- (3) If a lawsuit arises in respect to this Contract, Badger shall appear and defend the lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by the District, its elected or appointed officers, officials, employees, agents and volunteers, Badger shall pay the same.
- (4) The District may, in its sole discretion, (i) withhold amounts sufficient to pay the amount of any claim for injury, and/or (ii) pay any claim for injury of which the District may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of this Contract. The District shall exercise this discretion reasonably.
- (5) Any amount withheld by the District shall be held without interest until Badger secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, Badger shall reimburse and otherwise be liable for costs incurred by the District, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.
- (6) In the event the District incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from Badger.

1.6. Termination for Default or Convenience

A. Termination for Default

- (1) The District may terminate, without prejudice to any right or remedy of the District, the Services, or any part of it, for cause upon the occurrence of any one or more of the following events:
 - a. Badger fails to perform the Services or any portion thereof with sufficient diligence to ensure completion of the Services within applicable Contract milestones as set forth in Attachment C to be provided by Badger to the District;
 - b. Badger fails to perform the Services or any portion thereof with sufficient diligence to ensure Final Acceptance of the Services in a timely manner;
 - c. Badger is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 - d. Badger fails in a material way to re-perform, repair, replace or correct Services or

- Equipment not in conformance with the Contract;
- e. Badger repeatedly fails to supply skilled workers, or proper services, materials or equipment;
 - f. Badger repeatedly fails to make prompt payment to its employees or subcontractors;
 - g. Badger materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction over the matter or procedure;
 - h. Badger fails to comply with applicable state, city, county and federal laws, regulations, ordinances, orders and codes regarding safety; or
 - i. Badger is otherwise in material breach of any provision of the Contract.
- (2) If the District reasonably believes that one of the aforementioned events has occurred, the District will provide Badger with written notice of its "Intent to Terminate" the Contract for default, specifying within such notice the ground(s) for such termination. The District shall require Badger, at Badger's sole expense, to either, within thirty (30) days of the date of notice of default (a) correct the deficiencies noted in the District's "Intent to Terminate; or (b) provide the District with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, the District concludes that Badger has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the District shall thereafter have the right to terminate this Contract for default. Badger shall receive written notice of the termination.
- (3) Upon termination, the District may, at its option, finish the Services by whatever reasonable method it deems expedient.
- (4) Badger shall be liable for all damages and costs, including but not limited to: (i) any other costs or damages incurred by the District in completing and/or correcting the Services; and (ii) any other special, incidental or consequential damages incurred by the District which results or arises from the breach or Termination for Default.
- (5) In the event of Termination for Default, the District shall only pay Badger for any portion of Services successfully completed and accepted by the District prior to the date of termination. The District shall not be responsible for any other Badger costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with the Contract. In no event shall the District reimburse Badger for any costs directly or indirectly related to the cause of the Termination for Default.
- (6) If, after Termination for Default, it is determined that Badger was not in default, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of the District.

B. Termination for Convenience

- (1) Upon thirty (30) days written notice to Badger, the District may terminate the Services, or any part of it, without prejudice to any right or remedy of the District, for the convenience of the District.

- (2) If the District terminates the Services or any portion thereof for convenience, Badger may make a request to the District for payment of:
 - a. Reasonable direct costs for all Services completed prior to the effective date of the termination and not previously paid for by the District;
 - b. A reasonable allowance for overhead and profit for Services actually performed, provided and accepted by the District prior to the date of termination.
- (3) Badger shall not be entitled to any other costs or damages.
- (4) In no event, shall the total sum payable upon termination exceed the total Contract Price stated in Subsection 2.1, as reduced by prior payments.

C. Badger's Obligations During Termination

Unless the District directs otherwise, after receipt of a written notice of Termination for Default or Termination for Convenience, Badger shall promptly:

- (1) Stop performing Services on the date as specified in the notice of termination;
- (2) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services not terminated;
- (3) Cancel all orders and subcontracts, upon terms acceptable to the District, to the extent that they relate to the performance of Services terminated;
- (4) Assign as specifically requested by the District all of the rights, title, and interest of Badger in all orders and subcontracts;
- (5) Continue performance of Services only to the extent not terminated; and
- (6) Take any other steps required by the District with respect to this Contract.

1.7 Disputes, Claims and Appeals

- (1) Badger shall address questions or claims (other than a request for equitable adjustment) regarding the Contract in writing to the Project Manager, within ten (10) days of the date in which Badger knows or should know of the question or claim (including any denial of a request for equitable adjustment). No claim by Badger shall be allowed if asserted after Final Payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) days before Badger gives written notice, as required in this section. The Project Manager shall ordinarily respond to Badger in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) day following receipt by the Project Manager. Discussion between Badger and District after the time period for notification of claim has expired shall not waive the ten (10) day requirement in Subsection 1.7(1).
- (2) Pending final decision of a dispute hereunder, Badger shall proceed diligently with the performance of the Contract and in accordance with the direction of the Project Manager. Complying with the procedures set forth herein is a prerequisite to filing any lawsuit by Badger against the District. Failure to comply precisely with the time deadlines under this Subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the District.

- (3) All the provisions of this Subsection 1.7 shall survive the completion or termination of this Contract.

1.8 Severability

Should any provision of this Contract now or at any time during the term hereof be in conflict with any federal, state or municipal law, regulation or the like, or any applicable judicial decision, then such provision shall continue in full effect only to the extent permitted. In the event any provision of this Contract is thus held inoperative, the remaining provisions of this Contract shall nevertheless remain in full force and effect.

1.9 Nonwaiver of Breach

No waiver by the District of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the District. Such waiver by the District of any breach or violation by Badger of any provision of the Contract shall not constitute a waiver of any further or additional breach of such provision or of any other provision. This Contract may only be amended by a Change Order.

1.10. Laws and Venue

In the event that either Party brings a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in King County Superior Court, King County, Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington. In any litigation, arbitration or other proceeding by which one Party either seeks to enforce its rights under this Contract or seeks a declaration of any rights or obligations under this Contract, the prevailing party shall be awarded its reasonable attorneys' fees, costs and expenses incurred, including any reasonable attorneys' fees, costs and expenses incurred in any appeal.

1.11. Independent Status of Badger

In the performance of this Contract, the Parties shall be acting in their corporate or governmental capacities and not as agents, employees, partners, joint ventures or associates of one another. The Parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever. Badger shall not make any claim of right, privilege or benefit, which would accrue, to an employee under Title 41 RCW or Title 51 RCW.

1.12. Non-disclosure of Data

Data provided by either Party either before or after the Effective Date of the Contract shall only be used for its intended purpose. Neither Party shall utilize nor distribute the data in any form without the prior express written approval of the Party that owns the data.

1.13. Non-disclosure Obligation

While providing the Services under this Contract, both Parties may encounter personal information, licensed technology, software, documentation, drawings, schematics, manuals, data and other materials described as “Confidential”, “Proprietary,” or “Business Secret.” No Party shall disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual; provided, the Contract imposes no obligation upon a Party with respect to confidential information which the Party can establish that: (i) was in the possession of, or was rightfully known by the Party without an obligation to maintain its confidentiality prior to receipt from another party; (ii) is or becomes generally known to the public without violation of this Contract; (iii) is obtained by the receiving Party in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, (iv) is independently developed by a Party without the participation of individuals who have had access to that Party’s or the third party’s confidential information, If either Party is required by law to disclose confidential information, the disclosing Party shall notify the other Party of such requirement prior to disclosure.

1.14. Public Disclosure Requests

This Contract and its attachments shall be considered public records subject to public inspection and copying unless subject to exemption under the Washington Public Records Act, chapter 42.56 RCW.

If Badger considers any portion of the Services, including software, data and related materials, delivered to the District to be protected under the law, Badger shall clearly identify each such item with words such as “CONFIDENTIAL”, “PROPRIETARY,” or “BUSINESS SECRET.” If a request is made for disclosure of such item, the District shall determine whether the material should be made available under applicable Washington law. If the material or parts thereof are determined by the District to be exempt from public disclosure, the District shall not release the exempted documents. If the District determines the material is not exempt from public disclosure law, or the District is not in the position to make such a determination, the District shall notify Badger of the public records request and allow Badger ten (10) days to obtain a court order enjoining the District from disclosing the requested public record or portions thereof. If Badger fails or neglects to obtain such a court order within said period, the District shall release the requested public records. By signing this Contract, Badger agrees to the procedure set forth in this Subsection and shall have no claim against the District on account of actions taken under such procedure.

1.15. No Prototype Components

All equipment and materials furnished under this Contract shall be in production and be used by customers comparable to the District at the time of the Contract Effective Date. Test or prototype items shall be clearly identified as such and may be subject to rejection by the District. A sufficient inventory of Equipment shall be available to meet delivery requirements.

1.16. Hazardous Chemical Communication

In order to comply with Chapter 296-62 WAC, Hazard Communication, Badger shall prepare, a Safety Data Sheet (SDS) for all products containing any toxic products that may be harmful to the end user. The SDS Sheet shall accompany the toxic product(s) to the specified delivery sites.

The following information shall be included in the SDS:

- (1) Chemical Abstract Service (CAS) numbers for every chemical that is listed in the SDS.
- (2) If the product is actually used diluted, the dilution rate shall also be so stated in the SDS and the hazards and corresponding personal protection, etc. also be listed.
- (3) SARA Title 3 chemicals shall be listed with the percentage by weight of the total product.

1.17 Industrial and Hazardous Waste

Badger shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Badger shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

1.18 Prohibition on Asbestos-Containing Products

Asbestos-containing products shall not be provided to the District under this Contract, unless no practicable alternative for the asbestos-containing product exists and Badger obtains the prior written consent of the District to accept such asbestos-containing product(s). Badger shall notify the District in writing at least sixty (60) days before it plans to supply the District with an asbestos-containing product. The District shall respond to such notification within thirty (30) days of receipt of such notice. Badger shall comply with applicable state, federal and local labeling and other laws, regulations and ordinances pertaining to asbestos-containing products, including, but not limited to, the State of Washington Industrial Safety and Health Act and the federal Occupational Safety and Health Act.

1.19 Patents, Royalties and Badger's Infringement Indemnity

Badger is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, Badger shall, if requested by the District, furnish acceptable proof of a proper release from all such fees or claims.

Badgers Infringement Indemnity. Badger shall indemnify and hold the District harmless from and against any and all third-party suits, actions, losses, damages, claims or liability of any type, character, or description, including, but not limited to, all expenses of litigation, court costs and attorneys' fees, based upon any claim of infringement of any patent or other license or intellectual property right (whether by way of trademark or otherwise) resulting directly or indirectly from the manufacture, sale, supply or importation of the parts and components or their use in an AMR system. Badger agrees to notify the District as soon as reasonably possible of any material matters with respect to which the foregoing indemnity is likely to apply and of which Badger has actual knowledge. If notified in writing of any action or claim for which Badger may be liable to provide indemnity, Badger shall, without limitation, defend (subject to reasonable consultation with the District) such action or claim at Badger's sole cost and expense and pay the costs, damages and attorneys' fees awarded against the District in such action or claim; provided, however, that Badger shall have the reasonable right to control the defense and

settlement of all such actions or claims, which settlement shall be subject to the consent of the District, if applicable, not to be unreasonably withheld. Indemnification pursuant to this provision shall not be predicated on the District having made payment on any such claim. The obligations of this Subsection 1.19 shall survive Contract completion or termination and/or assignment of this Contract.

Badger grants the District a royalty free irrevocable non-exclusive license to use the technologies provided and contained in the materials furnished under the Contract.

1.20. Design Defects

The District shall declare a design defect in the event that five percent (5%) of any like items purchased under this Contract experience the same failure. The District shall notify Badger of the defect in writing; Badger shall, at its sole expense, provide a modification, redesign or a plan to correct the defect within thirty (30) days of receipt of the notification.

The warranty period and terms for corrected items under this section 1.20 shall be the same as for the initial items purchased under this Contract and shall begin on the correction of the defect as determined by the District.

1.21. Changed Requirements

New Federal, State and District laws, resolutions, regulations, ordinances, policies and administrative practices may be established after the Effective Date of this Contract and may apply to this Contract. To achieve compliance with changing requirements, Badger agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. If Badger believes such changes entitle it to a change in Contract Price or Contract Time, it shall submit a Change Order request to the District in compliance with Subsection 1.2 Contract Changes.

1.22 Patents, Copyrights and Rights In Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the District, excluding improvements to Badger's own previously patented and copyrighted items, which shall and do remain the sole and exclusive property of Badger. The District in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

Badger agrees that the ownership of any plans, drawing, designs, scope of Services, technical reports, operating manuals, calculations, notes and other Services submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this Subsection as "Subject Data") shall be vested in the District.

Notwithstanding the above, nothing in this Contract transfers any right, title or interest in or to any previously patented or copyrighted items of Badger to the District or any other party.

All such Subject Data furnished by Badger pursuant to this Contract, other than documents exclusively for internal use by the District, shall carry such notations on the front cover or a title page, (or in such

case of maps, in the name block), as may be requested by the District. Badger may also place its identifying information on all Badger-furnished Subject Data. All such identification details shall be subject to approval by the District prior to printing.

Badger shall ensure that the substance of foregoing Subsections is included in each subcontract for the Services under this Contract.

1.23. Bankruptcy

In the event Badger shall, at any time when this Contract is in effect, be adjudicated bankrupt, make an assignment for the benefit of creditors, commit any act of insolvency, or fail to pay promptly when due all bills and charges for labor, materials, and rental of equipment used in the performance of this Contract, or of insolvency, or fail to pay promptly when due all bills and charges for labor, materials, and rental of equipment used in the performance of this Contract, or required by this Contract to be paid, and/or in the event of Badgers failure to perform promptly each and every obligation required hereunder, the District, upon mailing a written notice to Badger, may take over the Services or any separable part thereof, and complete the same, or have same completed at Badger's expense, and in taking over the Services the District shall have the right, for the purpose of completing the Services hereunder, to take possession of all supplies, equipment, materials and documentation related to the Services belonging to Badger, and for such purpose this Contract shall be construed as an assignment by Badger to District of said supplies, equipment, materials and documentation. Such taking over shall not constitute or be construed as a waiver by the District of any action, claim or demand the District may have against Badger by reason of injury or damage resulting to the District because of Badger's failure of performance hereunder. It is agreed that in the event of such taking over by the District, Badger shall pay to District a sum equal to District's total cost of completing the Services, plus a sum of reasonable attorney's fees in taking over and completing the Services. In no event shall any delay in performance hereunder by Badger be excused unless (and then to the extent only) such delay is excused by the District in respect to Badger's obligations under its Contract.

1.24. Audits

A. Badger, including its Subcontractors, shall maintain books, records, documents, and other evidence directly pertinent to performance of the Services under this Contract in accordance with generally accepted accounting principles and practices consistently applied. The District, or any of its duly authorized representatives, shall, for the purpose of audit and examination, have access to and be permitted to inspect and copy such books, records, and documents for a period of six (6) years after completion of this Contract at its own expense. The District shall also have access to such books, overhead data, records and documents during the performance of this Contract if deemed necessary by the District to verify Badger's performance of the Services and invoices, to assist in negotiations for amendments to the Contract, and to resolve claims and disputes. Such information shall include but not be limited to:

- (1) A statement about the accounting system indicating the following:
 - a. An overview of the accounting system and its capability to track costs and provide financial information.

- b. Written procedures and policies concerning the accounting system, timekeeping, payroll, purchased services and materials, direct and indirect cost control, asset capitalization, depreciation, and pre-contract costs.
- (2) Chart of accounts including definition of what is included in each account.
- (3) Amounts charged other customers for AMR units similar to those supplied in the same geographic area and same quantities as the District pursuant to this Contract.
- B. Audits conducted under this Section shall be in accordance with Generally Accepted Auditing Standards and established procedures and guidelines of the reviewing or audit agency(ies).
- C. If the audit shows that any amount was overpaid or underpaid, such amount will promptly be paid by the appropriate Party to the other Party. If the audit shows that Badger has overcharged the District by more than ten percent (10%) over any calendar month or if Badger has not maintained complete and accurate books and records, Badger shall pay for the cost of the audit and reimburse the District for the overcharge.
- D. Badger agrees to the disclosure of all information and reports resulting from access to records under subparagraphs A and B of this Subsection.
- E. Badger shall ensure that the foregoing paragraphs are substantially included in each subcontract for Services on the Project.

1.25. Indemnity

Badger shall defend, indemnify and hold harmless the District, its elected and appointed officers, officials, employees, agents and volunteers ("Indemnified Parties") from and against all of the following claims and demands: damages, defense, indemnity, loss, judgment, equitable recovery, equity, and any other liability or obligation including but not limited to loss of use and attorney fees and expenses of any kind, caused or occasioned in whole or in part by reason of: 1) the services performed and materials or equipment supplied under or related to this contract; or 2) the presence and activities of Badger or its subcontractors and suppliers, or their property, employees or agents, upon or in proximity to the property of the District, and any other property upon which Badger is performing any work called for or in connection with this Contract, subject to the limitations provided below (collectively the "Indemnified Claims").

In addition to any remedy authorized by law, the District may retain so much of any money due the Contractor as deemed necessary by the District to ensure the defense and indemnification obligations of this Section until final disposition has been made of such Indemnified Claims.

Liability For Negligence. Pursuant to RCW 4.24.115, to the extent liability for Indemnified Claims (including defense obligations) were caused or result from the concurrent negligence of (a) the District and (b) Contractor or the Contractor's agents or employees, the indemnity and defense obligations under this Agreement shall be limited to the extent of the Contractor's negligence.

Title 51 Waiver. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been specifically and mutually negotiated by the parties.

Contractor further agrees to require its consultants, subcontractors, and suppliers and their Consultants, subcontractors and suppliers to similarly indemnify and hold Contractor harmless and waive immunity under Title 51 solely for the purposes of this indemnification.

SECTION 2. SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2.1 Execution of the Contract and Total Price

- A. The documents constituting the Contract between the District and Badger are intended to be complementary so that what is required by anyone of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence as listed on this Contract. The date the Contract Form is countersigned by the District shall be the "Effective Date" of the Contract. No other act of the District shall constitute Contract award. After Contract award, the District shall issue a "Notice to Proceed" detailing the Services to be performed. The total price of this Contract, 31,300.00 \$, plus applicable sales tax for the initial purchase of the BEACON Mobile AMA system as identified in Attachment B incorporated herein in full by this reference. Purchase of Meter Endpoint Equipment (Attachment "B") shall be by Purchase Order per Section 2.5. The Contract Price shall not be adjusted unless authorized by a Change Order in accordance with Subsection 1.2 Contract Changes.
- B. Badger Equipment and Services may be purchased at the District's option based on the unit prices set forth in Attachment B.
- C. The Contract may be executed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.
- D. Cooperative purchase by other governmental or municipal agencies may be facilitated in compliance with Chapter 39.34 RCW and the execution of an Intergovernmental Cooperative Purchasing Agreement.

2.2 Contract Term and Notice to Proceed

- A. The term of this Contract shall commence on the Effective Date of the Contract and, unless terminated earlier, shall terminate at the District's discretion pursuant to the provisions of Subsection 1.6B.
- B. Notice(s) to Proceed shall be issued referencing this Contract. Notice(s) to Proceed shall define and authorize the Services by Badger based on the Services contained in Attachment A. The Notice(s) to Proceed issued by the District may confirm duly executed Change Orders to the Contract terms, funding or other matters subject to Subsection 1.2, Contract Changes. Badger shall commence the Services upon receipt of the Notice to Proceed and shall diligently

prosecute the same in conformity with the Contract Schedule, which the District may change from time to time for any reason.

2.3. Schedule

Badger shall provide a Delivery Schedule to the District within _____ days of the Effective Date of this Contract for the provision of the Services as referenced in Attachment A and the Meter Endpoint Equipment as referenced in Attachment B for the District’s review and approval. Following the District’s approval of such Delivery Schedule, such Delivery Schedule shall be included in this Contract as Attachment C and shall be incorporated herein as part of the Contract by such reference (“Delivery Schedule”).

2.4. Notices

All notices or Documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.
For Project Management related notices or Documentation:

Highline Water District	Badger Meter, Inc.
Greg Wilson 23820 30 th Ave S. Kent, WA 98032 Phone: (206)-592-8914 Email: gwilson@highlinewater.org	Mr. Torre Treece, Account Manager 4545 W Brown Deer Rd Milwaukee, WI 53224-9536 Phone: (425) 766-3034 Email: ttreece@badgermeter.com

2.5 Payment Procedures

(1) Invoices

Attached as Attachment D is the Contract Schedule of Values (“Schedule of Values”) that identifies the major cost milestones relating to this Contract.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

(2) Subcontractor Prompt Payment

Badger shall pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) days from the receipt of each payment Badger receives from the District. Badger shall pay any and all other bills when due for all charges in connection with its Services. Failure to comply with the provisions of this paragraph shall constitute a default under this Contract. At any time the District may request, as a condition precedent to payment under this Subsection 2.5, written releases from Subcontractor(s) for the completed portion of the Subcontractors Services, in a form acceptable to the District.

a. Payment Procedures For the Implementation Services

The Schedule of Values identifies the major Implementation Services milestones. Within thirty (30) days of the issuance of a Notice to Proceed by the District for this Contract, Badger shall submit to the District a more detailed schedule of values that accurately defines the Services (or deliverables) performed for each month and a refined value of such Services. The final schedule of values shall substantially conform to the preliminary schedule identified on Attachment D and shall be subject to the District Project Manager's approval prior to implementation. Such District approval shall not be unreasonably withheld. The revised and approved Schedule of Values shall include line items, which reflect the values associated with the design of the major components of the AMR system in such detail to allow the Project Manager to monitor and track monthly progress and percentage completion of the Services to insure timely progress and approval of progress payments

Monthly Progress Disbursements. Monthly progress payments are controlled by successful, timely completion of the milestones set forth in Attachment C. Monthly progress payments will be made against the allocated funds for each milestone as invoiced and approved by the Project Manager. However, Badger shall not be entitled to any payment for successive milestones if the deliverables from the previous milestone have not been accepted by the District.

b. Payment Procedures For the Meter Endpoint Equipment and Other Purchases

Following the request by purchase order for Meter Endpoint Equipment and the delivery of the same, Badger shall invoice the District. The District will make payments to Badger according to the Contract based on actual equipment purchased and delivered as set forth in Attachment B. The quantities provided for each year are estimated annual requirements. The District will place orders as needed in lots per year or as determined by the District (estimated lead-time of AMR products is 6 weeks) for pro-rated monthly delivery. The District does not guarantee the quantities estimated for each item; nor does the District limit itself to the estimated quantities.

General Condition

Before any payment can be made, Badger must submit a completed W-9 form to the District.

2.6 Pricing

Prices for the Implementation Services shall remain firm through _____, 2016.

Prices in effect at the time that a District purchase order is issued for the Meter Endpoint Equipment shall be good for a period of twelve (12) months following the date of the first purchase order by the District. The pricing for the Meter Endpoint Equipment may be extended annually for three (3) additional twelve-month periods by the issuance and acceptance of a purchase order. After the first twelve (12) months, a price escalation not greater than two percent (2%) is permitted in subsequent 12 month periods. Only one escalation will be allowed in each twelve (12)-month period. Badger shall guarantee that the prices charged to the District, over the course of the Contract, will not exceed the

prices charged by Badger to any other customer purchasing a similar product or service in a similar market situation under similar terms and conditions.

To apply for a price escalation, Badger must request an adjustment. Requests for any such change are to be made in writing to the District's Project Manager. The price adjustment shall be up to two percent (2%) of the then current District cost for each item included on Attachment B. The District shall reasonably evaluate this information to determine if revising the pricing is fair and reasonable to the District. Any price adjustment approved by the District shall be retroactive to the date of the written request for adjustment, provided, if Badger fails to give the District timely notice, prices shall not be changed.

Badger warrants that the prices charged the District during the term of this Contract shall not exceed the prices charged by Badger to any other customer purchasing a similar product or service in a similar market situation under similar terms and conditions.

2.7. Shipping Charges

All prices shall include freight FOB to the delivery point(s) designated by the District, and shall not include additional compensation for freight charges.

2.8. Cost Mark-Up on Additional Services

On all additional Services, Badger shall be entitled to a ten percent (10%) mark upon Subcontractor costs and other direct costs.

2.9. Direct Costs Related to Additional Services

All direct costs for additional Services, if any, performed by Badger at the District's request, and included in a Change Order, shall be billed at cost and in accordance with subparagraph 2.8 above. Badger's costs for travel, lodging, meal expenses, equipment, materials and supplies, equipment rental and all other costs related to the Services are included in the Total Price (section 2.1A) and will NOT be billed separately to the District. Badger's costs for travel, lodging, meal expenses, equipment, materials and supplies, equipment rental and all other costs related to additional Services will be billed to District at the applicable GSA travel per diem rates to Seattle, Washington.

2.10. Acceptance Process

The District may give iterative acceptances as the Services are provided either by phase or milestone. Badger shall give the District "Notice of Completion" of Services related to a specific milestone following Badger's completion of all such Services associated with that Milestone or phase.

(1) Acceptance process.

Upon completion of the milestone deliverables Badger shall notify the District and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Badger of completion of the milestone, District shall issue a written notice of milestone Acceptance or provide Badger with a notification of rejection, which will include documentation of the specific grounds for the rejection,

outlining items not in compliance with the deliverable guidelines. Acceptance shall not be unreasonably withheld.

(2) Correction of deficiencies process.

If a deliverable is rejected, Badger will have a commercially practicable time, not exceeding thirty (30) days, to correct items documented in the District's notification of rejection. Following the delivery of Badgers' notice that the Services has been corrected, the District shall issue a written notice of Acceptance or provide Badger with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Services not in compliance with the milestone. The project schedule shall be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Badger's second attempt to correct the Services and no clear plan can be agreed upon between the District's Project Manager and Badger's Project Manager, the District shall determine the appropriate corrective actions.

2.11. Final Acceptance Process

The District shall begin the Final Acceptance process in accordance with the Contract as follows:

- A. Final Acceptance shall be based on successful completion of the Services as referenced on Attachment A.
- B. If the District Accepts the Services, the District will send a notice of Final Acceptance to Badger indicating the successful completion of the performance testing.
- C. If District determines that the Services are not acceptable, the District shall notify Badger in writing, describing the deficiencies.
- D. Badger shall either provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period with no charge to the District.
- E. If the District Accepts the Services following a second or subsequent Performance Test the District will send a notice of Final Acceptance to Badger.
- F. If Badger does not correct or replace the unacceptable Services the District may declare a breach of contract.
- G. Final Acceptance shall not be unreasonably withheld.

2.12. Warranty Provisions

- A. Badger warrants that the Implementation Services shall in all material respects conform to the requirements of this Contract.
- B. Badger warrants that qualified, professional personnel with in-depth knowledge shall perform the Implementation Services in a timely and professional manner, and that the

Implementation Services shall conform to the standards generally observed in the industry for similar Implementation Services.

- C. Badger warrants that the Implementation Services shall be in compliance with all applicable laws, rules and regulations.
- D. Badger warrants that the performance of the Implementation Services and any software provided is free from intentional viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as “backdoor shut down mechanisms”, “time bombs”, and features that can “retire”, “shut down”, “cripple” or “stop” the software. Badger further warrants that neither the software alone nor through contact with Badger, is capable of electronic self-help that may deprive the District of the use of the licensed software.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.13. Equipment Warranty

For the specific terms of the Equipment Warranty, see Attachment F incorporated herein as if fully set forth. Any modifications to the Equipment Warranty shall be subject to the District’s prior written review and approval, such approval to be given or withheld in the District’s sole discretion.

2.14. Defective Services

Prior to Final Acceptance, when and as often as the District determines that the Services or Equipment, furnished under the Contract is not fully and completely in accordance with any requirements of the Contract, it may give notice and description of such non-compliance to Badger. Within seven (7) days of receiving such written notification, Badger shall supply the District with a detailed, written plan which indicates the time and methods needed to bring the Services or Equipment in compliance with the Contract. The District may reject or accept this plan at its reasonable but sole discretion, If the District rejects the plan Badger may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the District by law, including those available under the Uniform Commercial Code, Title 62A RCW.

SECTION 3. INSURANCE REQUIREMENTS

3.1. Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, Badger shall file with the District evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, and the expiration date and that the District will be provided notice as an additional insured of any cancellation lapse or material change as provided in the applicable insurance policy.
- B. Failure to provide such insurance in a timeframe acceptable to the District shall enable the District to suspend or terminate Badger’s Services hereunder in accordance with Contract

provisions regarding "Termination for Convenience/Default." Suspension or termination of this Contract shall not relieve Badger from its insurance obligations hereunder.

3.2. Insurance Requirements

- A. Badger shall obtain and maintain the minimum insurance set forth below. Badger shall provide proof of such required insurance coverage (a certification of liability insurance and endorsements which shall be made part of the Contract Documents in Attachment E).

By requiring such minimum insurance, the District shall not be deemed or construed to have assessed the risks that may be applicable to Badger under this Contract, Badger shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the Scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form. Errors and omissions when required may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Badger warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services that is the subject of this Contract.

- B. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- (1) **General Liability**

Insurance Services Office form number (CG 20 10 10 01 and CG 20 37 10 01) covering COMMERCIAL GENERAL LIABILITY.

- (2) **Automobile Liability**

Insurance Service form number (CA 0001 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol I "any auto"; or the combination of symbols 2, 8 and 9.

- (3) **Workers' Compensation**

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington as well as any similar coverage required for the Services by applicable federal or "Other States" State Law.

(4) Employers Liability or "Stop Gap":

The protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

Badger shall maintain limits no less than for:

- (1) General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit (provide CG 25 03 05 09 or equivalent acceptable to the District).
- (2) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation: Statutory requirements of the state of residency.
- (4) Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles self-insured retentions shall be declared to, and approved by, the District. The deductible and/or self-insured retention of the policies shall not limit or apply to Badger's liability to the District and shall be the sole responsibility of Badger.

E. Other Insurance Provisions

The Insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

(1) General Liability and Auto Liability Policies:

"The District and its elected and appointed officers, officials, employees and agents are additional insureds" as respects liability arising out of activities performed by or on behalf of Badger in connection with this Contract, Use the above exact quoted language on the Endorsement Form.

Badger's insurance coverage shall be primary insurance as respects the District and their collective officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the District, its officers, officials, employees or agents shall not contribute with the insurance or benefit Badger in any way. (provide CG 20 01 04 13 or equivalent acceptable to the District)

Badger's insurance shall apply separately to each insured against whom a claim is made

and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the District:

Insurance is to be placed with insurers with a Bests' rating of not less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the District, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the District, Badger shall, upon notice to that effect from the District, promptly obtain a new policy, and shall submit the same to the District, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

Badger shall include all Subcontractors and/or sub-consultants as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor and/or sub-consultant. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

H. Endorsements

Endorsement must be included with insurance form(s) acceptable to the District. The endorsement form(s) which comply with these insurance requirements must be provided to the District before the District will execute the Contract.

SECTION 4. SPECIFICATIONS

Attached as Attachment G are the District's Endpoint Equipment specifications that shall apply to this Contract.

ATTACHMENT "A"

SCOPE OF SERVICES

AUTOMATED METER READING SYSTEM IMPLEMENTATION

This project includes all work and equipment required to implement an Automated Meter Reading (AMR) System. AMR system shall be functional, in use and ready for installation of new radio equipment meters in large quantities by the District at completion of this project. All equipment to be provided under this Contract shall be new and undamaged.

Badger will provide documentation of work products as appropriate to adequately record Badger's work, including all assumptions made, regulation interpretations, methodology used, calculations rationale supporting recommendations, and meeting or conversation records.

All draft and final deliverables are to be provided to the District in the following formats:

One electronic copy

The District will create and distribute additional copies of the deliverables as required.

(A) Task 100 - Project Management

Badger shall organize, manage, and coordinate the disciplines required to provide the Services. Badger shall coordinate the Services with efforts performed by District staff. Badger shall provide project management and contract administration services.

(C) Task 200 - Vehicle Mounted Data Collection Units

Badger shall provide two (2) Orion ME External Receivers per the specifications. The Orion ME External Receiver units shall be programmed with software capable of interfacing with their route management software. Each unit shall be performance tested on a Highline meter reading route by the District before acceptance.

{D) Task 300 – Beacon Software Access

Badger shall provide access and install the web based route management software. All required hardware and software to communicate with the data collection units shall be included. Data communication will be wireless. The units shall be performance tested by the District using units provided in task 200 before acceptance by the District. Pursuant to Sections 1.13 and 1.23 of the Contract, the District shall own all Subject Data, including data files, and shall be responsible for the retention of such Subject Data pursuant to applicable State of Washington public records retention schedules.

(E) Task 400 - Billing interface

Badger shall provide the District with a specific file layout for Badger's route management software. Badger shall support and offer solutions to the District to ensure the District's data requirements are met with the new interface file format. Badger shall be responsible to coordinate the development of the District's special interface to its customized billing software, and the District will assist as reasonably required. Once the new interface is completed, the file will be sent to Badger for testing and certification. Badger shall report back to the District to ensure the new interface file meets the District's requirements and shall provide a live Web-X demo. The new interface file and route management software shall include the following elements:

- (i). Transfer of meter reads for utility billing purposes.
- (ii). Transfer of whole meter change-out information.

(F) Task 500 – Integration

Badger shall provide and ensure that all of the systems developed or provided in Tasks 300 thru 400 work together seamlessly and easily. Products must be fully integrated and fully functional.

(G) Task 600 – Training

At least the following three (3) groups of users must be trained. The District can determine how the two (2) days of total training are allocated among the three (3) groups.

- (i). Meter Reading Staff responsible for the daily operation of the Orion ME External Receiver units.
- (ii). The Customer Service Supervisor responsible for the overall operation of the AMR system and maintenance of the route and meter databases.
- (iii). Billing/Finance Staff responsible for processing the meter readings and producing utility billings.

PRICING- ATTACHMENT B

Effective May 18, 2016 thru May 17, 2017

Highline Water District, WA

METER ENDPOINT EQUIPMENT

5/8" RCDL Model 25 Low Lead Meter with HR-E, ORION ME Pit Endpoint	Each	\$135.70
3/4" RCDL Model 35 Low Lead Meter with HR-E, ORION ME Pit Endpoint	Each	\$151.50
1" RCDL Model 55 Lead Meter with HR-E, ORION ME Pit Endpoint	Each	\$181.20
1-1/2" RCDL Model 120 Low Lead Meter with HR-E, ORION ME Pit Endpoint	Each	\$329.65
2" RCDL Model 170 Low Lead Meter with HR-E, ORION ME Pit Endpoint	Each	\$438.70
1-1/2" E-Series Ultrasonic Meter, w/ORION ME Pit Endpoint	Each	\$398.10
2" E-Series Ultrasonic Meter, w/ORION ME Pit Endpoint	Each	\$513.10
ORION ME Pit Endpoint	Each	\$ 61.60
Register for 5/8 - 1" PD meter's - HR-E, ORION ME Pit Endpoint	Each	\$104.20
Register for 1-1/2 – 2" PD meter's - HR-E, ORION ME Pit Endpoint	Each	\$108.45
Field Splice Kit (P/N 62084-001)	Each	\$ 4.75

BEACON Mobile AMA System

BEACON Engagement Fee	1	\$12,750.00
BEACON AMA Mobile Hosting Fee, Year 1 Includes: 221,000 BEACON AMA Mobile Hosting Service Units (68886-201) @ \$0.04 each. *	1	\$8,840.00
Mobile Read Module – Year 1 Annual (68886-501) <i>Annual Renewal is required. Annual Renewal for Years 2 & 3 for 25,000 services: \$1,900.00. Annual Renewal Years 4 and beyond subject to change based on current published pricing at time of renewal.</i>	1	\$3,800.00
Mobile Read Module User Login - Year 1 Annual (68886-502) <i>Annual Renewal is required. Annual Renewal Years 2 & 3: \$360.00. Annual Renewal Years 4 and beyond subject to change based on current published pricing at time of renewal.</i>	Each	\$360.00
Windows®-based (Windows 7 or higher) Tablet or Laptop is required, but not included.**		Customer Supplied

ORION ME Mobile Transceiver Kit	Each	\$ 2,750.00
Trimble Ranger 3 Handheld with ORION ME Transceiver (optional)	Each	\$ 6,418.00
Training Courses (required) – On-site Course Delivery		
BEACON AMA Intro	1	\$450.00
BEACON Data Exchange	1	\$350.00
BEACON Mobile Data Sync	1	\$200.00
BEACON AMA Field Application Suite – ORION Mobile Read –	1	\$1,800.00
BEACON Handheld Training (optional) (only required if purchasing the Trimble Ranger handheld) <i>\$1,000 discount offered if completed at same time as other BEACON training</i>	1	\$1,800.00

*Refer to enclosed *BEACON AMA Mobile Solution Terms & Conditions* for more information. Service Unit pricing of \$0.04 each is based on Purchase Increment commitment of > 50,000 units. BEACON AMA Mobile Hosting Fee is a recurring charge, and additional Service Unit purchase is required once initial units have been consumed.

** Refer to BEACON® Advanced Metering Analytics Product Data Sheet BEA-DS-01912-EN for system requirements.



The following Terms & Conditions apply to BEACON® AMA Mobile Solution and BEACON AMA Traditional Fixed Network Solution services sold by Badger Meter, Inc. ("Badger Meter") or one of its authorized distributors to a utility or non-utility customer ("Customer") and are in addition to those found at <https://www.badgermeter.com/certifications-legal/>.

ONE-TIME FEES

BEACON ENGAGEMENT FEE

A one-time BEACON Engagement Fee is required for all BEACON AMA Mobile Solution and Traditional Fixed Network Solution deployments. This fee includes the setup and activation of Customer's BEACON AMA portfolio and initial licensing of the BEACON AMA software. Fees charged to a Customer by its utility billing vendor for an interface file are separate and are the responsibility of the Customer. One-time BEACON Engagement Fee will be invoiced by Badger Meter or one of its authorized distributors.

SERVICE UNITS

Recurring service fees are based on asset type and assessed monthly ("Service Units"). Asset types are identified by unique Service Unit part numbers as represented in this section. Service Units will be invoiced by Badger Meter or National Meter & Automation, Inc.

HOSTING FEE SERVICE UNITS

Customers deploying a BEACON AMA Mobile Solution or Traditional Fixed Network Solution will be assessed Hosting Fee Service Units which include Customer's access to the BEACON AMA software and hosting of Customer's metering data. A Hosting Fee Service Unit represents one (1) month of service for an Account in Customer's BEACON AMA portfolio and will be assessed on the 26th of each month. Service Unit price may vary if purchase increment is changed.

MOBILE: Mobile Hosting Fee Service Units (68886-301) will be assessed monthly, per eligible Mobile Account in Customer's BEACON AMA portfolio. Any Account which is brought into Customer's portfolio which is not classified as a Fixed Network or Cellular Account will be classified as a Mobile Account.

FIXED NETWORK: Fixed Network Hosting Fee Service Units (68886-201) will be assessed monthly, per eligible Fixed Network Account in Customer's portfolio. An Account will be classified as a Fixed Network Account the first time a fixed network message is heard by a gateway.

FIXED NETWORK GATEWAY CELLULAR COMMUNICATION FEE SERVICE UNITS

Cellular gateway backhaul communication Service Units (68886-601) will be assessed quarterly based on cumulative number of cellular backhaul gateways shipped to Customer. A cellular gateway backhaul communication Service Unit represents one (1) month of backhaul service for a gateway shipped to Customer and will be assessed quarterly. Service Units for backhaul communications are available for purchase in multiples of three (3) Service Units and each gateway will consume three (3) Service Units per quarterly invoicing period.

EyeOnWater® CONSUMER ENGAGEMENT SERVICE UNITS

An optional annual EyeOnWater® License is available for BEACON AMA Traditional Fixed Network Solutions. The annual license includes software licensing, setup and activation of EyeOnWater consumer engagement module for fixed network accounts in Customer's BEACON AMA portfolio. An EyeOnWater Service Unit represents one (1) month of Customer access to EyeOnWater consumer engagement tools and will be assessed in multiples of twelve (12) EyeOnWater Service Units (68886-401). EyeOnWater license may be added by a utility at any time. Customer is required to have appropriate data fields provided from billing software to support EyeOnWater. Fees charged to a Customer by its utility billing vendor for interface file are separate and are the responsibility of the Customer.

BEA-FM-01939-EN-02 (April 2016)

BEACON AMA FIELD APPLICATION SUITE – MOBILE READ MODULE SERVICE UNITS

An annual BEACON AMA Field Application Suite-Mobile Read Module license is required for Customer access to the BEACON AMA mobile meter reading software suite.

A Mobile Read Module License Service Unit represents one (1) month of Customer access to the BEACON AMA Field Application Suite-Mobile Read Module, including BEACON AMA Field Director, ORION® Mobile Read software and ORION Endpoint Utility software, and will be assessed in multiples of twelve (12) Mobile Read Module License Service Units (68886-501).

BEACON AMA FIELD APPLICATION SUITE – MOBILE READ MODULE USER LOGIN SERVICE UNITS

An annual BEACON AMA Field Application Suite-Mobile Read Module User Login license is required for each Customer User Login for the BEACON AMA mobile meter reading software suite.

A Mobile Read Module User Login License Service Unit represents one (1) month of Customer user access to BEACON AMA Field Director or ORION® Mobile Read software and will be assessed in multiples of twelve (12) Mobile Read Module User Login License Service Units (68886-502).

SERVICE UNIT PRICING AND PAYMENT

Customer will be required to submit a PO to Badger Meter or National Meter & Automation, Inc. for applicable Service Units. Initial Service Unit pricing will be held for the first 36 month term at quoted purchase increment then subject to change thereafter.

Service Units may be purchased in Customer-defined increments except where minimum multiple purchase increments have been stated.

Service Unit pricing is Net to Customer and will be invoiced by Badger Meter or National Meter & Automation, Inc. based on Customer-defined Service Unit purchase increments or minimum multiple purchase increments as noted. Service Unit part numbers are denoted as 68886 and have been included in this document for cross reference with Customer pricing proposal.

Service Units will be consumed on a monthly basis, as applicable to each asset type.

Service Units are non-refundable and non-transferable to another entity without Badger Meter approval.

Service Units may be converted to like-valued, or higher, Service Units of a different asset type with Badger Meter approval.

Service Units expire ten (10) years from date of purchase. Expired Service Units will be forfeited unless converted prior to expiration.

Upon termination of a Customer's BEACON AMA services, for whatever cause, unused Service Units will be forfeited if not converted to Badger Meter or National Meter & Automation, Inc. future purchase credit within ninety (90) days.

Failure to renew services at term expiration or pay for services invoiced by Badger Meter or National Meter & Automation, Inc. may result in termination of services and limited access to Customer's BEACON AMA portfolio at the discretion of Badger Meter.

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www.badgermeter.com

The Americas | Badger Meter | 4545 West 20th Street | PO Box 248036 | Milwaukee, WI 53224-9836 | 800-476-3837 | 414-355-0400
México | Badger Meter de las Américas, S.A. de C.V. | P.O. Box Luis Ogazón #22 | Esq. Angolina N°24 | Colonia Guadalupe Inn - CP 01850 | México, DF | México | +52 55 9537 0831
Europe, Middle East and Africa | Badger Meter Europe GmbH | Mühlhagen 2b 76 | 72639 Neuffen | Germany | +49 7033-9208-0
Europe, Middle East Branch Office | Badger Meter Europe | PO Box 341442 | Dubai Silicon Oasis, Head Quarter Building, Wing C, Office 4C209 | Dubai | UAE | +971-4-371-7583
Czech Republic | Badger Meter Czech Republic s.r.o. | Malborská 2082/76 | 621 00 Brno, Czech Republic | +420 5-41420411
Slovenia | Badger Meter Slovenija s.p.a. | Trnavska 100/10 | 831 00 Bratislava, Slovenia | +386 2-44 63 83 01
Asia Pacific | Badger Meter | 80 Marine Parade Road | #21-06 Parkway Parade | Singapore 449269 | +65-63444836
China | Badger Meter | 7-1302 | 99 Hongfeng Road | Minhang District | Shanghai | China 201101 | +86-21-5763 5412

ATTACHMENT "C"

DELIVERY SCHEDULE

ATTACHMENT "D"
SCHEDULE OF VALUES

ATTACHMENT "E"
PROOF OF INSURANCE

ATTACHMENT "F"
EQUIPMENT WARRANTIES

ATTACHMENT "G"

ENDPOINT EQUIPMENT SPECIFICATIONS

Agenda Item No.: 5.2
Agenda Date: 9/07/16
Reviewed By: M.E.

Subject: Resolution authorizing an Equipment and Services Agreement with Badger Meter, Inc. to purchase an Automated Meter Reading System (AMR System)

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input checked="" type="checkbox"/>
<i>Engineering/Operations</i>	<input type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>		
		<i>Amount:</i>		<u>\$ 33,000.00</u>		
				<i>Plus Sales Tax</i>		

Attachments:

1. Resolution 16-9-7B
2. Exhibit A – Equipment and Services Agreement with Badger Meter, Inc.

Comments:

The District desires to acquire an AMR System and related services from Badger, and Badger has represented to the District that it has the specialized expertise and experience necessary to properly provide the Equipment and Services required by this Contract in a timely manner and that its proposal includes all of the functions and features required for the Equipment and Services.

Staff recommends approval of this resolution.