

SOFTWARE AND HARDWARE SUPPORT SERVICES MAINTENANCE AGREEMENT

This Software and Hardware Support Services Maintenance Agreement (“**Support Agreement**”) is entered into effective this **11th** day of **March, 2014** (the “**Effective Date**”) by and between **City of Othello**, located at **111 N. Broadway, Othello, WA 99344** (“**Customer**”), and **Badger Meter, Inc.**, a Wisconsin corporation with its principal place of business located at **4545 West Brown Deer Road, Milwaukee, WI 53224** (“**Badger Meter**”). Under this Support Agreement, Customer and Badger Meter are referred to individually as a “**Party**” and collectively as the “**Parties**.”

I. RECITALS

- A. Customer has purchased Badger Meter Software (“**Software**”) and Badger Meter has granted Customer a license to use certain Badger Meter software pursuant to the terms of the Badger Meter Software License Agreement (the “**License Agreement**”).
- B. Customer may also have purchased a Badger Meter mobile meter reading hardware system, such as handheld data collectors, laptop computers or other mobile reading equipment (“**Hardware**”) for use with the Software. If so, this Support Agreement also covers Hardware as provided for herein.
- C. Customer desires to receive and Badger Meter agrees to provide certain support and maintenance services (collectively “**Support Services**”) for the Software and/or for the Hardware pursuant to the terms of this Support Agreement. Badger Meter.

II. TERMS AND CONDITIONS

- A. **Customer Software Support Services.** During the Term of this Support Agreement, Badger Meter agrees to provide Customer the support services (“**Software Support Services**”) related to the Software:
- B. **Badger Meter Customer Hardware Support Services.**
 - 1. One Year Hardware Warranty. Badger Meter agrees to provide Customer with support services for Hardware, as detailed in Schedule, under the one (1) year warranty included with the purchase of Hardware (“**Hardware Support Services**”).
 - 2. Optional Extended Hardware Warranty. Customer may elect to purchase up to four (4) years of extended warranty to cover the Hardware, for which Support Services will be provided according to Schedule 2 Badger Meter (“**Extended Hardware Warranty**”).
- C. **Professional Services.** Upon mutual agreement of the parties, Badger Meter will provide certain additional Software Support professional services (“**Professional Services**”) at Badger Meter’s then standard hourly and expense reimbursement rates. If Customer elects to purchase Professional Services, the Parties will prepare a Statement of Work setting forth a description of the Professional Services, the timeline for performance of the Professional Services, and the cost for the Professional Services. Each Statement of Work for Professional Services will incorporate all of the terms of this Support Agreement by reference.
- D. **Effective Date.** This term of this Support Agreement will commence on the Effective Date and continue for a period of **one (1) year** (“**Initial Support Term**”). At the end of the Initial Support Term, if renewed and paid for by Customer, the Support Agreement will renew for successive one-year terms, for Software Support Services as long as Badger Meter supports the Software, and for

Hardware Support Services for up to an additional four years after the end of the Initial Support Term (“**Renewal Support Term**”) unless earlier terminated in accordance with Section J (collectively, the “**Term**”). If Customer does not renew and later requests Support Services, prior to being eligible for Support Services, Customer must: 1) Pay prior unpaid Renewal Support Term years in full; and 2) send all Hardware to Badger Meter, at Customer's cost, for Badger Meter evaluation to confirm the Hardware is operational before Support Services are made available on a go-forward basis.

E. Payments to Badger Meter; Terms.

1. Customer must pay all applicable fees as invoiced.
2. Payment of Fees for the Renewal Support Terms. Badger Meter will notify Customer of fees due for any subsequent Renewal Support Term on an annual basis approximately ninety (90) days prior to the commencement of the anniversary of the Effective Date. To renew Support Services, Customer must at least submit a purchase order to Badger Meter if not pay the applicable fees for the upcoming Renewal Support Term, prior to the commencement of the applicable Renewal Support Term.
3. Interest. If Customer fails to pay an invoice when due, Badger Meter may charge interest on the unpaid balance at the rate of lesser of eighteen percent (18%) per annum or the maximum rate is allowable by law.
4. Taxes and Charges. In addition to the Fees, Customer agrees that it will be responsible to pay any taxes, government charges, surcharges or fees related to the purchase of services under this Support Agreement, except for taxes on Badger Meter’s income.

F. Limitations on Support Services. This Support Agreement does not include Support Services for:

1. Software, products, data, or features not provided by Badger Meter or by its authorized representatives to Customer;
2. Modifications or alterations to the Software by Customer or a third party without the prior written consent of Badger Meter;
3. Failure by Customer to install or use the Software in accordance with the Documentation as defined in the Software Agreement;
4. Failure to replace earlier versions of the Software with updates and improvements provided to Customer within a reasonable amount of time after receipt;
5. Repair or restoration of Customer’s data (unless the data loss is caused solely by Badger Meter while providing services to Customer and in such case, up to the point of the last Customer backup);
6. Software defects caused by Customer’s negligence, misuse, misapplication, or use of the Software other than as specified in the Documentation; or
7. Using a version of the Software which is no longer supported by Badger Meter.

G. Customer’s Obligations.

1. Access. During the Term of this Support Agreement, Customer will provide Badger Meter with reasonable access to Customer’s copies of the Software to the extent necessary to enable Badger Meter to perform the Support Services.

2. Miscellaneous Costs. Customer will bear all reasonable costs associated with procuring, installing, and maintaining all equipment, telephone lines and communications interfaces necessary for Customer to obtain Support Services.
3. Customer Contacts. Customer will designate on **Schedule 3**, two (2) employees, including one primary contact, as its “**Customer Contacts**” to be generally available during the Coverage Hours defined in **Schedule 2**, in order to confer with Badger Meter regarding support-related issues. Customer must provide Badger Meter with the full name, work and cell phone numbers and email addresses for each of its Support Contacts. Customer will notify Badger Meter promptly of any changes in the Support Contacts. Badger Meter will provide technical support only to Customer’s Support Contacts.

H. Express Limited Warranty.

1. Express Limited Warranty. Badger Meter provides an express limited warranty that the Support Services will be performed in a professional manner consistent with industry standards for a period of the lesser of one year or the balance remaining on the applicable warranty from the performance of those Support Services. **EXCEPT FOR THIS EXPRESS LIMITED WARRANTY, BADGER METER MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE SUPPORT SERVICES. BADGER METER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SUPPORT SERVICES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR INDUSTRY PRACTICE. CUSTOMER ACKNOWLEDGES THAT NO THIRD PARTY, INCLUDING A BADGER METER DISTRIBUTOR, HAS THE AUTHORITY TO MAKE OR MODIFY THE TERMS OF THIS EXPRESS LIMITED WARRANTY ON BEHALF OF BADGER METER.**
2. LIMITATION OF LIABILITY; REMEDIES. **IN THE EVENT THAT BADGER METER FAILS TO PERFORM THE SUPPORT SERVICES IN ACCORDANCE WITH THE EXPRESS LIMITED WARRANTY, CUSTOMER’S EXCLUSIVE REMEDY WILL BE THAT BADGER METER WILL USE COMMERCIALY REASONABLE EFFORTS TO RE-PERFORM THE SUPPORT SERVICES. IN THE EVENT THAT BADGER METER IS UNABLE TO CURE A DEFAULT UNDER THIS EXPRESS LIMITED WARRANTY, BADGER METER MAY CHOOSE TO REFUND ANY PAYMENTS RECEIVED BY CUSTOMER FOR THE DISPUTED SUPPORT SERVICES IN FULL SATISFACTION OF BADGER METER’S OBLIGATIONS.**

IN NO EVENT WILL THE PARTIES BE LIABLE TO ONE ANOTHER OR ANY THIRD PARTY FOR ANY (i) DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, (ii) ANY DAMAGES RESULTING FROM LOSS OR INTERRUPTION OF DATA, EXCEPT AS DESCRIBED IN SECTION F(5), OR LOST PROFITS, OR (iii) ANY CLAIM WHETHER IN CONTRACT OR TORT OR OTHERWISE THAT AROSE MORE THAN ONE (1) YEAR PRIOR TO INSTITUTION OF SUIT.

THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS SUPPORT AGREEMENT AND WILL APPLY NOTWITHSTANDING THAT A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

3. Essential Terms. The enforceability of this Section H is essential to Badger Meter’s willingness to enter into this Support Agreement with Customer.

I. **Confidentiality.**

1. Protection of Confidential Information. The Parties agree that any non-public information shared between the Parties in connection with their performance under this Support Agreement will be deemed to be confidential and proprietary information if the Disclosing Party identifies that information as Confidential in writing prior to or at the time of disclosure ("Confidential Information"). Each Party agrees to hold the other Party's Confidential Information in strict confidence and will not copy, reproduce, give, sell, assign, license, market, transfer or otherwise dispose of the Confidential Information to third parties or use the Confidential Information for any purposes whatsoever other than as contemplated by this Support Agreement, without the other Party's prior written consent.
2. Third Party Requests for Confidential Information. Neither Party may disclose the other Party's Confidential Information except as required by law. If a Party receives a request for access to the other Party's Confidential Information, Party agrees to inform the Disclosing Party in writing within three (3) business days of receipt of the request unless prohibited by law.
3. Exclusions from Confidential Information. Confidential Information of a Party will not include information which is (i) in or becomes part of the public domain through no fault of the Receiving Party, (ii) the Receiving Party can prove was known to it prior to its receipt from the Disclosing Party, (iii) independently developed by the Receiving Party outside of this Support Agreement without the use of the Disclosing Party's information, or (iv) obtained by the Receiving Party from a third party which had no obligation of confidentiality to the Disclosing Party.
4. Equitable Relief. The Parties agree that in the event of a breach of this Section I, money damages may be inadequate. Either Party may seek injunctive, declaratory or other equitable relief to prevent a breach of this Section I.

J. **Termination.** This Support Agreement may be terminated for the following reasons:

1. Termination of License Agreement. This Support Agreement will immediately terminate upon the termination of the License Agreement.
2. For Breach. Either party may terminate this Support Agreement upon the occurrence of a material breach by the other Party if that breach has not been cured within thirty (30) days after the non-breaching Party has provided the breaching Party with written notice which contains a detailed explanation of the alleged breach.

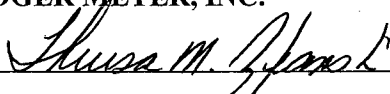
K. **General.**

1. Binding Agreement. This Support Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns.
2. Assignment. Either party may assign its rights and obligations under this Support Agreement with the express written consent of the other party, which consent will not be unreasonably withheld or delayed, provided however that either party may assign its rights and obligations under this Support Agreement without the consent of the other party (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 similar change of control.
3. No Waiver; Severability. All rights and remedies of the Parties are separate and cumulative. The waiver or failure of either Party to exercise any right or remedy provided under this Support Agreement will not be deemed a waiver of any further right or remedy.

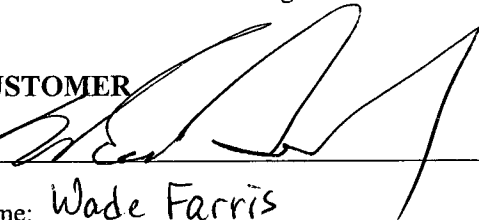
4. Savings Clause. The invalidity of any provision of this Support Agreement will not affect the validity and binding effect of the remaining provisions.
5. Notices. Any notice required under this Support Agreement must be sent by (i) an internationally recognized overnight delivery service, (ii) by facsimile with electronic confirmation of receipt or acknowledgement, or (iii) by electronic mail with electronic confirmation of receipt or acknowledgement. All written notices will be effective upon receipt.
6. Force Majeure. If, and to the extent that either party is precluded from performing its duties and obligations under this Agreement as the result of acts of God, authority of laws, strikes, lockouts, labor disputes, riots or other causes beyond its control, such non-performing party shall be excused to the extent that its performance continues to be precluded by such acts.
7. Entire Agreement. This Support Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior or contemporaneous agreements, negotiations, representations or proposals, whether written or oral.

By executing this Support Agreement, the Parties acknowledge that they have reviewed the terms and conditions of this Support Agreement and agree to be legally bound by those terms. —An electronic signature on this Support Agreement is legally binding on the parties.

BADGER METER, INC.

By: 
 Name: _____
Theresa M. Szafranski
 Title: **Assistant Secretary**

CUSTOMER

By: 
 Name: Wade Farris
 Title: City Administrator

SCHEDULE 1
CONTACT INFORMATION

Badger Meter, Inc.
4545 W. Brown Deer Rd.
Milwaukee, WI 53223
1-800-876-3837
www.badgermeter.com/

SCHEDULE 2

SERVICE LEVELS

1. Service Hours. Badger Meter will provide the Support Services during the following hours:

- (a) Normal Business Hours. Badger Meter will provide Support Services between the hours of 7:30 am and 5:00 pm Central Time, Monday thru Friday, excluding U.S. holidays ("Coverage Hours").
- (b) Extended Coverage Hours. Badger Meter, in its discretion, may provide Customer with Support Services during hours extending beyond the Coverage Hours for customers with active customer support agreements [or license agreements].

2. Support Services Process and Procedures.

(a) Software Support Services--

Badger Meter will provide Customer with access to scheduled software releases, product update releases, engineering updates and related documentation on an as-available basis.

Upon experiencing a difficulty with the Software, Customer should do as follows:

Check troubleshooting resources imbedded in the Software, instruction manuals, Badger Meter's self-service troubleshooting tips at www.badgermeter.com/ (includes informational materials, instructions and FAQs); Badger Meter

Contact Badger Meter with a request for assistance. Contact information can be found on Schedule 1.

Badger Meter will use reasonable efforts to identify and resolve the request.

(b) Hardware Support Services -- Upon experiencing a difficulty with the Hardware, Customer should do as follows:

Check troubleshooting resources imbedded in the Hardware, instruction manuals, Badger Meter's self-service troubleshooting tips at www.badgermeter.com/ (includes informational materials, instructions and FAQs);

Contact Badger Meter with a request for assistance. Contact information can be found on Schedule 1.

Badger Meter will use reasonable efforts to identify and resolve the request.

If Hardware is covered under the Support Agreement and a Hardware issue cannot be resolved after a Level 1 and 2 troubleshooting assessment, Badger Meter will provide Customer with loaned replacement Hardware and Customer will immediately return the inoperable Hardware to Badger Meter at Customer's cost. Upon receipt of the Hardware from Customer, Badger Meter will verify the Hardware inoperability issue and will arrange for the repair or replacement of the inoperable Hardware at its sole discretion. Badger Meter will return the repaired or replaced Hardware to Customer at Badger Meter's cost. Customer consents to Badger Meter's use of third-party vendors in repairing or replacing the Hardware. During use, Customer agrees be liable for damages to and misuse of loaned Hardware, owned by Badger Meter.

3. **Priority of Requests.** Badger Meter will prioritize Customer requests for assistance based upon the following criteria:

- (a) Priority I: Work Stoppage. Customer is unable to collect reading data or process reading data for billing purposes due to issues with Badger Meter Hardware or Software and a work-around is not available or is generally unacceptable.
- (b) Priority II: Loss of Software Function. A major software function is inoperable but reading and billing work can continue without any significant impact to Customer.
- (c) Priority III: Minor Software Issue. Loss of a function which does not seriously impact reading and billing.
- (d) Response Goals:

INCIDENT FIX	INCIDENT SEVERITY		
	Priority I	Priority II	Priority III
Initial Response	1 Business Hour	4 Business Hours	12 Business Hours
Response Update	Each Business Day	Each Week	Bi-Weekly
Relief	Immediate	As Soon as Possible	Reasonable Efforts

SCHEDULE 3
CUSTOMER CONTACTS

Primary Contact:

Name:
Title:
Address:
Phone Number
Fax Number
Email Address

Secondary Contact:

Name:
Title:
Address:
Phone Number
Fax Number
Email Address