



Badger Meter, Inc.
4545 W. Brown Deer Road, P.O.Box 245036
Milwaukee, WI 53224-9536 (800) 876-3837

Contract Effective Date: 05/06/2010
Warranty and MRT Service Agreement
Effective Date:

MRT SERVICE AGREEMENT
(G-5268-RD-695)

between

BADGER METER, INC.

4545 West Brown Deer Road
Milwaukee, WI 53223

Customer Name: City of Tempe

Address: 20 East 6th Street , Second Floor

City/State: Tempe, Arizona 85281

Badger Meter, Inc. ("Badger") agrees to provide and the MRT Customer ("Customer") agrees to accept maintenance and related service in accordance with the terms and conditions of this MRT Service Agreement ("Agreement").

maintenance agreement shall be renewed automatically after the expiration of the initial twenty-four (24) month period unless either of the parties provides the other with written notice of its desire to terminate the Agreement 60 days prior to the expiration of the term then in effect.

1. EQUIPMENT

This Service Agreement is limited to the MRT Utility Management System computers and computer support equipment as follows:

2.1b Hardware - This agreement shall remain in full force and effect for sixty (60) months, prepaid. The Agreement shall otherwise remain in full force and effect unless terminated by virtue of any schedule attached hereto, or by either party upon 60 days' prior written notice to the other.

Including:

Hardware (Service or Replacement)

Blank lines for listing hardware items.

Software: (Upgrades and Fixes)

Blank lines for listing software items.

Not Covered:

Blank lines for listing items not covered.

This Agreement specifically excludes service provisions for the field installation equipment.

2. EFFECTIVE DATE/SERVICE TERM/TERMINATION

2.1 Effective Date

2.1a Software - This agreement shall remain in full force and effect for twenty-four (24) months, prepaid. The software

2.2 Maintenance Service Term

2.2a Software - This initial software maintenance service term for the System specified herein is for for twenty-four (24) months commencing from the Warranty and MRT Service Agreement Effective Date.

2.2b Hardware - This initial hardware maintenance service term for the System specified herein is for sixty (60) months commencing from the Warranty and MRT Service Agreement Effective Date.

3. SERVICE PROVIDED BY BADGER

3.1 Service Subcontract Agreement

Maintenance and remedial service will be provided to the System by Badger or a subcontractor for Badger. A service subcontract agreement has been established in which Badger has appointed a third party vendor as the exclusive agent to perform maintenance and remedial service for the System.

3.2 Services Provided by Badger

a) The Customer Request for Service

All requests for remedial maintenance by the Customer must be directed to Badger's Technical Support 800#. The 800# is available 7 days/week, 24 hours/day. Please call 1-800-456-5023 (or 355-6917 in Milwaukee area only). A technician will provide assistance to diagnose the specific problem. When hardware problems are identified, the technician will take the following action:

b) Scheduling

The technician will promptly schedule the service requirements, providing specific Customer information.

c) Principal Period of Maintenance (for ACCESSplus Personal Computer Hardware only if listed in Section 1)

Maintenance or remedial service will be performed at the Customer's location 24 hours/day, 7 days/week. The normal response for remedial maintenance is the next business day after the receipt of the service request from Badger. Next business day service is limited to the Customer locations within 200 miles of an authorized service location.

**4. SERVICE PART REPLACEMENT RESPONSIBILITY**

**4.1 Service Parts**

Badger or its subcontractor will provide service parts for the System components as described in Section 1. Replacement parts for the above specified components are the property of Badger or its subcontractor. The technician of Badger or its subcontractor will be responsible for removing defective parts from the Customer's location.

**5. Service Limitations**

a) Badger will not be responsible for providing service assistance except in the times designated in section 3.2 Subpart A.

b) Badger is not obligated to accept any equipment for service hereunder which it determines is not in a maintainable condition. Equipment is subject to inspection by Badger or its subcontractor to determine if it is in maintainable condition, including, but not limited to, the following situations: installed equipment, equipment which has been maintained by other than Badger or its subcontractor, or equipment which the Customer has stored. Charges for said inspection and repairs required to bring the equipment into a maintainable condition are not part of this service agreement. All such charges will be the responsibility of the Customer and will be billed in accordance with Badger's then current hourly rates and policies.

c) Any service requested for equipment moved by the Customer is subject to the availability of Badger maintenance service resources at the new installation location, and in accordance with Badger's policies and charges then in effect.

d) The Customer shall pay, as an additional charge, for any repair performed by Badger or its subcontractor due to damage to the equipment resulting from the Customer's failure to perform its responsibilities or from any abuse, misuse, or movement of the equipment.

e) Maintenance service does not include: operating supplies, installing, deinstalling, or relocating equipment, maintaining or removing attachments that are not part of the System.

In addition, Badger and its subcontractor shall not be responsible for the loss of use of equipment or for any other liability arising from software or the attachment of devices to the System that are not part of the System and authorized by Badger. Further, Badger and its subcontractor shall not be responsible for loss of equipment use or any other liability arising from equipment which is altered, adjusted, or repaired by other than Badger or its subcontractor. The Customer shall be responsible for and pay for service calls resulting from System malfunctions due to attachments for software programs. The eligibility of such equipment for continued maintenance service hereunder is

subject to inspection under then current Badger policies and rates. Badger reserves the right to terminate maintenance service for the affected equipment upon 30 days written notice.

f) If, in Badger's reasonable opinion, maintaining the equipment in good working condition is no longer possible for any reason, Badger shall notify the Customer. If the Customer elects not to refurbish the equipment within 60 days of said notice, Badger reserves the right to terminate the maintenance service for the affected equipment upon 30 days written notice.

**6. CUSTOMER RESPONSIBILITY**

**6.1 Service Request Responsibility**

The customer agrees to promptly notify Badger's MRT Service Support Group of all equipment anomalies, or failures. Failure to promptly notify Badger may void this service contract.

**6.2 Service Support Facilities**

The Customer agrees to provide as required at no charge access to the MRT control computers and computer support equipment, and all facilities such as storage, working space, electricity, and telephone service as required for Badger's or its subcontractors use.

**6.3 Customer Neglect or Damage**

The Customer agrees to pay all charges for repair performed to the MRT control computer and computer support equipment for damages to the equipment resulting from the Customer's failure to perform its responsibilities or for any abuse, misuse, or movement of the equipment.

**7. CHARGES**

a) Services not provided for in the Agreement, requested by the Customer of Badger or its subcontractor are to be invoiced to the Customer as incurred and they are due and payable upon receipt of the invoice.

b) If the Customer fails to pay any charges when due and payable, Badger may charge the Customer a late payment charge of 1 1/2% of the past due balance per month but not to exceed the lawful maximum.

**8. INDEMNIFICATION**

The Customer shall indemnify and hold harmless Badger and its subcontractor, from any loss, claim, or damage to persons or property, arising out of the Agreement or services provided, to the extent that such loss, claim, or damage is not caused by the fault of Badger or its subcontractor. This indemnity survives the termination of this agreement.

Badger Meter, Inc. shall indemnify and hold harmless Customer and its subcontractor, from any loss, claim, or damage to persons or property, arising out of the Agreement or services provided, to the extent that such loss, claim, or damage is not caused by the fault of Customer or its subcontractor. This indemnity survives the termination of this agreement.

**9. NOTICES**

Any notice permitted or required hereunder shall be sent first class mail to the respective address in the heading of this Agreement to the attention of the parties specified below.

For Badger Meter, Inc.:  
Attention: Theresa Szafranski

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For the Customer:  
Attention: Ted Stallings  
CC: Customer Services

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10. LIMITATION OF REMEDY

10.1

In no event shall any parties to this Agreement be liable for any indirect, special, or consequential damages arising out of the Agreement or any service provided under the Agreement.

10.2

None of the parties to this Agreement may institute any action in any form arising out of the Agreement more than two years after the cause of the action has arisen, or in the case of nonpayment, more than two years from the date of last payment or promise to pay.

10.3

The Customer's exclusive remedy and Badger's entire liability in contract, tort, or otherwise hereunder is the installation of the equipment, and repair or exchange of any equipment or part thereof which Badger determines to be defective or inoperable.

11. GENERAL

11.1

Except for the Customer's responsibility for payments, neither party shall be responsible or liable in any way for any delays or failure to perform its obligations hereunder when such delays or failures are caused by conditions or circumstances beyond its control.

11.2

Except as otherwise required by law, no advertising, publicity release, or similar public information concerning this Agreement or the services to be performed hereunder shall be published or caused to be published by either Badger or the Customer without the prior consent of the other party, which consent shall not be unreasonably withheld.

BADGER METER, INC.

By Theresa M. Szafranski  
Theresa M. Szafranski  
Printed Name  
Assistant Secretary  
Title  
04/26/2010  
Date

11.3

This Agreement is deemed to be made and entered into at Tempe, Arizona and is governed in all respects by the laws of the State of Arizona.

11.4

THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NOT SPECIFIED HEREIN RESPECTING THE AGREEMENT OR THE SERVICE PROVIDED.

11.5

This Agreement represents the entire Agreement between the parties regarding the subject matter thereof and supersedes all prior and oral written proposals and communication. The terms of this agreement will apply except in instances where the requirements of Customer's RFP #09-127 provide Customer with greater protection, in which case Customer's RFP will govern.

11.6

This Agreement and any part thereof may be amended only by a written document executed by authorized representatives of the Customer and Badger.

11.7

The parties acknowledge that they have read the Agreement and shall be bound by its terms and conditions.

CITY OF TEMPE, AZ

By \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
  
By \_\_\_\_\_  
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