

## **Agreement for Sale of Meters**

**1. Definitions.** “Buyer” means the Town of Apex, a North Carolina municipal corporation, who is the party purchasing goods or services pursuant to these Terms and Conditions of Sale (“Terms and Conditions”). “Badger Meter” means Badger Meter, Inc., a Wisconsin corporation and all its subsidiaries. “Goods” means the Badger Meter goods, software, services, and advisory services sold or otherwise provided pursuant to these Terms and Conditions and as detailed in the attached Quotation No. 3552289 dated October 20, 2023.

### **2. Controlling Provisions.**

**Generally. THIS AGREEMENT CONSTITUTES THE FINAL EXPRESSION OF THE AGREEMENT BETWEEN BADGER METER AND BUYER REGARDING THE GOODS AND IT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THAT AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS AGREEMENT SHALL HAVE NO FORCE OF EFFECT UNLESS MADE IN WRITING AND SIGNED BY BUYER AND AN AUTHORIZED OFFICER OF BADGER METER.** Badger Meter's sales representatives do not have authority to change this Agreement. Badger Meter reserves the right to correct clerical errors in its documents. It is the express wish of the parties that this document and any related documents be drafted in English. Il est la volonté expresse des parties que ce document et tous les documents s'y rattachant soient rédigés en anglais.

**3. Storage.** If the Goods are not shipped within fifteen (15) days after notification to Buyer that they are ready for shipping, for any reason beyond Badger Meter's reasonable control, including without limitation Buyer's failure to give shipping instructions, Badger Meter may store such Goods, at Buyer's risk, in a warehouse or yard located on Badger Meter's premises, and Badger Meter may at its sole discretion charge Buyer and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices on the stored Goods.

**4. Prices.** Unless stated otherwise in a governing quotation or tender, prices are stated and payable in U.S. dollars or Euros FCA Badger Meter's Facility (pursuant to Incoterms 2010 of the International Chamber of Commerce, as amended or restated from time to time ["Incoterms"]). All prices are subject to change based on Badger Meter's selling prices in effect as of the date of shipment. Quoted prices are firm for acceptance, via an order, within the effective dates provided in the quote, shipping within sixty (60) days past the expiration of the quote. Prices quoted for blanket orders are subject to review and retroactive adjustment, if necessary, based on actual quantities shipped. Written quotations are void unless accepted within the effective dates listed on the quotation and are subject to earlier change upon notice from Badger Meter. Other Badger Meter publications are maintained as sources of information and are not quotations or offers to sell.

**5. Taxes.** All prices are exclusive of all sales, use, value added, customs and excise taxes, and any other taxes, duties, fees and charges of any kind imposed by any governmental authority in connection with this Agreement. Buyer shall pay or reimburse Badger Meter on demand for all such taxes, duties, fees and charges but Buyer shall not be responsible for any taxes imposed on, or with respect to, Badger Meter's income.

**6. Title and Risk of Loss.** All Goods are shipped F.C.A. Badger Meter's Facility (pursuant to Incoterms 2010 of the International Chamber of Commerce, as amended or restated from time to time). Buyer is

responsible for all delivery charges for Goods. Title and risk of loss or damage to Goods passes to Buyer when Goods are moved from Badger Meter's dock into the conveyance vehicle for transport.

**7. Payment Terms.** Buyer shall pay all invoices within thirty (30) days of the invoice date. Badger Meter reserves the right to establish credit limits for Buyer and may require full or partial payment prior to shipment of any Goods or commencement of any services provided hereunder. All payments shall be made via payment methods allowed by Badger Meter according to instructions provided by Badger Meter. For Buyers outside the U.S., Badger Meter may require cash in advance or a Letter of Credit for payment or security in a form acceptable to Badger Meter. If Buyer does not pay Badger Meter any amount due under this Agreement or any other Agreement when such amount is due or if Buyer defaults in the performance of this Agreement, Badger Meter may, without incurring liability to Buyer and without prejudice to Badger Meter's other lawful remedies (a) terminate Badger Meter's obligations under this Agreement, (b) declare immediately and due payable all Buyer's obligations to Badger Meter, (c) change credit terms with respect to any further work or deliveries, (d) suspend or discontinue any further work or deliveries and/or (e) repossess the Goods. Any invoices which Buyer does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law. Buyer shall not set off amounts due to Badger Meter against claims against Badger Meter.

**8. Packaging.** Badger Meter reserves the right to select the manner in which Goods are packaged. Special requirements for packing will be subject to extra charges.

**9. Delivery.** Delivery. Shipping dates and completion dates quoted by Badger Meter are made in good faith but are not guaranteed; Badger Meter reserves the right to extend shipping dates as it deems necessary in its sole discretion, without incurring liability to Buyer and to make delivery in installments. Time for delivery shall not be of the essence. In the absence of shipping instructions from Buyer, Badger Meter will use its discretion as to the selection of shipping services and routings. Installation of Goods is the responsibility of the Buyer unless otherwise agreed in writing. Buyer is responsible for following all applicable installation instructions, guides, or other documentation. Badger Meter is not responsible or liable for product that is installed or maintained improperly.

Badger Meter ships all products FOB – Factory within the United States (unless otherwise agreed to in writing, upon receipt of shipment, Buyer must inspect the goods for damage, shortage, or non-conformance. Buyer will make note of damage on the carrier's delivery receipt. Claims for shortages or other errors must be made in writing to Badger Meter within seven (7) days after receipt of shipment and claims for concealed damage must be made to Badger Meter within fifteen (15) days after receipt of shipment. When the Buyer's carrier and account are used for transit, the Buyer shall be responsible for any claims made for visible and concealed damage and/or loss of partial or complete shipment.

**10. Force Majeure.** Badger Meter shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Badger Meter including, without limitation, natural hazards outside of human control for which no person or persons can be held responsible, terrorism, pandemic, global supply chain disruptions, acts of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slow-down, war, riot, delay in transportation, delayed delivery by

suppliers, or inability to obtain necessary labor and materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**11. Orders; Changes and Cancellations.** Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. No order shall be binding upon Badger Meter until received and accepted by Badger Meter in its sole discretion. Minimum order value is \$200 U.S.D. or EUR 200. Orders submitted to Badger Meter may not be cancelled or amended, or deliveries deferred, by Buyer except with Badger Meter's prior written consent, and then only upon such terms as shall be acceptable to Badger Meter on a product by product basis. Neither Buyer's acceptance of this offer nor any conduct by Badger Meter (including but not limited to shipment of Goods) will oblige Badger Meter to sell to Buyer any quantity of Goods in excess of the quantity that Buyer has committed to purchase from Badger Meter at the time of such acceptance or conduct. Due to continuous efforts to improve and redesign of our products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternative to the quoted or ordered Goods, provided they are in conformance with the requirements of any agreed specifications and do not exceed the prices quoted.

## **12. Limited Warranties.**

**Generally.** Unless otherwise agreed in a writing signed by an authorized officer of Badger Meter, provided by Badger Meter in a written product-specific warranty or online at <http://www.badgermeter.com/Company/Legal/Warranty-Policy.htm>, or passed through by Badger Meter from the original equipment manufacturer, Badger Meter warrants the Goods (excluding services) supplied hereunder to be free from significant defects in material and workmanship under normal use and service for a period of 18 months from the date of shipment or 12 months from the date of installation, whichever period shall be shorter ("the Warranty Period"). This warranty applies only to the original purchaser of the Goods and does not apply to Goods that are the subject of negligence, accident, or damage by circumstances beyond Badger Meter's control, or any improper operation, maintenance, storage, installation or use. This warranty does not apply to Goods or component parts that were not manufactured by Badger Meter and not covered by a Badger Meter or original equipment manufacturers written warranty, all of which are sold "AS IS" and without warranty by Badger Meter. This warranty applies only to covered defects that are discovered during the Warranty Period. Buyer's failure to provide Badger Meter with written notice of any alleged defect within ten (10) days after its discovery constitutes a waiver of the remedies specified herein. If Badger Meter receives timely notice, and if the Goods are proved to Badger Meter's satisfaction to have a warranted defect, Badger Meter will, at its own discretion, expense and within a reasonable period of time, either (1) repair, correct or cure the warranted defect(s), or (2) replace the specific Goods at issue, or (3) give Buyer a refund of the price it paid for the Goods, prorated where appropriate to adjust for the value of any conforming Goods or services accepted and retained by Buyer. Any parts of Goods repaired or replaced under warranty are warranted only for the balance of the Warranty Period on the original part that was repaired or replaced. These remedies shall be Buyer's exclusive remedies (and the sole and exclusive liability of Badger Meter) for any defects or deficiencies relating to or arising out of Goods sold or services performed. All repairs are made on a C.P.T. factory basis (pursuant to Incoterms). **THE WARRANTIES IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO GOODS SOLD OR OTHERWISE PROVIDED BY BADGER METER. BADGER METER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS**

**TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

Where Badger Meter provides recommendations to Buyer to address or mitigate issues identified by the Buyer, Buyer acknowledges that Badger Meter will not have access to the full operational aspects and attributes of the Buyer's network. Badger Meter is not a certified consultant and does not provide consulting services unless specifically contracted. All Goods are selected by the Customer and Badger Meter's recommendations do not constitute a requirement for purchase. Badger Meter does not warrant that its product recommendations are an adequate solution for any identified or unidentified Customer issues.

Please note that Badger Meter's warranties for Syrinix branded products do not cover failures, interruptions, and damages resulting directly or indirectly from natural hazards outside of human control for which no person or persons can be held responsible, war, terrorism, civil, disobedience, theft, extreme weather, floods, storms, lightning, tornado, hurricane, fire, combustion, explosion, landslide, volcano and earthquake, extreme temperature, external electrical irregularity including surge and failure, acoustic interference, and third party service provider interruptions.

**Buyer's Obligations.** Buyer must satisfy the following obligations in order to be eligible for coverage by the applicable warranty. Prior to using or permitting use of the Goods, Buyer shall determine the suitability of the Goods for the intended use and Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Badger Meter has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Badger Meter satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and shall be responsible for any and all costs in connection with such duty or failure to warn. Buyer agrees to test and evaluate Goods promptly upon receipt to ensure compliance with all specifications, quality requirements and other requirements of Buyer's application. Badger Meter does not guaranty the accuracy of information given and recommendations made as to suitability of Goods for Buyer's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner.

**13. Intellectual Property.** No Intellectual Property (as defined below) is assigned to Buyer hereunder. Badger Meter shall own or continue to own all Intellectual Property used or created in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Badger Meter, and instead vests in Buyer, Buyer agrees to grant and assign and hereby does grant and assign to Badger Meter all right, title and interest that Buyer may have in and to such Intellectual Property. Buyer agrees not to reverse engineer any Goods purchased or provided hereunder. This includes the reverse engineering of software, source code, or other proprietary elements that Badger Meter provides to Buyer. "**Intellectual Property**" means patents and patent applications, inventions, developments and discoveries, whether or not patentable or copyrightable, trademarks, service marks, trade dress, copyrights, trade secrets, designs, drawings, specifications, database rights, rights in and to confidential information and know-how, and any rights analogous to the same anywhere in the world and existing at any time in the Goods or arising out of or relative to the design or manufacture of the Goods or the provision of services, and all other Intellectual Property and proprietary rights.

Any use of Badger Meter's or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by Badger Meter. Buyer agrees to take all steps which Badger Meter may from time to time consider to be necessary to perfect or protect Badger Meter's or its affiliates' or suppliers' rights in Badger Meter's Intellectual Property including, without limitation, executing all necessary assignments, declarations, and other documents requested by Badger Meter from time to time. Upon expiration or termination of this Agreement for any reason, Buyer shall take such steps and execute such documents as Badger Meter requests to cause Badger Meter or its affiliates or suppliers to own all rights in the Intellectual Property and to terminate any rights Buyer or its affiliates may have to use the Intellectual Property. Buyer shall inform Badger Meter promptly of any potential or actual infringement of any of Badger Meter's or its affiliates' or suppliers' Intellectual Property and shall provide all assistance and information required by Badger Meter, at Badger Meter's expense, in connection with any such infringement.

For Syrinix branded products that require transmission of data, the Buyer agrees to the transmission of information relating to the product and product data during the installation, commissioning and operation of the product and to the analysis and provision of product data, including web-based, server-based and bespoke communication and analytical methodologies, nationally and internationally. The Buyer shall own all product data provided from the product. Each and every Buyer and its consumers and/or employees hereby grants to Badger Meter a non-exclusive, irrevocable, transferable, royalty free license to store, analyze, copy, edit, record and otherwise use all product data for such purposes, including, without limitation, research, administration and commercial, as Syrinix, in its sole discretion, considers appropriate. This license shall survive the termination of this agreement, however arising, including, without limitation, termination due to Badger Meter's default. To the extent applicable, any use of product data is also subject to the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy) (see [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html)).

**14. Compliance with Laws.** Buyer agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Goods ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other anti-bribery laws, all U.S. anti-boycott laws, and the U.S. Export Administration Act and all regulations thereunder.

If Buyer or its affiliates, agents or representatives engages a freight forwarder or similar service provider, Buyer shall provide Badger Meter with copies of freight forwarder (or similar) records regarding Goods exports promptly upon request.

Buyer shall promptly notify Badger Meter in writing if Buyer receives notice of or otherwise has reason to believe that a violation of any applicable trade laws has occurred or is likely to occur. Buyer assumes all risk with respect to compliance of Goods with applicable Laws (including without limitation all environmental laws in any jurisdiction).

Buyer acknowledges that certain Goods may have restrictions on who can purchase, transport, use, supply, store, sell, offer for sale, lease and/or dispose of ("Actions") the Goods and on how and where such Actions may take place. Buyer agrees to be responsible for determining who may take such Actions and how and where such Actions may take place after Badger Meter's delivery hereunder, and further agrees to ensure that its customers comply with such requirements.

By accepting this Agreement, Buyer confirms that:

- Buyer understands that Goods provided by Badger Meter are subject to U.S. export control laws and regulations, including, without limitation, the International Traffic in Arms Regulation (ITAR) or the Export Administration Regulations;
- Buyer will comply with all applicable U.S., EU, and UN laws and regulations and any other laws, regulations, or orders of similar effect enforced any other applicable jurisdiction whenever we export, re-export, or transfer Product(s) acquired from Badger Meter, insofar as it does not infringe any applicable anti-boycott rule, and acknowledges that the controlling laws and regulations may be amended from time to time;
- Buyer acknowledges that U.S. law prohibits the sale, transfer, export, re-export, or participation in any export transaction involving Badger Meter's Goods with individuals or companies listed in the United Nations Financial Sanctions List, Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions, U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List; the U.S. Department of State Nonproliferation Sanctions, AECA Debarred List; U.S. Department of Treasury's Specially Designated Nationals, Foreign Sanctions Evaders List, Sectoral Sanctions Identifications (SSI) List, Palestinian Legislative Council (PLC) List, The List of Foreign Financial Institutions Subject to Part 561 List, and Blocked Persons Lists; and any additional lists added by the U.S. Government. Buyer will not transfer, export, or re-export, directly or indirectly to any party identified on a restricted party list published by the U.S. government, European Union, or any other government, or to any party otherwise prohibited under any applicable law from receiving Badger Meter Goods;
- Buyer will not use, sell, transfer, export or re-export Badger Meter Goods for use in any activity related to the development, production, use, stockpiling, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, chemical or biological weapons (i.e. the nuclear, chemical or biological materials/substances themselves could be used in weapons and/or the weapon delivery systems for those materials/substances) ("Weapons"), and that Buyer will not transfer, divert, export, or re-export, directly or indirectly, Goods, including any products developed or manufactured using Badger Meter's Goods, to any party engaged in any such activity. nor use such Goods in any facilities that are engaged in activities related to such Weapons. This restriction also includes, but is not limited to:
  - nuclear explosive activities, safeguarded and unsafeguarded nuclear activities
  - rocket systems or unmanned air vehicles
  - maritime nuclear propulsion;
- If Buyer is subsequently engaged in the use, development, production, transfer, export or re-export of any Badger Meter Goods, Buyer acknowledges that it may be subject to and responsible for the export licensing requirements of the U.S. government or any other government;

- Buyer acknowledges that it may receive Goods from Badger Meter exported under a written authorization from the U.S. government or any other government and acknowledge that it may be subject to and responsible for conditions subject to this written authorization and/or be subject to and responsible for the re-export licensing requirements applicable to the U.S. government's or any other government's written authorization;
- Buyer will comply with all applicable laws and regulations whenever Buyer transfers, exports, or reexport Goods obtained from Badger Meter, and Buyer acknowledges that the controlling laws and regulations may be amended from time to time; and
- Buyer will provide Badger Meter with information regarding end-user, end-use, and country of ultimate destination if purchasing Badger Meter Goods for anything other than stock inventory.

**15. Customer Validation.** Badger Meter reserves the right to determine OEM qualifications of any and all buyers to request end customer invoicing in situations where project pricing may have been granted by the factory. Badger Meter reserves the right to determine market definition of any and all buyers and to employ third-party sources, including SIC codes, and/or information about the application or products purchased to determine market definition.

**16. Nuclear Disclaimer.** The Goods are not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If the Goods are used in a nuclear facility or activity without a supporting quotation, Badger Meter disclaims all liability for any damage, injury or contamination and Buyer shall indemnify and hold Badger Meter, its shareholders, directors, officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all Losses (as defined in Section 17) which they, any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, by reason of such use. The foregoing shall not be deemed to imply or impose liability on Badger Meter where the Goods are used in a nuclear facility or activity with a supporting quotation; all limitations and exclusions in this Agreement and in Badger Meter's Limited Warranty shall apply.

**17. Limitation of Liability.**

**Cap on Liability.** Badger Meter's aggregate liability in any and all claims and causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by Buyer to Badger Meter under this Agreement, whether the Causes of Action are in tort including, without limitation, negligence or strict liability, in contract, under statute or otherwise.

**Limitation and Exclusion of Damages. AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, BADGER METER'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. BADGER METER SHALL NOT BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, DIRECT OR INDIRECT LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, SHUTDOWN OR SLOWDOWN COSTS, OR LOSSES RELATING TO COLLATERAL CONTRACTS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE)**

**UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; (II) ANY IN/OUT COSTS; (III) ANY MANUAL METER READING COSTS AND EXPENSES NOR (IV) ANY COSTS AND EXPENSES TO REMOVE PRODUCT FOR WARRANTY ANALYSIS, OR RE-INSTALLATION COSTS AND EXPENSES; "IN/OUT COSTS" MEANS ANY COSTS OR EXPENSES INCURRED BY BUYER IN TRANSPORTING GOOD BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES. "END USER" MEANS ANY END USER OF THE WATER OR GAS THAT PAYS BUYER FOR THE CONSUMPTION OF WATER OR GAS, AS APPLICABLE.**

**Limitations Unconditional.** The limitations on liability set forth in this Agreement are fundamental inducements to Badger Meter entering into this Agreement. They apply unconditionally and in all respects.

**18. Indemnification.** To the extent allowed by applicable law, Buyer releases and agrees to defend, indemnify and hold harmless Badger Meter its shareholders, directors, officers, employees, agents, affiliates, successors, assigns and customers from and against all claims, liabilities, actions, causes of action, fines, penalties, judgments, demands, damages, losses, costs and expenses, including without limitation attorneys' fees and costs, and including damages arising from personal injury or death, in law or in equity, of every kind and nature whatsoever (collectively, "Losses"), arising out of (a) Buyer's or its End User's use of the Goods, (b) breach of this Agreement by Buyer, (c) Buyer's or its End User's products, materials, performance, designs, approvals or instructions, (d) infringement of third party proprietary rights, except to the extent such Losses arise out of a breach of this Agreement by Badger Meter, (e) any violation of Buyer of any law, rule or regulation, (f) any negligence or willful misconduct of Buyer, or (g) any modifications or changes made to the Goods by or on behalf of any person other than Seller or its Representatives, if the infringement would have been avoided without such modification or change. Prior to settling any claims, Buyer will give Badger Meter an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Badger Meter's written consent. In the event of any recall affecting Goods, Badger Meter shall have the right to control the recall process and Buyer shall fully cooperate with Badger Meter in connection with the recall.

### **19. Confidentiality.**

**Generally.** Buyer acknowledges that all Badger Meter Confidential Information (as defined below) which may be disclosed to it by Badger Meter or its affiliates or suppliers shall at all times, during and after expiration or termination of this Agreement for any reason, remain Badger Meter's exclusive property, and Buyer shall not acquire any proprietary interest whatsoever therein. Buyer shall (and shall cause its employees and contractors to) keep all Badger Meter Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform this Agreement or as required under applicable law, court order or regulation. As used herein "Badger Meter Confidential Information" means any and all non-public information of Badger Meter, including without limitation all non-public data, specifications, equipment and product information, prototypes, drawings, technical information, engineering drawings, forecasts, sales data, "know-how", designs, computer programs, processes, inventions, current and future (unreleased) products and technology, and confidential business information such as cost data, profit margins, sales strategies, supplier information, procurement requirements, employee information, customer preference or needs, customer data and employee capabilities which are not available to the public, unpublished U.S. and foreign patent applications, invention disclosure forms, all technical information about products or services, pricing



information, marketing and marketing plans, Goods performance, Goods architecture and design, other business and financial information, software, third party information Badger Meter is required to keep confidential, any materials derived from or based upon Badger Meter Confidential Information, and all trade secrets. Badger Meter Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by Buyer. Notwithstanding the foregoing, "Badger Meter Confidential Information" shall not include: (i) any information that is in the public domain other than due to Buyer's breach of this Agreement; (ii) any information Buyer can demonstrate by documentary evidence was in the possession of the Buyer without restriction prior to disclosure by Badger Meter; or (iii) "public records" as defined by Chapter 132 of the North Carolina General Statutes. Upon expiration or termination of this Agreement for any reason, and otherwise upon Badger Meter's request, Buyer shall, within fifteen (15) days surrender to Badger Meter all plans, drawings, specifications, sketches, literature, samples, documents and other tangible objects and copies thereof relating to Badger Meter Confidential Information and all of Badger Meter's or its affiliates' or suppliers' property. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Badger Meter, its affiliates or suppliers with broader protection than that provided herein.

**Engineering Data.** All engineering data, design information and engineering and shop drawings used in the completion of Buyer's order are and shall remain Badger Meter's property. Buyer shall not copy, distribute or communicate to any third party such data without Badger Meter's prior written permission. However, Buyer shall distribute appropriate product data regarding operation, safety and maintenance to the end user.

**Personal Information Safeguards** This Section will apply unless superseded by a prior agreement. Under this Agreement, Badger Meter will not receive, or have access to, use or store Personal Information (as defined below), unless otherwise notified by Buyer with written notice that such information is pertinent to the transaction. If, however, Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, then this will apply (in addition to Section 18 [Confidentiality]).

**"Data Protection Law"** means: (a) the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 (as updated); (b) any other applicable data privacy legislation or regulation; and (c) Badger Meter's privacy policy ([available here.](#))

**"Personal Information"** means any information relating to an identified natural person or a directly or indirectly identifiable natural person.

To the extent Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, Badger Meter will:

immediately notify Buyer;

implement and maintain administrative, physical, and technical safeguards ("Safeguards") that meet or exceed relevant industry standards and that protect the security and privacy of Personal Information. Badger Meter will not permit access to Personal Information except to those who need to know it in order to perform under this Agreement, and will ensure that any third party accessing Personal Information protect it with Safeguards at least as strong as Badger Meter's Safeguards;

upon Buyer's instruction and in accordance with Badger Meter's electric record retention policy, delete such Personal Information immediately or return it to Buyer in a secure manner and delete all remaining copies of Personal Information after such return and provide documentation of the deletion to Buyer;

not use the Personal Information for any other purpose than compliance with its' obligations under this Agreement; and

if Badger Meter has reason to believe that Personal Information is reasonably likely to have been accessed for an unauthorized purpose or by unauthorized persons (a "Breach"): (a) promptly notify Buyer (b) reasonably assist Buyer in investigating and remedying any Incident and any related inquiry or claim; and (c) provide Buyer with reasonable assurance that Badger Meter has corrected all circumstances under Badger Meter's control that led to the Incident.

**20. Returns.** No Goods may be returned for credit or repair without a Returned Material Authorization (RMA) issued by Badger Meter. Badger Meter reserves the right to reject return if Buyer does not get prior authorization and RMA. Authorized return shipments must be returned in original packaging and in good condition to Badger Meter's designated receiving point, must be accompanied by a packing slip, including Badger Meter's RMA number, and must have transportation charges prepaid. NO RETURNS ACCEPTED WITHOUT PRIOR BADGER METER AUTHORIZATION EVIDENCED BY A VISIBLE RMA NUMBER ON THE OUTSIDE OF THE PACKAGE. If returned Goods are severely damaged in shipping, based on poor packing, they may not be eligible for credit. Correspondence concerning all returned Goods must be addressed to the appropriate Badger Meter office and party. Badger Meter reserves the right to deduct an adequate service charge to cover all inspection, testing and handling from any credit, plus freight, insurance, packing, import and export costs. Unused or uninstalled product returns received prior to 90 days after invoice date are eligible to be credited back to the customer with Badger Meter approval. Only current versions of other products are eligible to be credited back to the customer. Badger Meter reserves the right to charge a restocking fee.

**21. Assignment.** This Agreement may not be assigned by either party without the written consent of the other (which consent shall not be unreasonably withheld). However, consent will not be required for internal transfers and assignments of Badger Meter, its subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization.

**22. Governing Law and Dispute Resolution.** This Agreement shall be deemed as made and accepted in Wake County, North Carolina, USA. This Agreement and all disputes hereunder shall be governed by, resolved and construed under the internal laws of the State of North Carolina without regard to rules relating to conflict of laws. Neither this Agreement nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Upon expiration or termination of this Agreement for any reason, Badger Meter shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party in the jurisdiction where Buyer is located or stores the Goods.

**VENUE FOR ANY SUIT OR ACTION RELATING TO OR ARISING OUT OF ANY GOODS PURCHASED FROM OR SERVICES PERFORMED BY BADGER METER SHALL LIE EXCLUSIVELY IN THE STATE OR FEDERAL COURTS LOCATED IN WAKE COUNTY, NORTH CAROLINA, USA.**

**23. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. Non-Waiver.** Failure or delay of Badger Meter to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

**25. Government Contracts.** If the provision of Goods by Badger Meter under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. or any state or other national government, Buyer shall so notify Badger Meter in advance of order acceptance specifying the mandatory provisions of U.S, state or other national government law which apply.

a) **E-Verify.** Badger Meter shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

**26. Cumulative Remedies.** Badger Meter’s rights and remedies under the Agreement are cumulative and in addition to all other rights and remedies available to Badger Meter at law or in equity.

**27. Relationship of Parties.** Buyer and Badger Meter are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency or employment relationship Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_ day of \_\_\_\_\_, 2024.

BUYER (Town of Apex)

BADGER METER

\_\_\_\_\_

\_\_\_\_\_

Shawn Purvis, Interim Town Manager

Title: \_\_\_\_\_

\_\_\_\_\_

Allen L. Coleman, CMC, NCCCC, Town Clerk

*This instrument has been preaudited in the manner required*

*By the Local Government Fiscal Control Act.*

\_\_\_\_\_

Antwan Morrison, Finance Director