

**CITY OF PALMER ACTION MEMORANDUM No. 10-043**

**SUBJECT:** Authorize the City Manager to Enter into a Sole Source Procurement and Execute a Contract with BadgerMeter, Inc. for the Badger Water Meters and Supplies in the Amount of \$39,702.39

**AGENDA OF: July 27, 2010**

<b>Council action:</b>	<b>Authorized</b>
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**Approved for presentation by B. B. Allen, City Manager** Bob Casey

Route To:	Department/Individual:	Initials/Date:	Remarks:
X	Originator – Public Works	<i>CKL</i>	
X	City Clerk	<i>JK</i> 7/21/10	
X	City Attorney	<i>[Signature]</i> 7/21/10	
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

**Attachment(s):** BadgerMeter, Inc. Quotation 33078

**Certification of Funds:**

	No fiscal impact.	
x	Funds are budgeted from this account number: 02-01-10-6053	\$39,702.39
	Funds are not budgeted. Budget modification is required. Affected account number:	
	<b>Unrestricted/undesignated fund balance (after budget modification):</b>	

Director of Administration Signature: *[Signature]*

**Summary statement:** The City requests the approval to purchase the 300 Orion® Remote Meter Read (AMR) System and accessories from BadgerMeter, Inc. to continue the annual water meter replacement program.

Palmer Municipal Code (PMC) 3.21.230 allows for governmental and proprietary purchases. In 2006, the council approved AM 06-043 for the sole source purchase to BadgerMeter, Inc. in the amount of \$27,285.30 for the upgrade of water meters and supplies.

BadgerMeter, Inc. is the manufacturer of all the Badger products and the Orion<sup>®</sup> Remote Meter Read (AMR) System which communicates with the Badger Trace System.

In 2002, the council approved the purchase of this system as the City's water meter data collection system. The City has approximately 2,000 Badger water meters in service throughout the City.

The City annually purchases from BadgerMeter, Inc. (manufacturer) Badger water meters and accessories to issue to new customers and replace failing old meters.

In 2003, the City began the installation of the Badger Recordall<sup>®</sup> Transmitter Register (RTR<sup>®</sup>) which had a battery life of five to seven years. The Department of Public Works began updating them with the Orion<sup>®</sup> Remote Meter Read (AMR) System which has a 13-16 year battery life. The Orion<sup>®</sup> transmits faster and more accurately within a larger area. The Department has currently replaced 800 of 2,000 previously installed RTR<sup>®</sup>'s.

In 2010, the Department budgeted to upgrade 300 additional RTR<sup>®</sup>'s and accessories. The Department plans to budget annually for the replacement of 300 RTR<sup>®</sup>'s and anticipates the transition will be completed in 2013.

**Administration recommendation:** Approve action memorandum 10-043.

# Quotation #33078



## BadgerMeter, Inc.

4545 W. Brown Deer Road, Milwaukee, WI 53223

P.O. Box 245036, Milwaukee, WI 53224-9536

Phone: 800-616-3837

Fax: 888-371-5982

DATE: 4/29/2010

TO: CITY OF PALMER  
231 WEST EVERGREEN  
PALMER AK 99645

Phone: +1 (907) 745-3271

Fax: +1 (907) 745-0930

SUBJECT: ORION Quotation

Territory: Treece, Torre L.

EFFECTIVE: 4/29/2010 - 9/30/2010

Customer Number 500187

Quantity	Description	Unit Price in US Dollars	Total Price in US Dollars
1	5/8" x 3/4" Recordall M25 7 1/2" lay length, RTR, ORION Remote Module, Bronze Housing, Cast Iron Housing Bottom, Gallon, Plastic Lid/Plastic Shroud, Torx Seal Screw, Less Connections	157.69	157.69
1	2" Recordall Compound Series Meter Elliptical, (2) RTRs with (2) ORION Remote Modules, Bronze Housing, Plastic Lid/Plastic Shroud, Cast Iron Connections	1421.00	1,421.00
300	Registration RCDL Model 25 RTR, ORION Remote Module	113.68	34,104.00
1	Trimble Ranger Handheld, with ORION Internal Receiver & Charging Cradle <i>With a one for one trade-in of a Radix Handheld - includes (4) hours of WebEx based training &amp; support.</i>  <i>Our records indicate that you have the following Radix handhelds: ~MS50624, MS50629, MS51025</i>  <i>The pricing shown is for an exchange of 1 handheld.</i>	3700.00	3,700.00
5	ORION, Water Meter Monitor with Leak Detection <i>If your purchase (5) Water Meter Monitors on a single purchase order, you will receive one ORION Programming Accessory (65589-001) at NO CHARGE.</i>  <i>Limit one no charge accessory per customer.</i>	63.94	319.70

Total Price: \$ 39,702.39

All quotations are made subject to the conditions printed on the reverse side hereof. Prices are firm for acceptance within 30 days, and an order placed within that time period will indicate acceptance. Prices are subject to change without notice unless specifically stated in this quotation.

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Customer Number 500187

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Notes/Options: **GUIDELINES FOR TRIMBLE UPGRADE:**

*Utility may exchange on a one for one basis, an existing Badger ORION handhelds for a new Trimble Ranger with custom keypad and internal ORION receiver. The total number of Badger ORION handhelds purchased by the utility determines the total number of Trimble Ranger that may be purchased by the utility under this program.*

*An equal number of original Badger ORION handhelds with loader chargers must be returned to Badger Meter (through our standard RMI process) within two weeks after receiving the WebEx or on-site training. RMI should be marked "TRIMBLE RANGER UPGRADE PROGRAM".*

**Shipping Terms:**

*Freight is No Charge if shipment is over \$10,000.*

Shipping: Destination \$10,000 Minimum

BY J. Treece

Torre L. Treece

TITLE: Account Mgr. West

Payment: NET 30 DAYS

Delivery: Provided After Receipt of Order

All quotations are made subject to the conditions printed on the reverse side hereof. Prices are firm for acceptance within 30 days, and an order placed within that time period will indicate acceptance. Prices are subject to change without notice unless specifically stated in this quotation.

## TERMS AND CONDITIONS OF DOMESTIC SALES

**1. OFFER, GOVERNING PROVISIONS, AND CANCELLATIONS.** This writing constitutes an offer or counter-offer by Badger Meter, Inc. ("Seller") to sell the products and/or services described herein in accordance with these terms and conditions. This writing is not an acceptance of any offer made by purchaser ("Purchaser") and acceptance of this offer is expressly conditioned upon the Purchaser's assent to these terms and conditions. Purchaser will be deemed to have assented to these terms and conditions when:

- Purchaser signs and delivers to Seller an acknowledgment copy of any of Seller's quotations, order acknowledgment or invoice forms; or
- at Seller's option, when Purchaser shall have given to Seller specification of assortments, delivery dates, shipping instructions, or instructions to bill and hold as to all or any part of the merchandise herein described; or
- when Purchaser has received delivery of the whole or any part thereof; or
- when Purchaser has otherwise assented to the terms and conditions hereof.

No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication from Purchaser. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN. No order may be cancelled or altered by Purchaser except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such an approved cancellation by Purchaser, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation.

**2. DELIVERY AND DELAY.** All quoted delivery dates and/or periods are approximate. The delivery periods shall commence when Seller shall have acknowledged receipt of complete specifications, and/or applicable documents required to effect shipment such as import license, exchange permit, shipping instructions, etc. Title and risk of loss or damage in transit shall pass to Purchaser at the point where Seller has fulfilled its obligations under the shipping term specified in the contract for sale as described in the International Chamber of Commerce definition of Trade Terms — 1994, provided, that if payment shall be made under a letter of credit, Seller shall have a security interest in the equipment until acceptance of the related draft or drafts by the bank confirming such credit.

Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in the contract for sale, and all such installments, when separately invoiced, shall be paid for when due per invoice without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept remaining deliveries. Seller shall not be liable for any damage as a result of any delay due to any cause beyond Seller's reasonable control, including, without limitation, an act of God; act of purchaser; embargo or other governmental act, regulation or request; fire; accident; strike; slow-down; war; riot; delay in transportation; delayed delivery by suppliers; and 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.

Claims for shortages or other errors must be made in writing to Seller within thirty (30) days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Purchaser. Shipping specifications are approximate, any change resulting from variations are not subject to claim by Purchaser.

**3. DESCRIPTIVE LITERATURE AND SUBSTITUTES.** Catalogues, product brochures, photographs and other illustrations are a general representation of the products offered, but shall not be taken as an exact representation and shall not form part of the contract except as specifically set forth. Seller reserves the right to make changes in design, specifications or materials which in Seller's opinion are an improvement or necessary because of unavailability of materials. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

**4. STORAGE.** If the products are not shipped within 15 days after notification to Purchaser that they are ready for shipping, for any reason beyond Seller's reasonable control, including Purchaser's failure to give shipping instructions, Seller may store such products at Purchaser's risk in a warehouse or yard on Seller's premises, and Purchaser shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefor.

**5. PRICE AND PAYMENT.** As explained in Paragraph 10 below, the prices for the goods and/or services listed on the face of this offer (or counter-offer) are Seller's price for such goods and/or services with (1) the exclusive Warranty of repair or replacement of defective parts as found in Paragraph 7 below, and (2) the Exclusion of Consequential Damages and Disclaimer of Other Liabilities, as found in Paragraph 10 below, including the disclaimer of tort liability (including negligence and strict liability) enforceable against Purchaser. If Purchaser desires for Seller to provide a greater, or additional Warranty than presently contained in Paragraph 7, and/or to be liable for some or all of the disclaimed liability in Paragraph 10, and/or to be liable for Purchaser's consequential or incidental damages, then Purchaser must notify Seller before Purchaser accepts (or is deemed to accept), pursuant to Paragraph 1, this offer and Seller will amend this offer to reflect higher sales prices consistent with the additional warranty, liability and/or damages that Purchaser desires Seller to assume. In the absence of such a notification, the repair or replacement Warranty found in Paragraph 7, the disclaimer of consequential and incidental damages found in Paragraph 10 and the disclaimer of other liability also found in Paragraph 10 including the disclaimer of tort liability, shall be enforceable as stated in this contract.

Payment terms are net payment within 30 days of the date of invoice, unless otherwise stated. Interest will be charged at the rate of 18% per year (but not more than the highest rate permitted by applicable law) on accounts more than 30 days past due. Purchaser agrees to pay all costs of collection, including reasonable attorneys' fees, on all past due accounts. Invoices may be submitted as partial shipments are made. If during the period of the contract the financial condition of Purchaser does not justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with the contract. If shipment is delayed beyond the scheduled date by Purchaser, payment shall be due in full when Seller is prepared to make the shipment. If Purchaser defaults in any payment when due, then the whole contract price shall immediately become due and payable upon demand, or Seller, at its option without prejudice to other lawful remedies, may deliver or cancel this contract. If delivery is deferred, the goods may be stored as provided in Paragraph 4 above.

**6. TAXES AND OTHER CHARGES.** Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Purchaser, shall be paid by Purchaser in addition to the price quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, Purchaser shall reimburse Seller therefor. In lieu of such payment, Purchaser shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. When the contract price includes cost of transportation, field service and/or installation, it has been based on the lowest value for such service prevailing at the time such price is established, and, in the event of any change in such rates prior to shipment or performance of services, the price shall be modified accordingly.

**7. WARRANTIES.** Except as otherwise stated in Warranty Form S-3449 with regard to certain disc meters, Seller warrants equipment and parts manufactured by it and supplied hereunder to be free from defects in materials and workmanship for a period of 18 months from date of shipment or 12 months from date of installation, whichever period shall be shorter. If within such period any such equipment or parts shall be proved to Seller's satisfaction to be defective, such equipment or parts shall be repaired or replaced at Seller's option. Seller's obligations hereunder shall be limited to such repair and replacement and shall be conditioned upon Seller's receiving written notice of any alleged defect within 10 days after its discovery and, at Seller's option, return of such equipment or parts to Seller, or to its factory. This warranty shall not apply to equipment or parts not manufactured by Seller or to equipment or parts which shall have been repaired or altered by others than Seller, or which shall have been subject to negligence, accident, damage by circumstances beyond Seller's control or improper operation, maintenance, installation, or storage or to other than normal use or service. With respect to equipment and parts not manufactured by Seller, the warranty obligations of Seller shall in all respects conform and be limited to the warranty extended to Seller by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title). This exclusive remedy shall not be deemed to have failed its essential purpose so long as Seller is willing and able to replace defective products or issue a credit to Purchaser within a reasonable time after Purchaser proves to Seller that a defect is involved.

Any description of the products, whether in writing or made orally by Seller or Seller's agents, specifications, samples, literature, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Purchaser's order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

**8. PATENTS, TRADEMARKS AND COPYRIGHTS.** Seller will, at its own expense, defend any suits that may be instituted by anyone against Purchaser for alleged infringement of any United States patent, trademark, or copyright relating to any products manufactured and furnished by Seller hereunder, if such alleged infringement consists of the use of such products, or parts thereof, in Purchaser's business and provided Purchaser shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon Purchaser and permit Seller through its counsel, either in the name of Purchaser or in the name of Seller, to defend the same and give all needed information, assistance and authority to enable Seller to do so. If such products are in such suit held in and of themselves to infringe any valid United States patent, trademark or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such products by Purchaser is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure for Purchaser the right to continue using the products, (ii) modify the products to render them noninfringing, (iii) replace the products with noninfringing goods, or (iv) refund the purchase price and the transportation costs paid by Purchaser for the products.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to an infringement.

As to any products furnished by Seller to Purchaser manufactured in accordance with drawings, designs or specifications proposed or furnished by Purchaser or any claim of contributory infringement resulting from the use or resale by Purchaser of products sold hereunder, Seller shall not be liable, and Purchaser shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringements of any other proprietary rights of third parties.

**9. NUCLEAR DISCLAIMER.** Equipment sold by Seller is 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 equipment is used in a nuclear facility or activity without a supporting quotation, Seller disclaims all liability for any damage, injury or contamination, and Purchaser shall indemnify and hold Seller, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages or expenses of whatever form or nature (including attorneys' fees and other costs of defending any action) which they, or 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.

**10. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF OTHER LIABILITY; PURCHASER'S INDEMNITY.** Seller's liability with respect to breaches of warranty shall be limited as provided in Section 7 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slow-down costs, or for any other types of economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Purchaser's customers or any third party asserted by Purchaser against Seller for indemnity or contribution, as well as to direct claims of Purchaser against Seller.

The prices for the goods and/or services on the face of this offer are Seller's price for such goods and/or services with all the above Disclaimer of Liabilities, including tort liability, enforceable against Purchaser. If Purchaser desires for such Disclaimer to be amended so that Seller is liable for some or all of the matters disclaimed then Seller's price for the goods and/or services covered by this offer will be adjusted upward to reflect the risks which Purchaser desires Seller to assume. Purchaser understands that Purchaser is foregoing the possibility of, among other things, recovery from Seller of tort liability in exchange for Purchaser obtaining a lower sales price for the goods and/or services.

Purchaser shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Seller may incur as a result of any claim by Purchaser or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

**11. TECHNICAL INFORMATION.** Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of Seller.

**12. PURCHASER'S PROPERTY.** Any property of purchaser placed in Seller's custody for performance of this contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, war, burglary, theft, civil disorder or any accident beyond the reasonable control of Seller.

**CITY OF PALMER ACTION MEMORANDUM**

**SUBJECT:** Authorize City Manager to Enter Into a Sole Source Purchase Agreement with Badger Meter, Inc., in the Amount of \$27,285.30 for Purchase of Water Meter Equipment and Supplies

**AGENDA OF: April 25, 2006**

<b>Council action:</b>	Authorized
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**Approved for presentation by Tom Healy, City Manager** \_\_\_\_\_

Route To:	Department/Individual:	Initials:	Remarks:
X	Originator – PW	GW	
X	City Clerk		
	City Attorney		
	Emergency Services Director		
X	Finance Director		
	Library Director		
	Police Chief		
X	Public Works Director		

**Attachment(s):** Spreadsheet listing meter equipment and cost.

**Fiscal note:**

	No fiscal impact.	
X	Funds are budgeted from this account number:	02-0110-6053
	Funds are not budgeted. Budget modification is required. Affected account number:	

Finance Director Signature: \_\_\_\_\_

**Summary statement:** The City utilizes water meters and meter reading equipment manufactured by the Badger Meter, Inc. It is in the City's interest to utilize a sole source purchase agreement with Badger Meter for meter reading equipment upgrades and equipment and supplies. This \$27,285.30 purchase will upgrade our meter reading equipment for \$6,000, with the balance of the expense to purchase water meters, transmitting devices and supplies for 2006 water meter inventory.

**Administration recommendation:** Authorize City Manager to Enter Into a Sole Source Purchase Agreement with Badger Meter, Inc., in the Amount of \$27,285.30 for Purchase of Water Meter Equipment and Supplies.

