

ORDINANCE NO. 7-22

AN ORDINANCE TO ACTIVATE THE ORION CELLULAR ENDPOINT TECHNOLOGY ASSURANCE PLAN AND AMEND THE BADGER METER BEACON AMA MASTER AGREEMENT FOR THE PROVISION OF A CELLULAR BASED AUTOMATED WATER METER READING SYSTEM AND DECLARING AN EMERGENCY

WHEREAS, the Utility Department, pursuant to Ordinance 113-15, passed on September 14, 2015, awarded a contract to Badger Meter, Inc., a Wisconsin Corporation, for the installation of an Automated Metering Infrastructure (AMI) system utilizing cellular communication endpoint devices attached to each customer's water meter.

WHEREAS, the project included the installation of new water meters, cellular communication endpoint devices, appropriate water meter database updates and the required software infrastructure to automatically communicate all meter reading information to the City of Avon's central water/sewer service billing system.

WHEREAS, the project, known as the Water Meter Changeout Project, was substantially completed by Badger Meter in 2016 and finally completed in 2017; and

WHEREAS, Badger Meter Inc. and its cellular service aggregator and data-hosting service providers also developed a hosted, on-demand, web-based service web site, accessible to its customers to provide metering and water usage service information known as the BEACON Advance Metering Analytics (AMA) Managed Solution, thereby creating a complete AMI system where the water meter reads the usage, the cellular endpoint communicates the data and the BEACON AMA system provides an efficient and accessible way to view the water usage data; and

WHEREAS, Ordinance 113-15 also authorized the Mayor to enter into a Master Agreement with Badger Meter Inc. giving the Utility Department and its Authorized Consumers the right to access and use the Badger Meter Inc. hosted, on-demand, BEACON AMA Managed Solution website to obtain metering and water usage service information for the Utility Department's internal business use and for the benefits of its Authorized Consumers in accordance with the Master Agreement and in consideration of the payment of the Service Fees as called for in the Master Agreement and in the bid proposal for the installation of the AMI water meter reading system; and

WHEREAS, the BEACON AMA Managed Solution Master Agreement was executed on November 6, 2015 for a term of ten (10) years; and

WHEREAS, the contract established by Ordinance 113-15 for the installation of a cellular based automatic water meter reading system also included a negotiated provision identified as the ORION Cellular Endpoint Technology Assurance Plan (Cellular Assurance Plan) wherein Badger Meter, Inc. provided the City of Avon certain protections in the event that the CDMA (1XRTT) Cellular Network was shut down during the initial ten years of the BEACON AMA subscription period due to a technological sunset or obsolescence; and

WHEREAS, The CDMA Cellular Network is the mode of communication between each user's cellular endpoint at their home and Badger Meter's BEACON AMA system; and

WHEREAS, the City of Avon was notified by Badger Meter, Inc. in early 2021 that the certain changes in the cellular communication industry had led to the unexpected technological sunseting of the CDMA (1XRTT) Cellular Network at the end of 2022 for all practical purposes; and

WHEREAS, the imminent shutdown of the CDMA (1XRTT) Cellular Network initiated the consideration of activating the Cellular Assurance Plan and thus discussions were commenced between the City of Avon Utilities Director, Finance Director, the City's Consulting Engineer and representatives of Badger Meter, Inc. to determine the schedule for and implications of upgrading all CDMA dependent user endpoints; and

WHEREAS, the Cellular Assurance Plan provided for a ten (10) year warranty against the obsolescence of CDMA and stipulated the following: a) Badger Meter, Inc. will remove, replace and dispose of all CDMA dependent endpoints; b) that Badger Meter, Inc. will use its best efforts to assure the seamless integration of the replaced endpoints; c) the City of Avon agrees to renew its BEACON AMA contract for an additional ten (10) years; d) the City of Avon agrees to pay an activation fee for each replaced endpoint at the beginning of the second ten (10) year BEACON AMA term; e) each replacement endpoint will carry a warranty that starts upon replacement and ends upon expiration of the renewal BEACON AMA term (November 6, 2035) thus creating a twenty (20) year system which matches the expected life cycle of the water meter units; and f) if the City of Avon opts out of the ORION Cellular Endpoint Technology Assurance Plan it will be fully responsible for replacing all such CDMA reliant endpoints at its sole cost; and;

WHEREAS, the Cellular Assurance Plan stipulates that the activation fee for new meter installations is adjusted annually from a starting point of \$79.50 per unit based on the Producer Price Index (PPI) starting with the June 2015 PPI, not to exceed 5% annually; and

WHEREAS, after discussions with Badger Meter, Inc. the City was given the option to pay either the activation fee on November 6, 2025 based on its PPI adjusted price at that time or pay the activation fee in 2022 at its current PPI adjusted rate, thus saving the PPI unit cost increases between the current rate and the 2025 rate; and

WHEREAS, the Avon Finance Director has evaluated the activation fee payment options, the City of Avon's current fiscal state, and the current United States economic climate and has determined that the payment of the activation fee in 2022 as opposed to 2025 is in the best interests of the City of Avon; and

WHEREAS, Badger Meter, Inc. has prepared an agreement memorializing the steps involved with activating the Cellular Assurance Plan, [Exhibit A](#) attached, for consideration by the City of Avon.

WHEREAS, Council, having considered the options as set forth herein and as presented by the various heads of each department, finds their recommendations to activate the Cellular

Assurance Plan to be reasonable and in the best interest of the health, safety and welfare of the citizens of Avon who are serviced by the Avon Utility Department.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - The City of Avon acknowledges the oncoming shutdown of the CDMA (1XRTT) Cellular Network, that the shutdown of the CDMA network would be detrimental to the consistent and efficient collection of water usage data throughout the Avon water distribution network, that provisions for such a contingency were negotiated and made part of Ordinance 113-15 in the form of the Cellular Assurance Plan, and that enactment of the Cellular Assurance Plan is in the best interest of the City of Avon.

Section 2 - Council hereby authorizes the Mayor to execute the Cellular Assurance Plan summary agreement in substantially the form as set forth in the attached Exhibit A, which is incorporated herein by this reference, directing the Finance Director to make the stipulated activation fee payments in the 2022 fiscal year and extend the term of the BEACON AMA Master Agreement with Badger Meter Inc. for a second ten (10) year term that would begin on November 6, 2025 and end on November 6, 2035, upon the recommendations of the Utilities Superintendent, the Finance Director and the City's Consulting Engineer.

Section 3 - The Finance Director is hereby authorized to appropriate funds and make payment to satisfy the obligations under the agreement set forth herein from the Capital Improvements Water Fund No. 303, the Water Revenue Fund No. 611, the Sanitary Sewer Replacement & Depreciation Fund No. 406, and the Sanitary Sewer Revenue Fund No. 631. One-half of the payment will come from water funds and one-half of the payment will come from sanitary sewer funds.

Section 4 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to upgrade all CDMA Cellular Network devices prior to their obsolescence in order to maintain the integrity of the water distribution and billing system and that this work begin at the earliest possible date; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Brian Fischer, Council President

Ordinance No. 7-22 (Con't.)

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director