

Robert E. Shannon  
City Attorney of Long Beach  
335 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2100

1 AGREEMENT

2 **30029**

3 THIS AGREEMENT is made and entered, in duplicate, as of March 1, 2007  
4 for reference purposes only, pursuant to Resolution No. RES-07-0010 adopted by the City  
5 Council of the City of Long Beach at its meeting on January 23, 2007, by and between  
6 DRESSER, INC. --ROOTS METERS & INSTRUMENTS, dba DMD Dresser ("Vendor") and  
7 the CITY OF LONG BEACH ("City"), a municipal corporation.

8 WHEREAS, City, acting through its Gas and Oil Department, desires to  
9 purchase Dresser Roots rotary-type gas meters from Vendor, and Vendor desires to sell  
10 the same to City;

11 NOW, THEREFORE, in consideration of the terms and conditions contained  
12 in this Agreement, the parties agree as follows:

13 1. Vendor shall furnish that certain rotary-type gas meter equipment  
14 specified in Exhibit "A" attached hereto at the prices included therein, and otherwise in  
15 accordance with the terms and conditions of this Agreement.

16 2. City shall purchase such products in installments, as and when it deems  
17 necessary, but in no event shall the aggregate amount of purchases made hereunder  
18 exceed \$150,000, including applicable taxes, if any. The prices set forth in Exhibit "A" shall  
19 be effective through December 31, 2007, at which time and periodically thereafter Vendor  
20 may submit revised pricing for any subsequent purchases. The City intends in good faith  
21 to purchase a substantial amount of product pursuant to this Agreement, however, City  
22 shall not be obligated to make any purchase under this Agreement. The term of this  
23 Agreement shall be one (1) year from the date of execution by both parties, and the City  
24 shall have the option to extend the term of this Agreement for two additional one-year  
25 periods.

26 3. Payment for such products purchased from Vendor by City shall be made  
27 by City on delivery of the equipment to City at its address set forth below and submission  
28 of an invoice to City. Payment is due thirty (30) days after the date of the invoice.

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1                   4. Vendor warrants that its manufactured goods and services will be free  
2 from defects in materials and workmanship. Any warranty claim must be made in any  
3 event, within the earlier of 12 months from date of initial operation or 18 months from  
4 shipment. Upon City's submission of a claim as provided above and substantiation  
5 thereof, Vendor shall, at its option (i) either repair or replace its nonconforming goods, or  
6 re-perform the services or (ii) refund an equitable portion of the purchase price attributable  
7 to such non-conforming goods. Vendor shall not be liable for the cost of removal or  
8 reinstallation of materials or any unauthorized warranty work, nor shall Vendor be  
9 responsible for any transportation cost, unless expressly authorized in writing by Vendor.  
10 Any spare parts provided by Vendor hereunder shall be warranted for the same time period  
11 and on the same basis as described above. Vendor makes no representation regarding  
12 the stocking by Vendor of spare parts for the goods.

13                   Repair or replacement of goods or refund of an equitable portion of the purchase  
14 price shall be Vendor's only obligation and the sole and exclusive remedy of City in the  
15 event of a failure to conform to the foregoing warranty. The foregoing warranty is exclusive  
16 and in lieu of all other warranties (except that of title), express or implied, including, but not  
17 limited to the implied warranties of merchantability or fitness for a particular purpose. The  
18 foregoing warranty shall accrue to the City of Long Beach.

19                   5. Neither this Agreement nor any money that becomes due to Vendor under  
20 this Agreement may be assigned by Vendor without the prior written consent of the City  
21 Manager or his designee.

22                   6. Any notice given under this Agreement shall be in writing and personally  
23 delivered or deposited in the U.S. Postal Service, return receipt, and shall be delivered or  
24 mailed to the respective parties at the addresses listed below.

25                   DMD Dresser  
26                   16240 Port NW Drive, #100  
27                   Houston, Texas 77041  
28                   Attn: Ms. Ginger Lamkin  
                    Tel: (832) 590-2558  
                    Tax ID: 750813641

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1 City of Long Beach  
2 Department of Gas & Oil  
3 2400 E. Spring Street  
4 Long Beach, California 90806  
5 Attn: Sigmund Jacoby

6 7. In no event shall Vendor be liable for special, incidental, indirect or  
7 consequential damages whether for breach of Agreement, breach of warranty, tort or  
8 otherwise. The Vendor's liability on all other claims for loss or liability arising out of or  
9 connected with this Agreement, or the manufacture, sale, delivery, resale, or use of any  
10 parts or equipment covered by this Agreement shall in no case exceed the price of the  
11 services or the unit price of such equipment or part hereof involved in the claim. Any  
12 release, limitation of liability or other exculpatory language contained herein shall apply  
13 regardless of the fault, negligence, or strict liability of the Vendor. Vendor shall cooperate  
14 with the City in all reasonable respects in all matters relating to the City's self-accrual of  
15 California use tax, provided that such cooperation does not violate any agreements Vendor  
16 may have with third-parties or otherwise violate applicable laws, and provided further that  
17 such cooperation does not impose any expense upon Vendor. Vendor shall contact the  
18 City Treasurer should it require additional information regarding such self-accrual.

19 8. Vendor shall, with respect to all services performed hereunder, indemnify  
20 and hold harmless City, its Boards and commissions, and their officials, employees, and  
21 agents (collectively in this Section "City") from and against any and all liability, damages,  
22 losses, penalties, costs and expenses (including but not limited to reasonable attorney's  
23 fees, court costs, and expert and witness fees)(collectively "Claims" or individually "Claim")  
24 arising, in whole or in part, from any negligent act or omission of Vendor, its officers,  
25 employees or agents. In connection with the indemnification duty on the part of Vendor,  
26 Vendor shall defend City and shall continue such defense until the Claim is resolved,  
27 whether by settlement, judgment, or otherwise. Vendor shall give to City notice of any  
28 Claim within ten (10) calendar days. Likewise, City shall give Vendor notice of any Claim  
within ten (10) calendar days, shall tender the defense of such Claim to Vendor, and shall

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1 assist Vendor, as may be reasonably requested, in such defense.

2 IN WITNESS WHEREOF, the parties have caused this document to be duly  
3 executed with all formalities required by law as of the date first stated above.

4 DRESSER, INC. --ROOTS METERS &  
5 INSTRUMENTS, dba DMD Dresser

6 April 12, 2007

7 By Barbara S. Hilliard  
~~Manager~~ ~~President~~ Customer Services  
8 Barbara G. Hilliard  
(Type or Print Name)

9 "Vendor"

10 CITY OF LONG BEACH, a municipal corporation

11 4-23, 2007

12 By Christine J. Shippey **ASSISTANT**  
13 ~~EXECUTIVE MANAGER~~  
14 "City" **TO SECTION 301 OF**  
**THE CITY CHARTER.**

15 This Agreement is approved as to form on 4/16, 2007.

16 ROBERT E. SHANNON, City Attorney

17 By [Signature]  
18 Deputy City Attorney

19 L:\APPS\CtyLaw\32\WPDOCS\022\005\00101816.WPD  
20 07-00637

EXHIBIT "A"  
EQUIPMENT AND PRICES  
[ATTACHED]

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<b>METERS</b>	<b>NEED</b>	<b>PRICE</b>	<b>SUB-TOTAL</b>	<b>TOTAL</b>
<u>ROTARY</u>				
8C - 601	185	\$477.00	\$88,245.00	
15C - 602	50	\$638.00	\$31,900.00	
3M - 605				
5M - 615			\$0.00	
7M - 625	6	\$1,420.00	\$8,520.00	
11M - 636	3	\$1,673.00	\$5,019.00	
16M - 646			\$0.00	
23M - 651			\$0.00	
38M - 656			\$0.00	
<u>PROVER RECERTIFICATION</u>			\$3,135.00	
<u>PROVER REPLACEMENT PARTS</u>			\$2,688.00	
<u>TEST ON 11M</u>			\$550.00	
<b>TOTAL ESTIMATED ROTARY NEEDS</b>				<b>\$140,057.00</b>