

1 AGREEMENT

2 **30593**

3 THIS AGREEMENT is made and entered, in duplicate, as of January 8, 2008,
4 pursuant to Resolution No. RES-08-0004 adopted by the City Council of the City of Long
5 Beach at its meeting on January 8, 2008, by and between ELSTER AMERICAN METER
6 ("Vendor") and the CITY OF LONG BEACH ("City"), a municipal corporation.

7 WHEREAS, City, acting through its Gas and Oil Department, desires to
8 purchase natural gas flow regulators and meters and other related equipment from Vendor,
9 and Vendor desires to sell the same to City;

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

12 1. Vendor shall furnish those certain natural gas flow regulators and meters
13 and other related equipment specified in Exhibit "A" attached hereto at the prices included
14 therein, and otherwise in accordance with the terms and conditions of this Agreement.

15 2. City shall purchase such products as and when it deems necessary, but
16 in no event shall the aggregate amount of purchases made hereunder exceed \$500,000.
17 City shall not be obligated to make any purchase under this Agreement. This Agreement
18 shall be effective for a period of one year, and the City Manager, or designee, shall have
19 the option to extend the term of this Agreement for two additional periods of one-year each,
20 during which extension periods the same terms and conditions shall apply.

21 3. Payment for such products purchased from Vendor by City shall be made
22 by City on delivery to and acceptance of the equipment by City and submission of an
23 invoice to City. Payment is due thirty (30) days after the date of the invoice.

24 4. All warranties shall accrue to the City of Long Beach.

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

28 6. Any notice given under this Agreement shall be in writing and personally
delivered or deposited in the U.S. Postal Service, return receipt, and shall be delivered or

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 mailed to the respective parties at the addresses listed below.

2 Elster American Meter
3 1720 S. Amphlett Boulevard, #129
4 San Mateo, California 94402
5 Attn: Ms. Jan Beougher
6 Tel: (650) 340-1414
7 Tax ID: [REDACTED]

8 City of Long Beach
9 Department of Gas & Oil
10 2400 E. Spring Street
11 Long Beach, California 90806
12 Attn: Sigmund Jacoby

13 7. Vendor shall cooperate with the City in all matters relating to self-accrual
14 of use tax. If requested by City, Vendor shall contact the City Treasurer for additional
15 information regarding self-accrual.

16 8. Vendor shall, with respect to all services performed hereunder, indemnify
17 and hold harmless City, its Boards and commissions, and their officials, employees, and
18 agents (collectively in this Section "City") from and against any and all liability, claims,
19 demands, damage, loss, causes of action, proceedings, penalties, costs and expenses
20 (including but not limited to attorney's fees, court costs, and expert and witness
21 fees)(collectively "Claims" or individually "Claim") arising, in whole or in part, from: 1) any
22 negligent act or omission of Vendor, its officers, employees, agents, invitees, or anyone
23 under Vendor's control (collectively "Indemnitor"); 2) Vendor's breach of this Agreement;
24 3) Vendor's misrepresentation or willful misconduct; and 4) Claims by any employee of
25 Indemnitor relating in any way to workers' compensation. Independent of the
26 indemnification duty and as a free-standing duty on the part of Vendor, Vendor shall
27 defend City and shall continue such defense until the Claim is resolved, whether by
28 settlement, judgment, or otherwise. No finding or judgment of negligence, fault, breach,
or the like on the part of Indemnitor shall be required for the duty to defend to arise.
Vendor shall give to City notice of any Claim within ten (10) calendar days. Likewise, City
shall notify Vendor of any Claim, shall tender the defense of such Claim to Vendor, and
shall assist Vendor, as may be reasonably requested, in such defense.

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

3 ELSTER AMERICAN METER

4 _____, 2008

By [Signature]
President

Roy A. Sutcliffe
(Type or Print Name)

7 February 21, 2008

By [Signature]
Secretary

Herbert E. Natteron
(Type or Print Name)

"Vendor"

12 CITY OF LONG BEACH, a municipal corporation

13 March 17, 2008

By [Signature] Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

16 This Agreement is approved as to form on March 10, 2008.

17 ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy City Attorney

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EXHIBIT "A"
EQUIPMENT AND PRICES
[ATTACHED]

