

ENERGYAXIS® SUPPLY CONTRACT

BETWEEN

City of Ocala

AND

ELSTER ELECTRICITY, LLC

July 1, 2008

GENERAL AGREEMENT

THIS GENERAL AGREEMENT (this "Agreement") is entered into between Elster Electricity, LLC, a Delaware limited liability company ("Elster" or "Seller"), and City of Ocala, a Florida municipal corporation, (City of Ocala "Licensee" or "Purchaser"). Together Elster and City of Ocala they shall be known as "the parties".

1. **Entire Agreement.** This General Agreement, together with the Exhibits attached hereto constitute the entire Agreement between the parties and supersede and cancel any and all prior agreements, written or oral, between them relating to the subject matter hereof, and may not be amended except in a written change signed by both of the parties hereto. This Agreement shall include:
 - a) The General Agreement
 - b) Exhibit A– Elster Software License Agreement
 - c) Exhibit B – Elster Software Maintenance Agreement
 - d) Exhibit C – Pricing
 - e) Exhibit D – Draw Schedule
 - f) Exhibit E – Elster Terms and Conditions

The Elster Software License Agreement and Software Maintenance Agreement are included herein since their signing by the Purchaser is a requirement for completion of the General Agreement. They will survive and remain in effect as per their individual requirements after this General Agreement is ended or terminated.

2. **Supply.** This General Agreement will cover the supply of certain goods, software and services as delineated herein to provide an automated metering infrastructure (AMI) system (the "System") for electric and water meters for City of Ocala. City of Ocala or its subcontractors will provide installation of all meters and equipment, except as noted herein.
3. **The Project.** Elster shall sell the equipment (the "Equipment"), provide the services (the "Services"), and license to City of Ocala the software (the "Software"). The Equipment and Services will be provided through subcontract with Johnson Controls, Inc. ("JCI"). The duration of the Project is expected to run from July 1, 2008 to July 31, 2009, subject to an overall project schedule to be determined during system planning that is mutually agreeable to the parties.
4. **Applicable Terms.**
 - a) All Software shall be licensed pursuant to a separate software license agreement to be executed by the parties in the form of the Software License Agreement, attached hereto and incorporated herein by reference as Exhibit A - Software License Agreement.
 - b) After installation, support for the software system will be provided by Elster in accordance with a Software Maintenance Agreement (SMA), attached hereto and incorporated herein by reference as Exhibit B - Software Maintenance Agreement.
5. **Prices.** In consideration of the Equipment and Services, City of Ocala shall pay Elster the following amounts in U.S. Dollars:
 - a) **Elster Scope of Supply**

MAS Communication Server Software			
Base Software License Fee	1	(included in JCI/Elster subcontract)	\$1.00

Per Meter License Fee - first 20,000 meters		Included	
Per Meter License Fee – over 20,000 meters	TBD	\$0.40	TBD
MAS Software Maintenance Agreement (prorated for a partial first year)		(included in JCI/Elster subcontract)	
Elster Project Support Services , to include:	1 Lot	(included in JCI/Elster subcontract)	
System Planning Support			
Software Installation & Checkout			
Training			
Technical Support			
Elster Scope Project Coordination			
Travel & Living for site work		(included in JCI/Elster subcontract)	
Systems Integration Services	TBD	\$1,000 per man-day	TBD
Total Price			<u>\$1.00</u>

- b) **Custom Integration** - None is included in the base Contract scope. If Elster is subcontracted for integration work, City of Ocala will provide Elster with legal access to any formats or protocols necessary to develop the file structures and will provide suitable and timely support for testing support at no cost to Elster. Elster will not unreasonably withhold cooperation with any City of Ocala financial or utility billing software vendor.
6. **Payment.** City of Ocala shall pay for Elster deliverables per the following payment schedule:
- a) **Elster MAS Software License Fees** – The initial 2008 License Fee will be paid by the City of Ocala’s contractor, Johnson Controls and will be invoiced upon completion of MAS installation and training at site. Additional per meter fees will be issued after periodic audit, but not more than quarterly each year. The 2008 audit is planned to occur in October. No credit will be given for audits resulting in fewer meters on the MAS system. At the conclusion of the contract between Ocala’s contractor, Johnson Controls, and the City of Ocala, Ocala will need to make payment directly with Elster Electricity LLC for any future License fees based on additional meters added to the Ocala system outside the JCI contract.
- b) **Software Maintenance fees** – The prorated 2008 Maintenance Fee will be paid by the City of Ocala’s contractor, Johnson Controls, and will be invoiced upon completion of Software installation and training for the first partial calendar year after installation and annually thereafter unless terminated by City of Ocala. At the conclusion of the contract between Ocala’s contractor, Johnson Controls, and the City of Ocala, Ocala will need to make payment of the Software Maintenance fees directly with Elster Electricity LLC in order to be covered under the maintenance agreement. Non payment of the fee would result in termination of the coverage.
- c) **Payment terms** are net cash, payable without offset, in United States Dollars, by wire transfer to the account designated by Elster due 30 calendar days from date of invoice.
7. **Delivery terms.** Delivery terms for the Software shall be as set forth in the Software License Agreement - Exhibit A.

8. **Software License Agreement.** The Software License Agreement Exhibit A shall govern the licensing and use by City of Ocala of the Software.
9. **Software Maintenance Agreement.** The Software Maintenance Agreement (SMA) in Exhibit B shall govern the responsibilities of Elster for software support and maintenance while the SMA is in effect.
10. **Order of Precedence.** In the event of any inconsistencies among the documents, the Software License Agreement shall control with respect to any issues relating to the Software, and the following order of precedence shall apply with respect to any other issues relating to this Agreement:
 - a) This General Agreement
 - b) Exhibit A - Elster Software License Agreement
 - c) Exhibit B- Elster Software Maintenance Agreement
 - d) Exhibit C – Pricing
 - e) Exhibit D – Draw Schedule
 - f) Exhibit E – Elster Terms and Conditions
11. **Assignment.** Neither party may assign this Agreement, in whole or in part without the prior written consent of the other party, except that either party may assign this Agreement without such consent in connection with a sale of a controlling interest in the capital stock or other equity interest of such party, a sale of all or substantially all of the assets of such party or pursuant to a merger or consolidation to which such party is a party. Subject to the foregoing, this General Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
12. **Waiver.** The terms, covenants and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time or times to require performance of any provision of the Agreement shall in no manner affect the right at a later date to enforce the same or to enforce any future compliance with or performance of any of the provisions hereof. No waiver by any party of any condition or other breach of any provision, term or covenant in this Agreement whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or the breach of any other provision, term or covenant of this Agreement.
13. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.
14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. For the purposes of this Agreement, a facsimile signature shall be deemed an original.
15. **Governing Law.** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the Stat of Florida in the county of Marion County.
16. **Elster Status.** Elster shall be an independent contractor shall have no authority, express or implied, to act for or bind City of Ocala by virtue of anything contained in this General Agreement. Nothing contained within this General Agreement shall be deemed or construed by City of Ocala or Elster or by any third party to create the relationship of a partnership or a joint venture.

17. **Delays.** Elster shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control, including but not limited to acts of war (declared or undeclared), Acts of God, acts of war or terrorism, fire, strike, labor difficulties, acts or omissions of any governmental authority or of City of Ocala, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery or performance will be extended by period equal to the delay plus a reasonable time to resume performance. If the delay is caused by City of Ocala, the price will be adjusted to compensate Elster for such delay.

18. **Changes.** Any changes requested by City of Ocala affecting the ordered scope of work must be accepted by Elster and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change. All requested contractual changes shall be in writing between the City of Ocala Project Manager and the Elster Project Manager when the change impacts project scope or project schedule. Should City of Ocala request changes to the contract, the City of Ocala Project Manager and Elster Project Manager will manage and schedule the impacts of those changes as indicated above, including information on cost and scheduling impacts, if any. Changes to the scope requirements will be priced per the unit pricing in Section 4 of the General Agreement, if applicable or otherwise on request from Elster.

Any changes to the system initiated by City of Ocala either before or after delivery may necessitate upgrades to third party licenses which may be based on changes in named users, application, number of meters, number of system CPUs or processors, or other criteria and payment for any additional third party license fees will be the responsibility of City of Ocala unless such costs are specifically noted as included in Elster's Scope of Supply in Appendix A.

19. **Termination.** Any order or contract may be terminated by City of Ocala only by written notice and upon payment of reasonable and proper termination charges, including but not limited to all costs identified to the order or contract which have been incurred up to the date of the notice of termination. Payments shall be made within 30 calendar days from receipt of invoice and acceptance of the goods. Elster may terminate any order for nonpayment. No termination by City of Ocala for default shall be effective unless, within thirty (30) calendar days after receipt by Elster of City of Ocala's written notice specifying such default, Elster shall have failed to initiate and pursue with due diligence correction of such specified default.

20. **Limitation of Liability.**

- a) IN NO EVENT SHALL ELSTER OR CITY BE LIABLE LFOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING FROM, RELATING TO, PRFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
- b) The liability of the City under this Agreement is intended to be consistent with limitations of Florida law.

21. **Warranties.**

- a) Warranty and other terms for the software will be per the Software License Agreement, Exhibit A.
- b) Elster will provide all freight charges for return of repaired or replaced items from its factory. After the vendor's Warranty period, City of Ocala is responsible for payment of any support

or maintenance agreements and/or customer supplied third party software used in the system.

- c) After the vendor's Warranty period, City of Ocala is responsible for payment of any support or maintenance agreements and/or customer supplied third party software used in the system.

22. **Notifications.** Any notices given under the provisions of this General Agreement shall be in writing and shall be either hand-delivered, sent by overnight delivery service or sent by Registered or Certified Mail, Return Receipt Requested and shall be deemed to have been given or made when personally delivered, the next business day following the date such notice was sent by overnight delivery service, or three (3) days after the date such notice was deposited in the mail, as the case may be, and shall be addressed as follows:

To City of Ocala 201 SE Third Street Ocala, FL 34471-2174	To Elster Bob Dumas, Project Manager Elster Electricity, LLC 208 South Rogers Lane Raleigh, NC 27610
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23. Miscellaneous Provisions

a) **Attorneys Fees.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs (including without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.

b) **Jurisdiction and Venue.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

c) **Jury Waiver.** In any civil action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, of the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. Each party hereby irrevocably waives any right it may have to a trial by jury. Any party may file an original counterpart or a copy of this Agreement with any court, as written evidence of the consent of the parties hereto of the waiver of their right

to trial by jury. Neither part has made or relied upon any oral representations to or by any other party regarding the enforceability of this provision. Each party has read and understands the effect of this jury waiver provision.

IN WITNESS WHEREOF, the parties have authorized their representatives to execute this Agreement effective as of the last date written ("Effective Date").

Elster Electricity, LLC

By: _____

Name: _____

(print)

Title: _____

Date: _____

City of Ocala

By: _____

Name: Charles Ruse Jr.

Title: Council President

Date: _____

Approved as to form and legality

Patrick G. Gilligan, City Attorney

ATTEST:

Valerie J. Forster, City Clerk

ACCEPTED BY CITY COUNCIL
July 1, 2008
DATE
OFFICE OF THE CITY CLERK

EXHIBIT A

SOFTWARE LICENSE AGREEMENT

EnergyAxis Metering Automation Server (MAS)

This Software License Agreement (this "License Agreement") is made and entered into by and between Elster Electricity, LLC, a Delaware limited liability company, with offices at 208 South Rogers Lane, Raleigh, NC 27610, USA, ("Elster"), and the City of Ocala, and existing under the laws of the State of Florida, with offices at 201 SE Third Street Ocala, FL 34471-217 ("Licensee").

In consideration of their mutual promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

- 1.1 "Authorized User" shall mean the number of users authorized to Use the Program, as more particularly described in Appendix A-1 attached hereto and incorporated herein by this reference.
- 1.2 "Documentation" means Elster's published software manuals and all other written materials or documents provided by Elster to Licensee to explain the operation of the Software and to aid in its use. All Documentation shall be written in the English language.
- 1.3 "Equipment" shall mean the computer equipment specified in Appendix A-2.
- 1.4 "Meter Point" shall mean an individual device, from which Licensee collects and analyzes data using the Program.
- 1.5 "Operating System" shall mean the computer software system installed in a computer that controls and monitors the computer's function and provides support for the Program, as more specifically specified in Appendix A-2.
- 1.6 "Program" shall mean the Software and the Third Party Software.
- 1.7 "Software" shall mean the computer software developed and owned by Elster or its affiliates and all updates, enhancements and upgrades thereto, all in the English language, as more particularly described in Appendix A-2, attached hereto and incorporated herein by this reference.
- 1.8 "Third Party Software" shall mean the computer software (in the English language) which is distributed by Elster under this Agreement, but which is owned by other parties (other than Elster affiliates), and listed in Appendix A-2 as Third Party Software.
- 1.9 "Supported System" shall mean the combination of Equipment, Operating System and third-party software specified by Elster for use with the Program and required to be procured by Licensee, as described in Appendix A-2.
- 1.10 "Use" means to load, execute, employ, utilize, store or display the Program.

2. License Grant

- 2.1 Elster hereby grants to Licensee a nonexclusive, nontransferable license, subject to the terms and conditions set forth in this Agreement, to Use the Program (in object code only) and the applicable Documentation during the term of this Agreement as follows:
 - 2.1.1 To Use the Program, in object code only, solely in connection with Licensee's business purposes.

- 2.1.2 To make one copy of the Program for backup purposes only as long as that copy is not running on a server.
 - 2.1.3 To run a non-production backup of the software for purposes of testing and as a backup for the operational system subject to payment of the incremental license fee in Appendix A-1.
- 2.1 Licensee's use of the Program is limited to use in connection with the maximum number of Authorized Users, Meter Points and computers specified in Appendix A-1. Licensee may increase the number of Authorized Users, Meter Points or computers upon written request and payment of additional fees. Licensee shall use the Program on the Supported System only.
- 2.2 Additional license terms, if any, for Third Party Software are contained in Appendix A-3. To the extent such terms in Appendix A-3 are inconsistent or are in addition to the terms of this Agreement, the terms of Appendix A-3 shall control with respect to the referenced Third Party Software. Licensee shall not configure, use or install any Third Party Software separately or independently of the Programs.
- 2.3 The license granted in Section 2.1.1 above shall be effective on the date hereof and shall continue in effect unless terminated in accordance with Section 14 of this Agreement.
- 2.4 Licensee shall procure the Supported System required to operate the Program, as specified in Appendix A-2, either from Elster or a third party.

3 Ownership and Intellectual Property Rights.

- 3.1 Licensee hereby acknowledges and agrees that the Software, the applicable Documentation and all patents, copyrights and trademarks related thereto are the exclusive property of Elster or its affiliates and that Elster or its affiliates own all rights, title and interest, including, without limitation, all worldwide patent, copyright, trade secret and trademark rights and all goodwill associated therewith, in and to the Software. In addition, Licensee hereby acknowledges and agrees that all ideas, concepts, know-how, techniques, inventions and other copyrightable works of authorship related to the Software and the applicable Documentation are proprietary to and the exclusive property of Elster or its affiliates and shall be deemed Confidential Information for the purposes of Section 5 of this Agreement. Licensee agrees to assign, and hereby assigns, to Elster all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in such ideas, concepts, know-how, techniques, inventions and copyrightable works of authorship related to the Software and the applicable Documentation developed in whole or in part by Licensee's employees or contractors. Notwithstanding the foregoing, Licensee shall have a non-exclusive, non-transferable, royalty-free license which shall be subject to Section 5, to use for its own internal business purposes any ideas, concepts, know-how, techniques, inventions and other copyrightable works of authorship related to the Software that are developed solely by employees of Licensee or its contractors.
- 3.2 Except for the license granted by Elster to Licensee pursuant to Section 2.1.1 of this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Program or any patent, copyright, trade secret or trademark of Elster, Elster's affiliates or Elster's licensors.
- 3.3 The Program is protected under United States and international copyright, trade secret and other intellectual property laws. Without limiting the generality of the foregoing, the parties acknowledge and agree that the source code, object code and all visual, printed and other outputs of the Program are trade secrets of Elster and its affiliates and licensors. Except as otherwise expressly permitted under this Agreement, Licensee may not copy, translate, modify, display, patch, alter or otherwise change or make derivative works of the Program, the applicable Documentation or any individual part thereof. Licensee shall not alter or remove any

copyright notice or any propriety legend contained in or located on any part of the Program or the applicable Documentation and shall reproduce and maintain all such copyright notices or proprietary legends in and on any copy of the Program or Documentation that Licensee makes as permitted by this Agreement.

4. Restrictions on Use, Transfer and Provision of Services. Licensee shall not derive or attempt to derive the source code or structure of all or any portion of the Program by reverse engineering (except as required by law for interoperability), disassembly, decompilation or any other means. Licensee shall not give, sell, rent, lease, pledge, encumber, hypothecate, timeshare, provide subscription services for, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Program or the applicable Documentation or other rights to any third party, including but not limited to Licensee's subsidiaries and affiliates. Licensee shall not publish the results of any benchmark tests run on the Program and shall treat such results as Confidential Information of Elster. Licensee's primary business involves the generation, transmission or distribution of electricity, water or gas. The licensee is not in the business of providing meter reading services and shall not use the system for the purpose of providing meter reading or other services and does not provide meter reading and/or other services to other corporate entities using the system. This license specifically prohibits the use of the system for provision of meter reading and AMI services to other corporate entities. Additional recurring license fees and an amendment to this software license agreement is required if the Licensee's business model requires provision of meter reading and AMI services to other utilities.

5. Confidentiality. Licensee shall not disclose the Program, the Documentation, the terms of this Agreement, or any other information disclosed by Elster and identified by Elster as confidential to any third parties without Elster's prior written consent and then only after obtaining an appropriate nondisclosure agreement with each such third party. The information referred to in the preceding sentence is collectively referred to herein as the "Confidential Information." Licensee further agrees to use its best efforts and to take all reasonable precautions, including such efforts and precautions as are fully commensurate with those employed for the protection of its own confidential information (but in no event less than reasonable care), to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees and agents who require access thereto in order to use the Program as permitted under this Agreement. Licensee agrees to take all reasonable precautions to insure that its employees and agents who are given access to the Confidential Information shall make no further disclosure thereof either to other employees or to other persons. Licensee shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. Licensee acknowledges that the rights of the Elster in the Confidential Information are unique and, accordingly, Elster shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement, Licensee shall return all copies of the Program and all Confidential Information to Elster. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

6. Delivery. Elster shall deliver the number of copies of the Program specified in Appendix A-1.

7. License Fees and Payment.

7.1 Licensee shall pay the Software License Fee set forth in Appendix A-1 upon execution of this Agreement or as noted in Appendix A-1. Licensee shall pay all other fees as set forth in Appendix A-1. Licensee shall pay Elster interest on any late payments at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

7.2 License fees do not include shipping charges, or any sales, use, withholding, excise or other taxes now or hereafter imposed on the production, storage, transportation, import, export, licensing or use of the products or services provided under this Agreement. Such expenses and taxes shall be paid by Licensee. Licensee shall indemnify Elster for any such expenses or taxes which Elster is required to pay.

8. Warranties.

- 8.1 Elster warrants that the media on which the Software is recorded is free from defects in materials and workmanship. Elster warrants that the Software will perform substantially in accordance with the Documentation during the Warranty Period (as defined below). THIRD PARTY SOFTWARE IS PROVIDED AS-IS, AND WITHOUT WARRANTY OF ANY KIND.
- 8.2 If within a period of 90 days from the date the Software is delivered to Licensee (the "Warranty Period"), it is discovered that the Software does not conform to the foregoing warranty and written notice of such nonconformity is promptly provided to Elster, Elster will provide an exclusive remedy as follows:
- 8.2.1 With respect to any defect in the media, Elster will replace such media;
 - 8.2.2 With respect to any portion of the Software that does not perform in accordance with the Documentation, Elster will, at its option, repair or replace the Software and
 - 8.2.3 With respect to any descriptive error in the Documentation, Elster will correct such error by providing addenda or substitute pages.

Elster shall, in its sole discretion, determine whether any discrepancy between the Documentation and the functioning of the Software represents an error in the Documentation or an error in the Software. If Elster determines, in its discretion, that it is not possible to correct a Software nonconformity, Elster shall refund the license fees paid by Licensee for the Program upon Licensee's return of all copies of the Program and any associated materials, whereupon all licenses granted hereunder shall terminate. The foregoing remedies shall constitute Licensee's exclusive remedies and Elster's sole liability for any failure of the Program or Software to conform to any warranty.

- 8.3 EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ELSTER AND ITS LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. ELSTER AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE, EFFORT, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. ELSTER AND ITS LICENSORS MAKE NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE PROGRAM. ELSTER AND ITS LICENSORS DO NOT WARRANT THAT LICENSEE'S USE OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE, AND ELSTER AND ITS LICENSORS DO NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY LICENSEE'S USE OF THE PROGRAM. ELSTER AND ITS LICENSORS DO NOT WARRANT THAT EVERY FEATURE OR ERROR IN THE PROGRAM WILL BE CORRECTED, OR THAT THE PROGRAM WILL MEET LICENSEE'S REQUIREMENTS.

9. Infringement Remedy.

- 9.1 Elster shall, at its expense, defend any suit which may be brought against Licensee based on a claim that the Software infringes upon any United States patent or copyright, and Elster shall pay all judgments and costs recovered against Licensee in any such suit and shall reimburse Licensee for costs or expenses incurred by Licensee in the defense of any such suit, provided that Licensee gives Elster prompt notice of such suit no later than ten (10)

days after Licensee receives notice of such suit, or sooner if required by applicable law; reasonable assistance in the defense thereof; and full opportunity to control all aspects of the defense thereof, including settlement. In the event the Software is held to be infringing, and the use of the Software is enjoined, Elster shall, at its option, procure for Licensee the right to continue using the Software; replace it with non-infringing software; modify it so it becomes non-infringing; or remove the Software or the infringing portion thereof and refund the license fees applicable thereto.

- 9.2 Elster's obligations under this Section do not apply with respect to a claim of infringement if and to the extent such claim arises out of: (A) compliance with Licensee's specifications, (B) the use by Licensee of any third-party software or equipment that infringes any patent, copyright, trademark or trade secret of any third party, (C) any modification or alteration of the Software (other than by or on behalf of Elster) (D) use of a version of the Software that has been superseded or (E) use of the Software or the Program after notice of the claimed infringement has been received by Licensee. The foregoing states the exclusive remedy of Licensee and the sole liability of Elster for infringement.

10. Limitation of Liability. ELSTER'S TOTAL LIABILITY RELATING TO THIS AGREEMENT OR TO THE LICENSE GRANTED HEREUNDER, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), BREACH OF WARRANTY OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE LICENSE FEES PAID BY LICENSEE TO ELSTER UNDER THIS AGREEMENT. ELSTER AND ITS LICENSORS WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF USE OF SYSTEMS, COST OF REPLACEMENT SOFTWARE OR SYSTEMS, LOSS OF PROFITS, LOSS OF REVENUE OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE AND EVEN IF ELSTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Force Majeure. Elster shall not be liable for any failure to perform or for delay in performance due to fire, flood, or other labor difficulty, act of God, government authority, or Licensee, acts of war or terrorism, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or services from usual sources, or any cause beyond its reasonable control. If there is a performance delay due to any such cause, the date of delivery or time for completion shall be extended by a time period reasonably necessary to overcome the delay's effect.

12. Audit. Elster and its licensors shall have the right, upon notice to Licensee, to enter onto Licensee's premises to perform an audit to ensure that Licensee is in compliance with this Agreement. Licensee shall keep, and shall allow Elster to access, accurate records of each computer on which the Program or portions of the Program are installed, the locations of such computers, the number of Meter Points for which the Program is used and the number of Authorized Users Using the Program. Elster shall have the right to disclose the results of any audits to its licensors.

13. Assignment. Licensee shall not, by contract, operation of law, or otherwise, assign, transfer or hypothecate this Agreement (in whole or part), or delegate performance of any of its obligations under this Agreement, without in each case obtaining Elster's prior written consent. For the purposes of this Agreement, "assignment" shall include, without limitation, a merger to which Licensee is a party, a sale of all or substantially all assets of Licensee, a consolidation or reorganization of Licensee, the purchase of a controlling interest in the stock or other equity interests in Licensee and any material change in the management of Licensee (including, without limitation, any material change in the composition of the membership of Licensee's board of directors).

14. Termination. Either Party may terminate this Agreement and the licenses granted hereunder if the Other Party has breached any of its obligations hereunder and has failed to remedy such breach within thirty (30) days after written notice of the same. Within ten (10) days after the date of termination of this Agreement for any reason, Licensee will return to Elster or destroy the original and all copies, in whole or in

part, in any form, of the Program and Documentation and an officer of Licensee shall certify to the foregoing in writing to Elster.

15. Government Regulations.

15.1 The Program is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of the Program or Documentation by any department or agency of the federal government is subject to restriction as set forth in subparagraph (b)(3) of the Right in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. For purposes thereof, "Contractor" is Elster Electricity, LLC, 208 S. Rogers Lane, Raleigh, NC 27610.

15.2 Licensee shall not export or transmit the Program or any part thereof, directly or indirectly, to any restricted countries or in any manner that would violate the Export Administration Act of 1979, as amended, or any other United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to United States law.

16. Notices. Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified mail to a party's address or facsimile number shown below:

If to Elster:

Elster Electricity, LLC
208 Rogers Lane
Raleigh, NC 27610
Attn: Contract Manager
Fax: 919.250-5483

If to Licensee:

201 SE Third Street
Ocala, FL 34471-2174

A party may change its address or facsimile number for receipt of notice by providing written notice to the other party.

17. Miscellaneous.

17.1 This Agreement, including the Appendices attached hereto, contains the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified except by writing, executed by authorized representatives of Elster and Licensee.

17.2 The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only.

17.3 Either party's failure to exercise any right under this Agreement shall not constitute a waiver of any other terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

17.4 The provisions of Sections 1, 3, 4, 5, 7, 9, 10, 11, 13, 14, 15, 16 and 17 of this Agreement shall survive the cancellation, termination or expiration of this Agreement for any reason.

17.5 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law effective during the term hereof, such provision shall be fully severable

and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

- 17.6 This Agreement shall be construed and governed according to the laws of the State of Florida, without regard to the choice of law or conflicts of law rules of any jurisdiction. The parties hereby agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement.
- 17.7 Licensee acknowledges that this License agreement constitutes a legal agreement that obligates certain payments as noted herein. Should Licensee's business processes require that one or more purchase orders be issued to provide for payments obligated by this agreement, that these purchase orders will be issued to address these payment obligations.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE SIGNED AND EFFECTIVE AS OF THE LAST DATE WRITTEN BELOW.

ELSTER INTEGRATED
SOLUTIONS, LLC

By: *V. P. Bussan Development*

Title: *V. P. Bussan Development*

Date: *June 25, 2008*

CITY OF OCALA

By: *Charles Ruse Jr.*

Title: *Council President*

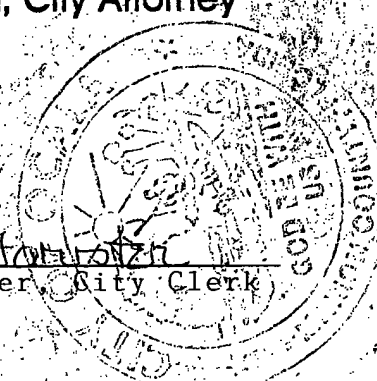
Date: *7-1-08*

Approved as to form and legality

Patrick G. Gilligan, City Attorney

ATTEST:

Valerie J. Forster
Valerie J. Forster, City Clerk



ACCEPTED BY CITY COUNCIL

July 1, 2008

DATE

OFFICE OF THE CITY CLERK

APPENDIX A-1 SOFTWARE LICENSE FEES

1. Licensee's Use of the Program is restricted to the following:

- a) **Authorized Users:** The number of authorized users is limited to the most restrictive of the following three conditions:
 - i) EnergyAxis MAS – Unlimited number of users.
 - ii) Embedded Oracle Database– Unlimited number of users accessed via the MAS GUI or standard MAS interfaces. Direct access to the data or schema is prohibited per Appendix A-3. Additional CPU licensing restrictions are noted below.
 - iii) Embedded Oracle Application Server- While Oracle Application Server may need to be embedded in the MAS Software installation to support Licensor's SOAP interfaces to the EnergyAxis MAS software. If embedded, unlimited number of users accessed via the MAS GUI standard interfaces or customer integrations. Direct access to the data, schema and the Oracle Application Server is prohibited per Appendix A-3. Additional CPU licensing restrictions are noted below.
 - iv) Windows 2003 Server – Limited to the number of Client Access Licenses (CALs) implemented by Licensee or by Elster (if provided by Elster).
- b) **Number of Processors on any Server with embedded Oracle database or application server installed:** - one (1), with a 4 processor maximum. The license fee includes the cost of middleware, database and other third party application software for:
 - i) A maximum of two Intel processors on each system supporting less than 200,000 units, each processor not to exceed two cores
 - ii) A maximum of four Intel processors on each system supporting more than 200,000 units and less than 1,000,000 units, each processor not to exceed two cores.
 - iii) A maximum of four Intel processors on the database application server and four processors on the web server on each system supporting in excess of 1,000,000 points, each processor not to exceed two cores.
 - iv) A maximum of four Intel processors on the database application server and four processors on the web server on each system supporting in excess of 1,000,000 points, each processor not to exceed four cores.

Additional per-processor fees may apply as defined in 2.d.ii and 2.d.iii.

Additional fees will also apply for additional MAS units as discussed in 2.d.

- c) **Computer Hardware:** See Appendix A-2, Section 3

2. LICENSE FEES: ⁽¹⁾⁽²⁾

- a) **Basic License Fee Structure:** The basic license fee structure applies to all standard configurations of EnergyAxis system. Fees defined in 2 b, 2c, 2d are in addition to the basic fees
 - i) **Base License Fee** for each operational Elster MAS Server: **\$21,000**. This includes per meter license fees for up to 20,000 AMI meters or AMR modules per operational Server.

Per Meter License Fee: ⁽³⁾ – One time fee applies to meters in each operational MAS server beyond 20,000 is \$.40 per meter. Does not apply to non-operational Backup or Test systems.

Example: Licensee has 77,644 electric and water end points. The per meter software license fees are calculated as follows:

Total Number of points not covered by base license fees = $77,644 - 20,000 = 57,644$

Per Meter License Fees = $57,644 \times .40 = \$23,058$

Standard configurations include the EnergyAxis MAS software with support for the following endpoints

- EnergyAxis residential electric, water and gas end points. Note that additional one time fees as specified below apply for gas and water configurations.
 - EnergyAxis A3 ILN (node) endpoints for residential, commercial or industrial end points.
 - EnergyAxis A3 collectors that act as concentrators within the EnergyAxis networks.
- b) **Optional Features:** The base license fee covers usage of the system for acquisition of metering data and two way metering operations such as on demand reads, service connects, disconnects to residential electric meters. Additional fees apply for optional modules and add on- services listed below
- (1) **Additional Fee for C&I support** – C& I meters are defined as single phase or polyphase meters used to meter commercial and industrial sites. The additional license fees will comprise the greater of \$5000 or the sum of
 - (a) \$0 for any A3 node within the 900Mhz EnergyAxis local area network
 - (b) \$0 for any A3 collectors that act as network concentrators within the EnergyAxis 900MHz local area network
 - (c) \$3 per direct connected A3 meter. (for e.g. an A3 with telephone or GPRS connection
 - (d) \$3 for any other C&I endpoint within the system.
- C&I support fees do not apply to non-operational Backup or Test systems.
- (2) **MV90xi HHF conversion application for C&I meters: \$3000 per operational system**
- (3) **Additional Fee for Gas support** – An additional one time fee of \$6000 applies for configuration of gas support for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
 - (4) **Additional Fee for Water support** – An additional one time fee of \$6000 applies for configuration of water support for use within the Licensee's operational infrastructure.
 - (5) **Optional Features and Interfaces.** – Elster reserves the right to commercialize new features, endpoints and interfaces as optional add-ons to the base system features. Additional license fees may apply unless the feature or interface was part of the contractual scope jointly agreed between Elster and the Licensee.
- c) **Software Maintenance Agreement Fee:** A Software Maintenance Agreement is required for the first partial year following MAS delivery, subject to the terms of a separately executed Software Maintenance Agreement (SMA).
- d) **Additional Fees :** Additional fees apply to additions specified by the Licensee to the standard Energyaxis systems
- i) **Backup or Test System License fee** (if applicable) – Elster highly recommends that the Licensee at a minimum purchase and configure a passive, cold-failover backup system as an identical replica of the production system. Additionally, Elster recommends that the Licensee purchase and configure a test system for large implementations to allow for integration testing with out compromising the integrity of the production or backup system. The licensing fees for

backup and test systems are specified below and are primarily to cover Elster's costs for third party application software license fees.

- (1) 2 processor backup or test system for systems up to 200,000 end points, each processor not exceeding two cores: **\$5,000**
- (2) 4 processor backup or test system for system installations not requiring Enterprise Editions of embedded Oracle Software (usually less than 1,000,000 points), each processor not exceeding two cores - **\$35,000**
- (3) 4 processor backup or test system for system installations requiring Enterprise Editions of embedded Oracle Software (usually more than 1,000,000 points), each processor not exceeding four cores - **\$115,000**

ii) **Additional Per Processor License Fee**— License fee for each processor beyond that specified in 1b or based on other configuration recommended by Elster with embedded Oracle or Oracle Application Server installed is **\$7,500 per additional processor and** beyond the first processor. Applies to all operational and backup MAS servers.

iii) **Embedded instances of Oracle Enterprise Edition database or application software:** License fees are based on Standard Edition or Standard Edition One of the embedded Oracle database server and Oracle application server (if applicable). Additional fees will apply for use of Enterprise editions of Oracle software.

3. **Additional System Expansions and Optional Project Implementation Services:** System expansions and project implementation services beyond the standard project services defined above can be provided on time and material (T&M) basis. Current rates and additional terms that apply are listed in Appendix A-3 of the Software Maintenance Agreement.

NOTES:

1. All software license fees are in US Dollars.
2. Prices are valid for deliveries in 2007.
3. Elster reserves the right to periodically audit the user's MAS Server to determine the current number and types of meters or control points deployed for the purposes of billing an additional per point license fees. No refund is allowed for a reduced number of points determined by a given audit.
4. Elster does not limit the number of users of its MAS software, nor does Oracle for the embedded processor license provided by Elster with the MAS software. If Elster provides the server hardware and Microsoft 2003 operating system, the user is limited to the default maximum of five (5) users per the MS Windows 2003 server license. If Licensee provides the hardware or desires system accessibility for more users, the Licensee is responsible for obtaining the Microsoft 2003 Server license or license expansion, including any additional fees for the desired number of CALs (Client access licenses).
5. See Appendix A-2 Notes for hardware considerations.

APPENDIX A-2 SOFTWARE PROGRAM

1. THE PROGRAM ⁽¹⁾

Elster Metering Automation Server (MAS) which includes:

- (i) **Data Acquisition Module** for the following supported Elster meters:
 - Residential meters with 900 MHz EnergyAxis communications
 - C & I Meters with 900 MHz EnergyAxis communications
 - A3 ALPHA Collector meters with 900 MHz EnergyAxis communications
 - A3 ALPHA meters
 - Elster AMI Water Modules
 - Elster AMI Gas Modules
- (ii) **Supported MAS Communications:**
 - Switched circuit Public Service Telephone or Cellular Networks (via Elster approved PSTN or cellular modems)
 - IP-based connections (via Elster approved IP-addressable modems with RS-232 outputs)
 - Integrated SmartSynch GPRS collector communications (when commercially available)
- (iii) **Database System** – An embedded Oracle database system is included in the MAS product. Maintenance support is available only from Elster. Maintenance for the first partial calendar year is included in the mandatory Software Maintenance Agreement. Support for subsequent years is included as part of the ongoing MAS Software Maintenance Agreement if elected by the Licensee.

2. THIRD PARTY SOFTWARE ⁽¹⁾

- a) **Operating System:** Windows 2003 Server Standard Edition ⁽²⁾
- b) **Clients:** Microsoft Internet Explorer 6.0 (or approved subsequent IE release) ⁽²⁾
- c) **Database:** Embedded Oracle Standard Edition or Standard Edition One (licensor maintained) ⁽⁴⁾
- d) **Application Server:** Embedded Oracle Application Server Standard Edition or Standard edition One (licensor maintained, if applicable within the Licensee's MAS Server deployment) ⁽⁴⁾

NOTES:

- (1) All Elster Software, Third Party Software, documentation and any related materials shall be provided in the English language.
- (2) It is the Licensee's responsibility to acquire and maintain the Supported System and this Third Party Software. Elster will specify the third party software and versions thereof (operating system, software products, etc.) required for each Program release.
- (3) Operation of a MAS server with embedded Oracle installed that is capable of expansion to more than 4 processors is not allowed unless the server is hardware partitioned such that the MAS embedded Oracle database is running in a partition of 4 or fewer processors.
- (4) Processor Quantities for Software License Fee Purposes – Some servers include dual or multi-core processors (multiple central processing units supplied in a single chip or processor package). For the purpose of the Per Processor License fees, in any computer with dual or multi-core processors, Oracle's treatment of dual and multi-core processors will apply.
- (5) Per Oracle's distribution agreement with Elster, Embedded Oracle software can only be supplied by Elster. No access to the core Oracle functionality is allowed except via the MAS GUI interface and the import/export functionality provided as a part of Elster's MAS product.

- a. This software license is not limited in the number of meters that can be read as long as the processor, production, backup and test restrictions are satisfied. Specific hardware requirements must be agreed to with Elster depending on the total meter counts, number of meters being read for LP, etc. need to be discussed with Elster.
- b. Future changes in the Software or the Third-Party Software or running of other third-party software programs not tested or provided by Elster could impact MAS system performance on a given hardware platform. For example, running virus-scanning software during a billing read could adversely affect the system's ability to process the readings in a timely manner. These situations may or may not be rectified by various means such as changing the scheduled virus scan time or the meter read schedule time.

APPENDIX A-3 ADDITIONAL THIRD PARTY LICENSE TERMS

ORACLE:

1. The Oracle programs licensed as part of the Program are subject to a restricted license and can only be configured, installed and used in conjunction with the authorized use of the Program. Licensee shall not navigate the underlying data schema.
2. Licensee shall not modify any Oracle programs licensed under this Agreement.
3. Oracle shall not be liable for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of the Program.
4. Licensee hereby acknowledges and agrees that Oracle Corporation is an intended third party beneficiary to this Agreement.

NctBeans:

The source code for the software contained in the file **schema2beans.jar** and **schema2beansdev.jar** (the "Covered Code") is available by contacting Elster at Elster Electricity, LLC, 208 S. Rogers Lane, Raleigh, NC 27610, Attn: Contracts Manager. Upon request, Elster will make the source code for the Covered Code available to Licensee, subject to the terms of the Sun Public License, version 1.0, which can be found at <http://www.sun.com>.

COVERED CODE IS PROVIDED UNDER THIS LICENSE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE COVERED CODE IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE COVERED CODE IS WITH LICENSEE. SHOULD ANY COVERED CODE PROVE DEFECTIVE IN ANY RESPECT, LICENSEE (NOT ELSTER, THE INITIAL DEVELOPER OR ANY OTHER CONTRIBUTOR) ASSUME THE COST OF ANY NECESSARY SERVICING, REPAIR OR CORRECTION. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE. NO USE OF ANY COVERED CODE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

Any terms of this License Agreement that grant any rights to Licensee with respect to the Covered Code that are in addition to the rights granted to licensees under the Sun Public License are offered by Elster only.

EXHIBIT B

ENERGYAXIS® Metering Automation Server (MAS) SOFTWARE MAINTENANCE AGREEMENT

BETWEEN

Elster Electricity, LLC
208 South Rogers Lane
Raleigh, North Carolina
27610

and

City of Ocala
201 SE Third Street
Ocala, FL 34471-2174

(LICENSOR)

(LICENSEE)

THIS SOFTWARE MAINTENANCE AGREEMENT (this "Agreement") is by and between **Elster Electricity, LLC** ("Licensor") and the City of Ocala ("Licensee") and is effective this 1st day of July, 2008. Licensor will provide software maintenance services ("Software Maintenance Services") for the Software licensed to Licensee pursuant to that certain **EnergyAxis** MAS Communication Server Software License Agreement, dated as of the date hereof, by and between Licensor and Licensee (the "Software License Agreement") and described in Appendix B-1. Capitalized terms herein not otherwise defined shall have the meaning set forth in the Software License Agreement. The terms and conditions of the License Agreement shall govern Licensee's use of the Software.

1. This Software Maintenance Agreement shall serve as the exclusive definition of the Software Maintenance Services for the Software.
2. The term of this Software Maintenance Agreement shall commence upon the above effective date and shall continue until December 31 of that effective year (the "Initial Term"). Thereafter, this Software Maintenance Agreement shall automatically renew for successive one-year renewal terms (each a "Renewal Term") unless the Software Maintenance Agreement is terminated by either party upon written notice thirty (30) days prior to the end of the Initial Term or the then-current Renewal Term, as the case may be, with such termination to be effective upon completion of such term. Licensor shall have the right to increase Software Maintenance Fees annually, provided Licensor provides Licensee written notice of the increased fees no later than sixty (60) days prior to the end of the current calendar year. Licensee may reinstate lapsed support and maintenance for Software licensed from Licensor upon payment of 150% of all support and maintenance fees in arrears and all costs invoiced by Licensor on a time and materials basis for updating Licensee's Software to the then-current version.
3. Software Maintenance Services shall consist of the following:
 - A. **Software Upgrade Service**

Software Upgrade Service includes:

 - Distribution of the following Software Upgrades:
 - **Patch Upgrades** – Software Upgrades that include a fix for a known bug or software operational problem, which causes the Software not to perform as designed. Patch Upgrades are typically identified by a change in the second decimal of the Software version number (i.e., 2.2.2 to 2.2.3).

- **Maintenance Upgrades** – Software Upgrades that are primarily maintenance related. Only minor functionality changes may be included. Maintenance Upgrades are typically identified by a change in the first decimal of the Software version number (i.e., 2.2.0 to 2.3.0).
- **Functional Upgrades** – Software Upgrades that include significant database changes or significant functional changes. Functional Upgrades typically will be identified by a change in the whole number of the Software version number (i.e., 2.0.0 to 3.0.0).
- Distribution of one copy of corresponding standard documentation update on CD in English.
- These upgrade services only apply to the Software and Modules originally supplied by Licensor and identified in the Software's Scope in Appendix B-1 of this Software Maintenance Agreement.
- Licensor will specify third party software and version thereof that Licensee is required to have for each Software Upgrade.
- To the extent any Software Upgrade contains new Third Party Software, Licensee shall comply with any and all license terms associated with such Third Party Software. Licensor shall notify Licensee of such license terms when the Software Upgrade is distributed to Licensee. Licensee's installation and use of the Software Upgrade shall be deemed Licensee's acceptance of such license terms and agreement to be bound by such license terms. To the extent any Third Party Software license terms are inconsistent with the terms of the Software License Agreement, such Third Party Software license terms shall control with respect to the Third Party Software.

B. Software Support

Software Support covers the latest version of the Software delivered to Customer and one previous version up to one 180 days following release of the latest version of the Software and Modules originally supplied by Licensor and identified in the Software's Scope in Appendix D-1 of this Software Maintenance Agreement. The parties may amend this Software Maintenance Agreement to add additional Modules licensed by Licensee, subject to additional Software Maintenance Fees and terms. Maintenance for other third-party software, such as the computer operating system, must be obtained from the supplier and is the responsibility of the Licensee. Licensor will provide support for embedded Oracle software according to Oracle's then-current support policies.

Software Support includes telephone and email support that does not require access to the production, test or backup system and that is limited to information readily accessible to tech support personnel, such as operation manuals and similar documentation ("Casual Consulting"). Software Support also includes support that may require more experienced technical support personnel, system analysis, and access to the production, test or backup system ("Technical Support"). Software Support does not include any On-Site Support (as defined below). For the purposes of this Software Maintenance Agreement, an "error" shall mean either: (i) a material nonconformity to the then-current applicable Specifications; or (ii) a defect which materially impairs use.

Standard 5x9 software support includes the following services:

- Casual Consulting and Technical Support during:

1. Elster's normal business hours, Monday through Friday (8:00 AM to 5:00 PM, Eastern Standard Time or Eastern Daylight time as applicable), except for Elster holidays. Alternate hours can be negotiated as part of the contract.
- Access to Casual Consulting and Technical Support is available via a toll-free number and customer specific PIN. The EnergyAxis Software Support line, 866-554-9007 or +919 250-5717, is available 24 hours a day 7 days a week. The line is staffed during Elster's normal business hours as mentioned above. If you call during normal business hours and no support engineer is available to take your call, your call will be routed to a voice mailbox exclusively for this service. If you leave your name and telephone number, the next available support engineer will return your call. Elster's voice mail system includes an out calling function that is used to notify the on call support personnel for customers who have an extended hours SMA.
 - Access to Casual Consulting and Technical support is also available via email. Email should be sent to EnergyAxis.Support@us.elster.com. Emails sent to this address are automatically routed to the support engineers, who will respond during Elster's normal business hours as described above.
 - Technical assistance regarding installation and operation of the Software and Software Upgrades
 - General support regarding proper utilization of the Software
 - Telephone and email support
 - Attempted replication of errors reported by Licensee
 - Assistance with Licensor's user documentation and technical manuals provided with the Software
 - Guidance on the Software's intended, normal use
 - Licensor shall use commercially reasonable efforts to resolve each replicated error by providing either: (1) a reasonable work-around; (2) a change to the Software code; or (3) an action plan for resolving the error.

As shown in Appendix B-2, support on a 7x12 and 7x24 is available for additional fees. For the Initial Term of this Software Maintenance Agreement, Licensee has selected the support level indicated in the signature block of this document. To change support levels, Licensee must request such change in writing no later than October 1 of the then-current year. Licensor will approve or reject the request in writing no later than December 1 of the then-current year, and, if approved, Licensor will invoice Licensee for the new level of support. All approved changes will be effective as of January 1 of the next calendar year.

C. Additional and Excluded Services

- (i) On-Site Support. Support Services shall not include On-Site Support. For the purposes of this Software Maintenance Agreement, "On Site Support" shall occur when:
 - (a) Licensor is requested by Licensee to arrive at a Licensee location to provide support and/or consultation services;
 - (b) Licensor is contacted outside of contracted support hours and must (at the approval of Licensee) travel to another location (including Licensor's site) to complete the required services; and

- (c) Licensor is contacted during contracted support hours and must (at the approval of Licensee) travel to a separate location to complete the required services.

Any travel to Licensee's site requires prior approval of Elster management. Any On-Site Support provided at the request or approval of Licensee shall be billed on an hourly basis at the then-current labor rates reflected in Attachment B-3, plus travel and living expenses (including a 10% administrative fee). On-Site Support and services will be provided under the "**Elster Electricity, LLC** General Terms and Conditions of Sale".

- (ii) Additional Services. The following items, among others, are specifically excluded from this Software Maintenance Agreement but may be purchased separately for additional fees (see Appendix D-3) to be charged by Licensor as specified in Section 4 below:

- Distribution or maintenance of Software Modules not listed in Appendix B-1
- Interpretation of the Software's results
- Supply of typical or representative data
- Assistance with computer hardware and peripheral questions not related to the Software's use
- Assistance with installation, upgrade and maintenance of computer operating system, data base or other software questions not directly pertinent to the MAS Software
- Data debugging and/or correcting
- Services necessitated as a result of any cause other than the Software's ordinary, proper use by Licensee, including but not limited to neglect, abuse, unauthorized maintenance, or electrical, fire, water, or other damage
- Special applications of the Software
- Services resulting from the failure of Licensee to provide a suitable environment for the Software or associated equipment
- Services resulting from failure of Licensee to provide adequate system administration of the MAS system including, but not limited to, normal system administration functions such as ensuring adequate disk space is available on the servers, reliable power quality equipment is in place (UPS) and adequate system backup procedures are followed.
- Service on any prior version of the Software, except that Elster will continue to support a prior version of the Software in accordance with the terms of Section 3(B) of this Software Maintenance Agreement
- Any problem caused by modifications in any version of the Software not made or authorized by Licensor
- Any problem resulting from the combination of the Software with such other programming or equipment to the extent such combination has not been approved in writing by Elster
- Any problem caused by communications facilities and infrastructure (telephone, etc.)

- Site planning for locating meters or collectors
 - IT infrastructure consulting on system management strategy
 - Testing of unsupported system hardware or communication devices.
- (iii) Excluded Services. Licensors shall not, under any circumstances, be obligated to perform the following services:
- Services to accessories, attachments, equipment, machines or devices
 - Electrical or plumbing work to equipment
 - Service which is impractical for Licensors to render because of, or service which would affect portions of the Software modified through, modifications to the Software made by persons other than Licensors, its authorized representatives or its third party suppliers
 - Services that would result in any violation of any federal, state or local law or regulation (including, without limitation, the Export Administration Laws)
4. Software Maintenance Fees are calculated based on the calendar year. The annual Software Maintenance Fees for the current year are set forth on Appendix D-2, attached hereto and incorporated herein by reference. Upon the effective date of this agreement or on a date as specified in an associated system contract, Licensee shall pay the then-current annual Software Maintenance Fee, pro-rated based on the number of months remaining in the calendar year from the effective date of this agreement. Thereafter, annual Software Maintenance Fees will be invoiced in October of each year, with payment for the next year's Software Maintenance due no later than December 31 of the current year. On Site Support services and any other Additional Services will be billed at the end of the month in which the services are provided. Fees for Modules licensed separately by Licensee shall be charged pursuant to the applicable Module License Software Maintenance Agreement. Except as specifically set forth in this Software Maintenance Agreement, all invoices are due net thirty (30) days from the date of invoice. Licensors will assess a late payment charge on any amount which remains unpaid after it is due, computed at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law on the unpaid amount for each month that such amount remains unpaid. This late payment charge shall be in addition to any other remedies Licensors may have at law or in equity. All Software Maintenance Fees are in US dollars.
 5. Either party shall have the right to terminate this Software Maintenance Agreement in the event that the other party breaches any material provision of this Software Maintenance Agreement and such breach is not cured within thirty (30) days after receipt of notification thereof.
 6. The maximum liability of Licensors for any direct damages sustained by the Licensee under this Software Maintenance Agreement shall in no circumstance exceed the amount of the annual maintenance fee payable by the Licensee to Licensors for the then-current year. Licensors shall in no event be liable to Licensee for loss of revenue, profit, anticipated profit or indirect, incidental, special or consequential damages, including but not limited to, any losses to Licensee resulting from lost computer time or the destruction or damage of records, or any claims or demands made against the Licensee by a third party.
 7. During the term of this Software Maintenance Agreement, Licensee shall:
 - a. Obtain, install and maintain, and provide to Licensors at no cost to Licensors, full VPN broadband access to all production, backup and test MAS servers under support to allow Licensors to perform Software Maintenance for the Software from Licensors' facilities in North Carolina. Reasonable allowance will be made to adhere to Licensee's corporate security administration and monitoring policies. However, during periods when Elster has access to the MAS servers, access will be at the administrator level.

- b. Ensure that only personnel properly trained in the operation and use of the Software and its associated equipment call Licenser for direct phone support and that such personnel have sufficient access and computer time when using such service in order to implement the corrections suggested by Licenser;
 - c. Install all Software Upgrades within 60 days of delivery of same;
 - d. Perform and install all diagnostic activities and routines recommended by Licenser before requesting On-Site Support;
 - e. Ensure the proper Software environment is maintained and that Licensee's personnel who have access to the Software are properly trained in the operation and usage of the Software and the associated equipment.
 - f. Provide, adequate safeguards for the protection of Licensee's data and files while the Software Maintenance is being performed on the Software.
 - g. Issue any purchase orders that might be required by Licensee's business processes to honor the payments obligated by this agreement.
 - h. Maintain the MAS servers consistent with industry standards on end of life planning for server systems. Elster's general recommendation is that Licensees plan for server replacements on a 3 year cycle to consider hardware and OS obsolescence and to provide latest generation servers to support new features provided in MAS software releases provided as a part of this SMA.
8. Licensee shall be solely responsible to ensure that all of its files and data are adequately duplicated or documented, and Licenser shall in no way be responsible for Licensee's failure to do so, nor for the costs or expenses of reconstructing data which are lost, destroyed or otherwise damaged or rendered useless during the course of or as the result of the performance of any services under this Software Maintenance Agreement.
 9. The parties shall treat all Confidential Information disclosed under this Agreement in accordance with the terms of Section 5 of the Software License Agreement. The terms of Section 5 of the Software License Agreement are hereby incorporated in this Software Maintenance Agreement by this reference.
 10. Licenser shall not be liable for any failure to perform or for delay in performance (other than payment obligations) due to acts of war, acts of terrorism, fire, flood, strike or labor difficulty, act of God, government authority or the other party, compliance with government regulations, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or services, delays in performance of subcontractors or suppliers due to any such causes, or any other cause beyond Licenser's reasonable control. If there is a performance delay due to any such cause, the date of delivery or time for completion shall be extended by a time period reasonably necessary to overcome the delay's effect.
 11. Licensee shall not, by contract, operation of law, or otherwise, assign this Software Maintenance Agreement (in whole or in part), or delegate performance of any of its obligations under this Software Maintenance Agreement, without in each case obtaining Licenser's prior written consent.
 12. Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified mail to a party's address or facsimile number shown below:

If to Elster:
Elster Electricity, LLC

If to Licensee:
City of Ocala

208 Rogers Lane
Raleigh, North Carolina 27610
Attn: Contracts Manager

201 SE Third Street
Ocala, FL 34471-2174

A party may change its address or facsimile number for receipt of notice by providing written notice to the other party.

13. This Software Maintenance Agreement, including the Appendices attached hereto, contain the entire understanding of the parties with respect to the matters contained herein. This Software Maintenance Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected thereby, the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein.
14. The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only.
15. No action, regardless of form, arising out of the transactions under this Software Maintenance Agreement may be brought by Licensee more than two (2) years after the cause of action has accrued.
16. Either party's failure to exercise any right under this Software Maintenance Agreement shall not constitute a waiver of any other terms or conditions of this Software Maintenance Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.
17. If Licensee issues a purchase order or other document that purports to define Software Maintenance other than as set forth in this Software Maintenance Agreement, it is agreed that the terms and conditions of any such purchase order shall have no application or effect, and that the provisions of this Software Maintenance Agreement shall continue to control matters related to the provision of Software Maintenance.
18. The provisions of Sections 1, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 shall survive the expiration or termination of this Software Maintenance Agreement for any reason.
19. This Software Maintenance Agreement shall be construed and governed according to the laws of the State of Florida without regard to the choice of law or conflicts of law rules of any jurisdiction.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES UNDER THIS SOFTWARE MAINTENANCE AGREEMENT WHATSOEVER WHETHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Software Maintenance Agreement.

(LICENSOR)

By: H. Z. Zucco

Title: V.P. Business Development

Company: Elster Electricity, LLC

Date: June 25, 2008

(LICENSEE)

By: [Signature]

Charles Ruse Jr.

Title: Council President

Company: City of Ocala

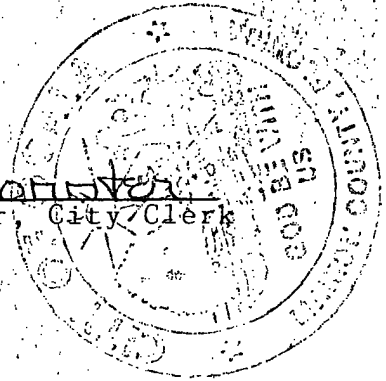
Date: 7-1-08

~~Approved as to form and legality~~

~~Patrick G. Gilligan, City Attorney~~

ATTEST:

Valerie J. Foster
Valerie J. Foster, City Clerk



ACCEPTED BY CITY COUNCIL

July 1, 2008

DATE

OFFICE OF THE CITY CLERK

Selected Support Level

Support level	Description	Licensee's Selected Support Level ("X")	Licensee Signature (Indicating Acceptance)
Standard Support (5*9)	Monday through Friday ,8 AM -5 PM Eastern Time except designated Elster holidays		
Extended Weekend Support	8 AM – 8 PM Eastern Time all 7 days of week		
7 * 24 Support	Access to Customer Support personnel 24 hours a day, 7 days a week		

APPENDIX B-1

SCOPE OF SOFTWARE AND SUPPORTED SYSTEM

SCOPE OF SOFTWARE:

ELSTER PRODUCTS

THE PROGRAM: As defined in Appendix A2 of the Software License Agreement

SUPPORTED SYSTEM

Computer: H-P DL380, H-P DL580 (or Elster approved HP, Dell or IBM equal)

Operating System: Microsoft Windows 2003 Server standard edition

Software: Embedded Oracle Standard Edition (Licensor Maintained)
Embedded Oracle Application Server Standard Edition(Licensor Maintained, if applicable to Licensee's system)

NOTES:

1. It is the Licensee's responsibility to maintain the Supported System and to maintain the operating system software shown above. Licensor will specify the third party software and version thereof required for each Software Upgrade or release.
2. ORACLE is a registered trademark of the Oracle Corporation.
3. Windows is a registered trademark of Microsoft Corporation.
4. EnergyAxis, REX, and A3 ALPHA are registered trademarks of Elster Electricity, LLC.

APPENDIX B-2

MAS SERVER YEARLY SOFTWARE MAINTENANCE AGREEMENT FEES

1. Software Maintenance Fee for Licensee's each operational server: The software maintenance fees are structured based on the level of support and the total system size as follows:

- i. A base maintenance and support fee to cover smaller system configurations
- ii. Adders for MV90 xi conversion application and any optional interfaces and capabilities defined in the Software License Agreement
- iii. A percentage of the total license fees that increases with overall system volume.

The table below describes the structure and calculation methodology for software maintenance fees for each operational /production MAS server^{1,2}

Support Level	Base SMA ⁽²⁾	Adders to Base SMA ⁽³⁾	Percent of License Fees
Standard Support (5*9) ⁴	\$15,000	MV90xi conversion application: \$2,500	20%
Extended Weekend Support (7*12)	\$22,500	MV90xi conversion application: \$2,500	30%
7* 24 Support	\$30,000	MV90xi conversion application: \$2,500	40%

The calculation methodology used to calculate support fees is:

$$\text{Total SMA Fee} = \text{Base SMA} + \text{SMA adders} + \text{Percentage Multiplier} * [\text{Total License Fees} - \$30000]$$

The table below provides an example of the license fees and SMA fees for standard support the Licensee's primary operational system under various scenarios for a system with 127,500 points.

Configuration	Base License Fees	Option Adders	Per point License Fees	Total License Fees	Total SMA
Electric Only	\$30,000	\$0	\$122,375	\$152,375	\$15,000 + 20%* (152,375-30000) = \$39,475
Electric + (Water OR Gas)	\$30,000	\$6000	\$122,375	\$158,375	\$15,000 + 20%*(158,375-30000) = \$40,675
Electric + Water + Gas	\$30,000	\$12,000	\$122,375	\$164,375	= \$15,000 + 20% * (164,375-30000) = \$41,875

2. Additional per processor SMA fee: \$4000 per additional processor beyond the numbers of processors recommended by Elster as the proposed system configuration.

3. Embedded instances of Oracle Enterprise Edition database or Application software: SMA fees are based on Standard Edition or Standard Edition One of the embedded Oracle database server and Oracle application server (if applicable in License's deployment). Additional fees will apply for use of Enterprise editions of Oracle software.

4. Software Maintenance Fee for each Backup or Test MAS system: These fees are structured to reimburse Elster for the cost of third party application software maintenance and incidentals on additional operational systems.

- a. **\$5000** per 2 processor system not exceeding 200,000 end points and not exceeding 2 cores per processor
- b. **\$7500** per 4 processors system not exceeding 1,000,000 end points and not exceeding 2 cores per processor
- c. **\$25,000** for systems exceeding 1,000,000 end points (usually require embedded versions of Oracle Enterprise Software and quad-core processors) and not exceeding 4 cores per processor

Plus **\$4,000** per processor beyond the number of processors recommended by Elster based on the number of end points

5. Software Maintenance Fee for Systems Integration/Billing File Conversion Program Support: Yearly flat fee for maintenance of Elster developed interfaces to maintain compatibility with future release of the MAS system and customer enterprise system(s). These fees are determined at the time that the integration application is scoped and quoted, but are a minimum of 20% of the initial development cost to Licensee.

6. Future Modules and Applications: Additional Software Maintenance fees for new modules or applications will be determined at time of contract. .

7. Annual Increase Provision: Licensor reserves the right to increase the annual SMA fee at the time of annual renewal each year after the 1st complete calendar year by the greater of 4% or the most recent CPI-U statistic posted by the Bureau of Labor Statistics of the US Department of Labor.

1. **Optional System Retraining:** Licensee with a current software maintenance agreement can optionally purchase system retraining for 1 week under the following fee structure
 - a) Training at Licensor's Facility in Raleigh, NC: \$7000 plus \$200 per set of printed materials (a maximum of nine students in one package)
 - b) Training at Licensee's Facility: \$10,000 plus travel and living and \$200 per additional set of printed materials (a maximum of nine students in one package).

Pricing Notes:

1. If Software maintenance is to be purchased for any licensee MAS Server, it must be purchased for ALL of the Licensee's MAS Servers (operational, backup and test) and the hours of coverage for all MAS servers must be the same.
2. SMA support for any of Licensee's systems is only available if the all of the applicable license fees have been paid (including any incremental backup and/or system Software License fees) ,the system(s) installed and all of the Licensee's systems are under an active and paid SMA..

APPENDIX D-3
MAS Server Software Maintenance Agreement
Professional Services Request Form

1	To: Elster Electricity, LLC	4	Attn: Systems Support Manager	7	Date:
2	208 S. Rogers Lane	5			
3	Raleigh, NC 27610	6	Fax: 919-250-5439		
8	Service Requested By:	9	Customer:	10	
11		12	Name:	13	
14		15	Telephone:	16	
Work Requested by Customer: (Attach additional page(s) if more space is required)					

RATES: Rates quoted below apply for work initiated in year 2007 and completed within one calendar year. Rates are for labor only and do not include travel and living expenses.

Skill Category	Elster Daily Rate	Exemplary Activities
Senior Project Manager / Program Director	\$1600	Ultimate authority for large scale or turn key projects reporting to executive sponsors. Risk Mitigation consultation and decision making Communications to Licensee's senior executives
Project Manager	\$1250	Planning and administration of day to day project activities, monitoring execution to project schedules, routine status reporting, communicating risks
Sr. Systems Engineer / Architect /Sr. Business Analyst	\$1400	Technical expertise for business process analysis and integration scoping for enterprise AMI integration
Business Analyst/ Support Analyst / Network Engineer	\$1250	Definition and execution of system acceptance tests On going consultation on business process analysis and design On Site Support as defined in the EnergyAxis Metering Automation Server Standard Maintenance Agreement
Sr. Database Administrator, / System Administrator / Enterprise IT Architect	\$1250	Planning and configuration of WAN communications, storage area networks, high availability options, load balancing options and such to meet Licensee's enterprise IT requirements
Sr. Field service engineer	\$1250	Field installation coordination and field trouble shooting
Systems Engineer / Sr. Developer / Sr. QA Engineer	\$1050	Implementation and test of any defined integrations within Elster scope
Technical Writer	\$900	Documentation of scope of implementation
Administrative Assistant	\$750	Assistance with administration of project

(Unless otherwise stated herein, Service prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). "Time" is on-the-job plus travel time to and from the job site from the regularly assigned office location. "Time" starts and ends at the person's regularly assigned office location unless otherwise agreed upon prior to the start of work. Overtime and Saturday hours will be billed at one and one half (1 ½) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours recognized by Elster will be billed at three (3) times the hourly rate.) Minimum billable time per person will be four (4) hours.

Exhibit C



Total Pages 4

To: Joe Noel
Company: City of Ocala

Date: 5/07/08
Neg #: JS080507
Subject: City of Ocala - Full System AMI Deployment

Fees Paid by JCI

Software Maintenance Fees (annual fees)	\$	38,012
- Prorated for July 1, 2008 Start Date: \$12,671		
Software License Fees	\$	60,058
Project Costs	\$	323,340
<u>Total JCI:</u>	\$	<u>421,409</u>

Fees Paid by Ocala

Electric Meters	\$	6,723,232
Network Equipment (Collectors, Repeaters, Antennas)	\$	451,955
Water Meters	\$	3,692,209
<u>Total Ocala:</u>	\$	<u>10,867,396</u>
<u>Total Project:</u>		<u>\$ 11,288,805</u>



To: Joe Noel
Company: City of Ocala

Date: 5/07/08
Neg #: JS080507
Subject: City of Ocala - Full System Deployment Electric Meter Pricing

ITEM	QTY	DESCRIPTION	Price Each	Price Extended
1	325	REX meter, Form 1S, 120volt, 2 wire	\$ 95	\$ 30,875
2	36853	REX meter, Form 2S, 240volt, 3 wire, CL200	\$ 76	\$ 2,800,828
3	50	REX meter, Form 2S, 240volt, 3 wire, CL320	\$ 91	\$ 4,550
4	10860	REX-D meter, Form 2S, 240volt, 3 wire	\$ 185	\$ 2,009,100
5	114	A3 Node, Type A3KL, FM2S, 240volt, 3 wire, CL320	\$ 394	\$ 44,916
6	15	A3 Node, Type A3KL, FM3S, 120volt, 2 wire, CL20	\$ 394	\$ 5,910
7	67	REX meter, Form 4S, 240volt, 3 wire, CL20	\$ 105	\$ 7,035
8	56	A3 Node, Type A3KL, FM4S, 240volt, 3 wire, CL20	\$ 394	\$ 22,064
8	828	REX meter, Form 12S, 120/208volt, 3 wire	\$ 120	\$ 99,360
9	3	A3 Node, Type A3KL, FM5S, 120volt, 3 wire/3PH, CL20	\$ 394	\$ 1,182
10	1234	A3 Node, Type A3KL, FM9S, 120volt, 4 wire/3PH, CL20	\$ 394	\$ 486,196
11	8	A3 Node, Type A3KL, FM9S, 120volt, 4 wire/3PH, CL20 w/1 KYZ Output	\$ 500	\$ 4,000
12	3064	A3 Node, Type A3KL, FM16S, CL320, 120volt, 4 wire/3PH	\$ 394	\$ 1,207,216
Total Qty. 53477		(reflects the replacement of all prior nodes/collectors)	Meter Total: \$	6,723,232

Non-Meter Network Equipment

NMC EnergyAxis Stand-alone AC-powered Network				
13	245	Collector, w/Ethernet board, battery backup, NEMA enclosure and mounting hardware.	\$ 1,710	\$ 418,950
14	81	External Antenna Assembly	\$ 350	\$ 28,350
15	49	REX meter repeaters	\$ 95	\$ 4,655
Non-Meter Network Equipment Total:			\$	451,955
Total All Above:			\$	7,175,187

- 1) All prices FOB Destination
- 2) Elster Terms and Conditions Attached
- 3) Prices firm through 14 month duration of the project
- 4) Terms: Net 30 days
- 5) Options for item #13 above:
 - A) NMC Stand-alone AC powered collector, no battery back-up, Ethernet \$ 980
 - B) A3-meter Collector, Form 9S only, w/Ethernet board, no battery back-up \$ 800
 - C) A3-meter Collector, any Form, w/RS232 board, no battery back-up \$ 800
 - D) A3-meter Collector, any Form, w/POTS modem, outage call-back battery \$ 880
- 6) Optional external digital cellular modem for collector applications: \$ 800

Additional Costs Associated with Project		<u>Price</u>	<u>Price</u>
		Each	Extended
Primary Server	Server furnished by City of Ocala	\$ -	\$ -
Back up Server	Server furnished by City of Ocala	\$ -	\$ -
Software License Fees			\$ 60,058
	Base license fee (includes first 20,000 meters)	\$ 21,000	
	SLA - 57,644 (77,644 - 20,000) meters @ \$.40 per point	\$ 23,058	
	SLA - Adder C&I Support Fee	\$ 5,000	
	SLA - Adder for Water Support	\$ 6,000	
	SLA - Adder for Backup Server License (optional, but included)	\$ 5,000	
Software Maintenance Fees (Calculated based on full year)			\$ 38,012
	Standard Support (5 x 9)	\$ 15,000	
	SMA - 20% of Per Point License Fees	\$ 12,012	
	SMA - Adder for Water Support	\$ 6,000	
	SMA - Adder for Back-up Server	\$ 5,000	
Project Services & Systems Integration			\$ 323,340
	Project Services	\$ 295,680	
	Systems Planning, Project Management		
	Engineering & Technical support		
	Training		
	Systems Integration (no Elster Systems Integration)	\$ -	
	Travel & Living Expense Estimate	\$ 27,660	
Note: (T&L Billed Separately as per contract; actual +10%)			



To: Joe Noel
Company: City of Ocala

Date: 5/07/08
Neg #: JS080507
Subject: City of Ocala - Full System Deployment Water Meter Pricing

Item	Description	<u>Replace</u>		
		Qty	Each	Extended
1	5/8x3/4" Elster AMCO Model C700 bronze case, bronze bottom, polymer register housing with glass lens encoder with factory installed EnergyAxis water module	15,668	\$ 163	\$ 2,553,884
2	1" Elster AMCO Model C700 bronze case, bronze bottom, polymer register housing with glass lens encoder with factory installed EnergyAxis water module	42	\$ 220	\$ 9,240
3	1 1/2" Elster AMCO Model C700 bronze case, polymer register housing with glass lens encoder with factory installed EnergyAxis water module	24	\$ 330	\$ 7,920
4	2" Elster AMCO Model C700 bronze case, polymer register housing with glass lens encoder with factory installed EnergyAxis water module	21	\$ 416	\$ 8,736
5	3" Elster AMCO Model C3000 bronze case, polymer register housings with glass lens encoder registers with factory installed EnergyAxis water module	5	\$ 1,636	\$ 8,180
6	4" Elster AMCO Model C3000 bronze case, polymer register housings with glass lens encoder registers with factory installed EnergyAxis water module	0	\$ 2,041	\$ -
7	6" Elster AMCO Model C3000 bronze case, polymer register housings with glass lens encoder registers with factory installed EnergyAxis water module	1	\$ 3,569	\$ 3,569
8	8" Elster AMCO Model C3000 bronze case, polymer register housings with glass lens encoder registers with factory installed EnergyAxis water module	0	\$ 6,484	\$ -
Total Replacement		15,761		\$ 2,591,529

Item	Description	Qty	<u>Retrofit</u>	
			Each	Extended
1	C700 sizes 5/8" thru 2" InVision Register with glass lens encoder potted to EnergyAxis water module	6699	\$ 130	\$ 870,870
2	C700 sizes 5/8" thru 2" InVision Register with glass lens encoder potted to EnergyAxis water module	1012	\$ 130	\$ 131,560
3	C700 sizes 5/8" thru 2" InVision Register with glass lens encoder potted to EnergyAxis water module	327	\$ 130	\$ 42,510
4	C700 sizes 5/8" thru 2" InVision Register with glass lens encoder potted to EnergyAxis water module	289	\$ 130	\$ 37,570
5	C 3000 size 3" with 5/8" low flow InVision Registers with glass lens encoder (for both low and high flow sides) potted to EnergyAxis water module	36	\$ 230	\$ 8,280
6	C 3000 size 4" with 5/8" low flow InVision Registers with glass lens encoder (for both low and high flow sides) potted to EnergyAxis water module	17	\$ 230	\$ 3,910
7	C 3000 size 6" with 5/8" low flow InVision Registers with glass lens encoder (for both low and high flow sides) potted to EnergyAxis water module	3	\$ 230	\$ 690
8	Fireline meters(2 registers for two turbines)	23	\$ 230	\$ 5,290
Total Retrofits		8406		\$ 1,100,680
Total Meters + Retrofits		24,167		
Total Price				\$ 3,692,209

EXHIBIT D				
Ocala Draw Schedule				
Project Month	Estimated Material Price	Percent of Project	Cash Flow	
1				
2	\$ 1,847,457	17%		
3	\$ 869,392	8%	\$ 1,847,457	
4	\$ 869,392	8%	\$ 869,392	
5	\$ 869,392	8%	\$ 869,392	
6	\$ 869,392	8%	\$ 869,392	
7	\$ 869,392	8%	\$ 869,392	
8	\$ 869,392	8%	\$ 869,392	
9	\$ 869,392	8%	\$ 869,392	
10	\$ 869,392	8%	\$ 869,392	
11	\$ 2,064,803	19%	\$ 869,392	
12				
13			\$ 2,064,803	
14				
Total	\$ 10,867,396	100%	\$ 10,867,396	
Notes:				
1) Product will be mfg'd in month 1 and start shipping in month 2				
2) Terms are net 30; payment occurs no later than month following shipment				
3) For final product shipment that occurs in Month 11 terms are extended to Net 60				
4) Payment for Month 11 product is predicated on meeting contracted performance measures				
5) Late payments will have late fees assessed in accordance with purchase agreements				

Exhibit E

ELSTER ELECTRICITY, LLC GENERAL TERMS AND CONDITIONS OF SALE EFFECTIVE OCTOBER 1, 2005

1. General.

Unless otherwise agreed by the parties in writing, the terms and conditions contained herein constitute the entire agreement (the "Agreement") between the parties with respect to Purchaser's order of goods or services and supersede all prior communications and agreements regarding the order. Acceptance by Elster Electricity, LLC ("Elster") of the order, or Purchaser's acceptance of Elster's quotation or proposal (the "Proposal"), is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions. Purchaser's acceptance of goods or services from Elster shall be deemed to be Purchaser's acceptance of these terms and conditions. These terms and conditions may not be changed or superseded by any different or additional terms and conditions proposed by Purchaser in a purchase order or other document, unless expressly agreed to in writing by Elster. Notwithstanding the foregoing, any software licenses purchased by Purchaser shall be governed exclusively by the terms and conditions of the applicable software license agreement (including, if applicable, a shrinkwrap or click-wrap software license agreement) in effect between the parties.

2. Prices.

- (a) Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.
- (b) Unless otherwise specified by Elster, the price does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Purchaser will assume the payment of all taxes, duties, fees and other charges assessed by any taxing authority in the Purchaser's country or country of ultimate destination with respect to the goods order. Purchaser agrees to pay or reimburse any such taxes, duties, fees or other charges which Elster or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide Elster a copy, acceptable to the relevant governmental authorities of any such certificate or permit.
- (c) Unless otherwise stated herein, Services prices are provided during Elster's normal business hours (8 a.m. to 5 p.m. U.S. Eastern Time, Monday through Friday, excluding Elster holidays). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; hours during Elster holidays will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are firm for one year from date of the contract. Thereafter, Elster can change the rates upon reasonable notice to Purchaser.

3. Payment.

- (a) Unless specified to the contrary in writing by Elster, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by Elster in the Proposal.
- (b) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus Elster's attorneys' fees and court costs incurred in connection with collection.

4. Changes.

- (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by Elster and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change.
- (b) Elster may, at its expense, make such changes in the goods and services as it deems necessary, in its sole discretion, to conform the goods and services to the applicable specifications. If Purchaser objects to any such changes, Elster shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

5. Delivery.

- (a) All goods manufactured, assembled or warehoused in the continental United States and to be delivered within the United States are delivered FOB (Point of Shipment). Goods delivered outside the United States will be delivered Ex Works, and Purchaser shall arrange for export clearance. Purchaser shall be responsible for any and all demurrage or detention charges.
- (b) When the Proposal calls for delivery FOB point of destination, Elster will deliver FOB accessible common carrier point nearest first destination, freight prepaid and included in the price and 2% will be added to the net price.
- (c) If the scheduled delivery of goods is delayed by Purchaser or by Force Majeure, Elster may move the goods to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.
- (d) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for Elster's performance hereunder.
- (e) Claims for shortages or other errors in delivery must be made in writing to Elster within ten days of delivery. Goods may not be returned except with the prior written consent of and subject to terms specified by Elster. Claims for damage after delivery shall be made directly by Purchaser with the common carrier.
- (f) Unless otherwise agreed in writing by the parties, the Purchaser shall be responsible for any required export/import licenses. The obligations of the Purchaser to pay for the goods shall not in any manner be waived by the delay or failure to secure or renew, or by the cancellation of any required export/import licenses.

6. Inspection and Acceptance.

Purchaser shall have up to thirty (30) days after delivery of the goods to the specified delivery point to inspect and reject or accept the goods. Failure to reject the goods during such time shall be deemed acceptance of the goods.

7. Title and Risk of Loss.

Title to the goods shall pass to Purchaser upon delivery to the F.O.B. delivery point. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery to the FOB/Ex Works delivery point (as defined in INCOTERMS, 2000 edition, published by the International Chamber of Commerce, ICC Publication 560). Notwithstanding the foregoing, title to any software delivered to Purchaser shall remain in Elster, and Purchaser shall receive only a license to use such software pursuant to the terms of the applicable software license agreement between the parties.

8. Warranties and Remedies.

- (a) Equipment and Services Warranty. Elster warrants that Equipment shall be delivered free of defects in material and workmanship and that Services shall be performed in a good and workmanlike manner. The Warranty Remedy Period for Equipment shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.
- (b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained (Purchaser to provide proper records) and written notice of such nonconformity is provided to Elster promptly after such discovery and within the applicable Warranty Remedy Period, Elster shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services.
- (c) Exceptions. In no event shall Elster be responsible for gaining access to the goods, disassembly, reassembly or transportation of the goods or parts from or to the place of installation, all of which shall be at Purchaser's risk and expense. Elster shall have no obligation hereunder with respect to any goods which (i) have been improperly repaired or altered; (ii) have been subjected to misuse, negligence or accident; (iii) have been used in a manner contrary to Elster's instructions; or (iv) are comprised of materials provided by or a design specified by Purchaser.

(d) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND ELSTER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

(e) Notwithstanding the foregoing, goods supplied by Elster but manufactured by others are warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WHILE ELSTER MAY INCORPORATE A THIRD PARTY MODULE INTO THE GOODS, ELSTER DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE MODULE AND THE OPERATION OF THE COMBINED MODULE/METER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES ARISING FROM THE COURSE OF DEALING OR TRADE USAGE, AND COMPLIANCE OF THE MODULE AND THE COMBINED MODULE/METER WITH THE ANSI OR FCC REQUIREMENTS. While Elster may act as a broker for the module manufacturer and may assist Purchaser in obtaining the benefits of the module manufacturer's warranties, any express or implied warranty regarding the module or the operation of the combined module/meter, to the extent any such warranty may exist, is provided SOLELY BY THE MODULE'S MANUFACTURER.

9. Limitation of Liability.

(a) In no event shall Elster, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the goods or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. Elster's liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case exceed the purchase price allocable to the goods or services or part thereof which gives rise to the claim. In no event shall Elster be liable for, and Purchaser shall indemnify and hold harmless Elster, its affiliates and their respective officers, directors and employees from, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising from any improper installation or improper use of any goods by Purchaser or any failure by Purchaser to follow its own safety procedures in connection with the installation or use of the goods.

(b) All causes of action against Elster arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the installation of the product to which such claim relates.

10. Choice of Law

This Agreement shall be governed by the laws of the State of Florida, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding Florida law with respect to conflicts of law. Purchaser agrees that all causes of action against Elster under this Agreement shall be brought in the State Courts of the State of Florida, or the U.S. District Court for the Central District of Florida (Ocala Division). If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

11. Force Majeure.

Elster shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, acts of war or terrorism, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery of goods or performance of services will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate Elster for such delay.

12. Cancellation.

Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by Elster attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs. Payment shall be made within 30 days after the date of invoice.

13. Termination.

Elster may terminate any order for nonpayment or other material breach by Purchaser that is not cured within thirty (30) days following written notice thereof. No termination by Purchaser for default shall be effective unless, within thirty (30) days after receipt by Elster of Purchaser's written notice specifying such default, Elster shall have failed to initiate and pursue with due diligence correction of such specified default.

14. Export Control.

(a) Purchaser represents and warrants that the goods and services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by Elster or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

(b) If applicable, Elster shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by Elster. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by Elster without liability for damages of any kind resulting from such cancellation. At Elster's request, Purchaser shall provide to Elster a Letter of Assurance and End-User Statement in a form reasonably satisfactory to Elster.

15. Resale.

If Purchaser resells any of the goods, the sale terms shall limit Elster's liability to the buyer to the same extent that Elster's liability to Purchaser is limited hereunder. In addition, when reselling any of the goods, Purchaser shall maintain strict compliance with the Export Administration Act of 1979, as amended, or any other United States laws and regulations as shall from time to time govern the sale, license and delivery of technology or goods abroad by persons subject to United States law.

16. Assignment. Neither this Agreement nor any interest under it shall be assigned by Purchaser without the prior written consent of Elster.