



DATE: August 31, 2011

TO: Honorable Mayor and City Council Members

FROM: Property Management Division, Economic and Community Development
Department

SUBJECT: **APPROVAL OF AN ENCROACHMENT PERMIT AGREEMENT
BETWEEN THE CITY OF OCEANSIDE AND SAN DIEGO GAS &
ELECTRIC COMPANY FOR USE OF EXISTING CITY STREETLIGHT
POLES WITHIN THE PUBLIC RIGHTS-OF-WAY**

SYNOPSIS

Staff recommends that the City Council approve an Encroachment Permit Agreement with San Diego Gas & Electric Company, a California corporation, in the amount of a lump sum payment of three thousand dollars and a nominal payment of up to two hundred-forty dollars per year to place smart meter network telecommunication devices on City streetlight poles within the public rights-of-way; and authorize the City Manager to execute the agreement.

BACKGROUND

In 1940 the City of Oceanside ("City") granted to San Diego Gas & Electric Company ("SDG&E") a franchise to use and construct poles, wires, conduits and appurtenances in public streets, ways and places in the City for transmitting and distributing electricity and gas (Ordinance Nos. 434 and 435). Under the franchise agreement SDG&E also has the right to construct poles in the public rights-of-way to install equipment such as smart meter network telecommunication devices in connection with SDG&E's transmission and distribution of electricity and gas ("Smart Meters").

SDG&E is interested in installing its Smart Meters in the City to better monitor the transmission and distribution of electricity and gas to its customers within the City. In lieu of constructing additional poles in the public rights-of-way, as permitted by the above referenced franchise agreement, SDG&E has approached the City about installing its Smart Meters on the City's existing streetlight poles.

ANALYSIS

The use of the Smart Meters by SDG&E will allow SDG&E to better serve its residential customers in the City. The Smart Meters on the streetlight poles relay information to and from residential meters in Oceanside neighborhoods to SDG&E offices. The Smart Meters will provide more efficient service such as being able to accurately determine customer usage of electricity and gas from a central location, and to turn electricity and gas on and off from a central location rather than sending a field service technician to an actual location.

Additionally, although SDG&E has the right, pursuant to the franchise agreement, to construct poles within the public rights-of-way to install such devices, aesthetically, the use of City streetlight poles will avoid placing more unsightly poles within the public rights-of-way. Initially, SDG&E is proposing to install five Smart Meters, with a maximum of twelve Smart Meters to be installed under the Encroachment Permit Agreement ("Agreement").

Per the Agreement SDG&E will be required to obtain approval of the improvement drawings by the City Engineer for the Smart Meters. See Attachment 1 for a depiction of the Smart Meters. Further, in the event the City reasonably determines that the Smart Meters need to be relocated, SDG&E shall relocate the Smart Meters at its cost.

FISCAL IMPACT

SDG&E will pay the City a one-time initial payment of three thousand dollars for administration fees related to the Agreement. To help offset the cost of the nominal electricity used by the Smart Meters, SDG&E will pay the City an annual fee of one hundred dollars for the installation of the initial five Smart Meters. Thereafter, SDG&E will increase the annual payment by twenty dollars per additional Smart Meter for a total maximum annual payment of two hundred and forty dollars. Payments from SDG&E will be deposited into Account No. 1101.4351.0005.

COMMISSION OR COMMITTEE REPORT

Does not apply.

INSURANCE REQUIREMENTS

SDG&E will be required to maintain the City's standard insurance requirements over the term of the Agreement.

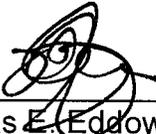
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

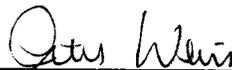
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PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager



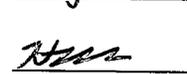
George Buell, Development Services Director



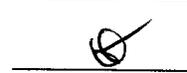
Scott Smith, City Engineer



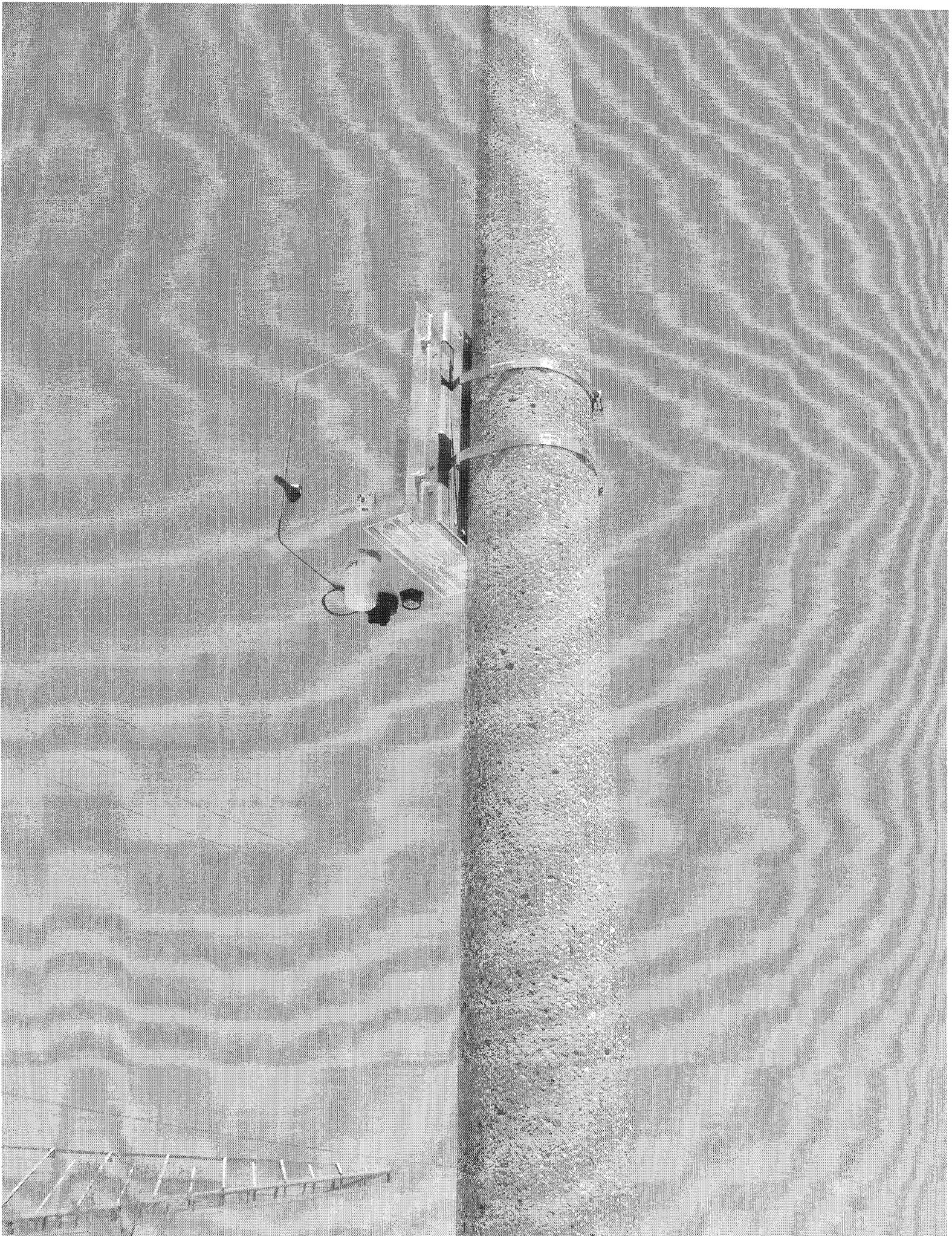
Kiel Koger, Public Works Division Manager



Teri Ferro, Financial Services Director



Attachments: Attachment 1



Specifications

Pole-mount Cell Relay

Power Requirements	Voltage Rating: 120 V	Operating Voltage: $\pm 20\%$ (60 Hz), $\pm 10\%$ (50 Hz)
	Frequency: 60Hz (50Hz)	Operating Range: ± 3 Hz
	Cell Relay Battery Voltage: 3.6V nominal Li-Ion, 4.8Ah	Register Battery Operating Range: 2.8 V - 3.3 V
Operating Environment	Temperature: -30° to $+70^{\circ}\text{C}$	
	Humidity: 0% to 95% non-condensing	
Transient	IEC 61000-4-4-2004-07	
Surge Protection	ANSI C62-45-2002	
Time	Maintained by the network	
Burden Data	Maintained by the network	
	Voltage: 120 V	
	Watts: 14.7W	
	Volt-Amps: 20 VA	
Current Coil (self-contained)	Volt-Amps: < 0.5 VA	

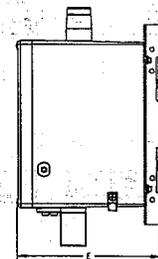
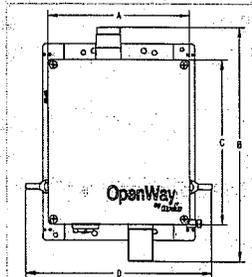
Dimensions

	A	B	C	D	E	F
in.	2.9	6.4	8.2	8.4	5.7	6.3
cm	7.37	16.26	20.83	21.34	14.48	16.00

Shipping Information

OpenWay Pole-mount + Standard Mounting Kit

	Height (in)	Width (in)	Length (in)	Pounds	Kilograms
Pole-mount Cell Relay	14.5"	15.5"	11"	19.5 lbs	8.8 kg
Installation Kit	3.75"	15"	16.75"	10 lbs	4.5 kg
18 Pole-mount Cell Relays (18 kits/pallet)	49"	32"	46"	580 lbs	263 kg



About Itron Inc.

Itron Inc. is a leading technology provider to the global energy and water industries. Our company is the world's leading provider of metering, data collection and utility software solutions, with nearly 8,000 utilities worldwide relying on our technology to optimize the delivery and use of energy and water. Our products include electricity, gas and water meters, data collection and communication systems, including automated meter reading (AMR) and advanced metering infrastructure (AMI); meter data management and related software applications; as well as project management, installation, and consulting services. To know more, start here: www.itron.com

Itron

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2111 North Molter Road
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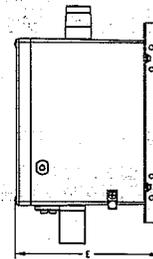
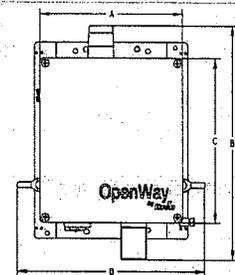
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**ENCROACHMENT PERMIT AGREEMENT
BETWEEN
THE CITY OF OCEANSIDE, CALIFORNIA
AND
SAN DIEGO GAS & ELECTRIC COMPANY**

This Encroachment Permit Agreement (“Agreement”) is entered into this ____ day of _____, 2011, by and between the City of Oceanside, a California municipal corporation, hereinafter referred to as the (“City”) and San Diego Gas & Electric Company, a California corporation hereinafter referred to as (“Permittee”). The effective date shall be the date this Agreement is approved by the Oceanside City Council, as evidenced by the date indicated hereinabove (the”Effective Date”).

R E C I T A L S

WHEREAS, City is responsible for management of the public rights-of-way and performs a wide range of vital tasks necessary to preserve the physical integrity of public streets and ways, to control the orderly flow of vehicles, to promote the safe movement of pedestrians, and to manage a number of gas, water, sewer, electric, cable television, telephone and telecommunications facilities that crisscross streets and public ways;

WHEREAS, Permittee is a public utility company that provides electric and gas utility services to residents of City.

WHEREAS, on August 14, 1940, City granted to Permittee a franchise to use and construct poles, wires, conduits and appurtenances in public streets, ways and places in the City for transmitting and distributing electricity (Ordinance No. 434) (“Electric Franchise”), and a franchise to use and lay pipes and appurtenances under, along, across or upon public streets, ways, alleys and places in the City for transmitting and distributing gas (Ordinance No. 435) (“Gas Franchise”). The Electric Franchise and the Gas Franchise are referred to collectively herein as the “Franchises.”

WHEREAS, under the Franchises, Permittee has the right to construct poles in the public streets in the City to install smart meter network communications devices, including but not limited to antennas, gas repeaters and/or radio frequency local area network (“RFLAN”) range extenders, and other smart meter facilities, in connection with Permittee’s transmission and distribution of gas and electricity in the City (“Smart Meter Facilities”).

WHEREAS, City has requested that Permittee install its Smart Meter Facilities on the City’s existing street light poles situated on portions of the public rights-of-way in certain streets, easements and/or public ways (“Street Light Poles”), rather than constructing new poles in such public rights-of-way for the purposes of installing Permittee’s Smart Meter Facilities.

WHEREAS, City and Permittee have agreed to enter into this Agreement regarding Permittee’s use and occupation of Street Light Poles in public rights-of-way upon the terms, conditions and other considerations set forth herein.

A G R E E M E N T

NOW THEREFORE, in consideration thereof and for other valuable consideration as set forth herein below the parties hereto do mutually agree as follows:

Section 1. Authorization. Subject to the terms and conditions contained herein, City hereby authorizes Permittee to encroach upon a portion of the public rights-of-way (hereinafter referred to as the “Rights-of-Way”) and to install Smart Meter Facilities upon existing Street Light Poles located in such Rights of Way as described and illustrated in those certain improvement drawings (the “Improvement Drawings”) as reviewed by and on file as a public record with the City Engineer of the City of Oceanside (“City Engineer”), and to operate, use, maintain, repair, replace, improve, alter, inspect, test and remove such Smart Meter Facilities on the terms and conditions set forth herein. Permittee shall deliver the Improvement Drawings to the City Engineer for review at least thirty (30) days prior to commencement of installation of the Smart Meter Facilities. City shall deliver to Permittee written notice approving or disapproving the Improvement Drawings within thirty (30) days after submittal of the Improvement Drawings, provided that City shall not unreasonably withhold, condition or delay its approval. It shall be reasonable for City to withhold its approval if the Improvement Drawings reflect any (a) material interference with City’s current operation, use or maintenance of the City street lights or Street Light Poles, (b) material interference with any existing third party fixtures, facilities or equipment currently installed on the Street Light Poles, (c) violation of applicable laws, statutes, codes, ordinances or regulations (“Laws”) (to the extent such Laws are not preempted by the exclusive jurisdiction of the CPUC), (d) violation of customary industry construction or safety standards, or (e) unreasonable risk of danger to persons or property (each, a “Problematic Condition”). If City disapproves the Improvement Drawings, then City’s written notice shall describe the basis for disapproval in reasonable detail. If, after the Effective Date, Permittee desires to install Smart Meter Facilities on additional Street Light Poles that are not identified in the Improvement Drawings, then Permittee may do so, provided that Permittee may install Smart Meter Facilities on a maximum of twelve (12) Street Light Poles in the aggregate, and provided, further, that Permittee shall deliver additional improvement drawings describing and illustrating such additional Smart Meter Facilities (“Additional Improvement Drawings”) to the City Engineer for review at least thirty (30) days prior to commencement of installation, and the provisions set forth above in this Section 1 with respect to the City’s approval or disapproval of Improvement Drawings shall also apply to the Additional Improvement Drawings.

Section 2. Term. The commencement date shall be first day of the month following the Effective Date of this Agreement. This Agreement authorizes the Permittee to encroach upon the Rights-of-Way pursuant to the terms and conditions herein, for so long as either of the Franchise Agreements remains in full force and effect.

Section 3. Scope of Agreement. This Agreement authorizes the Permittee to lease Street Light Poles and to encroach upon and occupy the Rights-of-Way for the installation, maintenance, operation, use, repair, replacement, improvement, alteration, inspection, testing and removal of Permittee’s Smart Meter Facilities, as identified in said Improvement Drawings and any Additional Improvement Drawings.

By entering into this Agreement, Permittee acknowledges that the Administrative Fee and the Annual Fee charged by City for use of the Street Light Poles constitutes a negotiated fee between the parties.

Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint-venture or of any association whatsoever between City and Permittee, it being expressly understood and agreed that neither the computation of fees nor any other provisions contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between City and Permittee other than the relationship of City and Permittee.

Permittee hereby acknowledges, agrees and covenants that this Agreement allows only for the lease of Street Light Poles, and installation, operation, use, maintenance, repair, replacement, improvement, alteration, inspection, testing and removal of Smart Meter Facilities on such Street Light Poles within the Rights-of-Way identified in said Improvement Drawings or any Additional Improvement Drawings and does not authorize or bestow any rights to Permittee to provide cable television service, or other telecommunications services not authorized by Permittee's Federal License or State Wireless Registration and that the provision of such services shall require separate and specific written authorization from City.

Section 4. Compensation.

a. Administration Fee. Permittee shall make a one-time initial payment to the City of Three Thousand Dollars (\$3,000.00) (the "Administrative Fee") for administration activities related to this Agreement, concurrent with the execution of this Agreement by the parties hereto.

b. Annual Fee. Upon commencement of this Agreement, Permittee shall pay to the City an annual fee of One Hundred Dollars (\$100.00) (the "Annual Fee") as compensation for Permittee's lease of five (5) Street Light Poles for installation of Smart Meter Facilities as identified in the Improvement Drawings. For each additional Street Light Pole attachment identified in any Additional Improvement Drawings (up to a maximum of twelve (12) Street Light Pole attachments in the aggregate, as set forth in Section 1 above), this Annual Fee will be increased by Twenty Dollars (\$20.00) per Street Light Pole. The Annual Fee shall be further adjusted in accordance with Section 4.c, 4.d and 4.e below.

Permittee shall pay the City all Annual Fee payments annually in advance, without demand from City, on or before the first (1st) day of July each year and in accordance with this Section, whether or not the Street Light Poles are occupied by Permittee's Smart Meter Facilities when said payments become due. The first annual payment shall be due upon commencement and shall be prorated from commencement date to the first June 30 following commencement.

Checks shall be made payable to the City of Oceanside and delivered to the City Property Manager at 300 N. Coast Hwy South Bldg. 3rd floor, Oceanside, CA 92054. City may change the place and time of payment at any time upon 30-days written notice to Permittee. Permittee agrees to pay City an additional Twenty Five Dollars and no cents (\$25.00) for any returned

check which is not honored by the financial institution from which the check is drawn.

c. **Minimum Annual Fee Adjustment Date.** The Annual Fee adjustment date shall be the first (1st) day of July of each year following the date of commencement as defined in Section 2 of this Agreement as set forth below.

d. **Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California, published for January of each year of this Agreement. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of City and Permittee. If the parties cannot agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection 4d.

Regardless of the index publication dates, the Annual Fee adjustment dates shall be on the dates defined by Subsection 4c above. Until the Annual Fee adjustment can be actually calculated in accordance with this Agreement, Permittee shall continue to make payments at the existing Annual Fee rate. When the adjustment is calculated, the balance of fees due at the adjusted rate, from the Annual Fee adjustment date through the date of calculation, will be paid to City within 30 days of written notice by the City. In no event shall the adjusted Annual Fee as established by the CPI be less than the Annual Fee in existence immediately prior to the adjustment date.

e. **Minimum Annual Fee Adjustment Computation.** The Annual Fee adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Annual Fee: The Annual Fee at the commencement of this Agreement as listed in Subsection 4b above.

Existing Annual Fee: The existing Annual Fee shall be the Annual Fee amount in effect on the date preceding the Annual Fee adjustment date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding 12-month period covered by the most recent publication of the Index.

Annual Fee Adjustment Formulas:

First Adjustment: Initial Annual Fee amount + (Initial Annual Fee x the percent change in the CPI) = New minimum Annual Fee.

For example: $\$100 + (\$100 \times 5\%) = \$105$

Section 5. Delinquent Payment. Permittee assumes all risk of loss and responsibility for delinquent payments. If Permittee fails to make payments when due a delinquent payment charge on any unpaid amount shall accrue from the due date until paid at the lower of a rate of one and one-half percent (1½ %) per month or the maximum rate allowable by Law until paid. Permittee's failure to make payments within thirty (30) days after written notice that City has not received such payments when they are due is considered a default of the terms of the Agreement, subject to the terms stated in Section 27, "Defaults and Termination."

Section 6. Assignment or Transfer of Authorization. This Agreement may be assigned or transferred to any qualified person or entity subject to the prior written approval of the City, which shall not be unreasonably withheld, provided Assignee first files for review and approval by the City Property Manager in a form reasonably acceptable with the City, an affidavit and other supporting documentation demonstrating the proposed Transferee's: (1) acceptance of and agreement to comply with all terms and conditions of this Agreement, (2) insurance coverage meeting the requirements as set forth in Section 13 herein or an acceptable program of self insurance. Notwithstanding the foregoing, City's prior written consent shall not be required for any of the following: (a) the transfer of any shares or stock in or change in control of Permittee's parent company, (b) any merger, consolidation or reorganization of, by or with Permittee or transfer of all or substantially all of the stock or shares in Permittee or assets of Permittee, if the transaction maintains or improves the financial condition of the resulting public utility, and the CPUC has determined that such merger, consolidation, reorganization or transfer satisfies all of the criteria set forth in California Public Utilities Code Section 854, including, without limitation, the requirement of subsection (c)(1) that such transaction will maintain or improve the financial condition of the resulting public utility doing business in the state.

Section 7. Responsibility of Permittee. The Permittee, on the Permittee's own behalf and on behalf of any successor or assign, shall acknowledge and assume all responsibility, financial or otherwise, for Permittee's or its employees', contractors', subcontractors' or agents' planning, design, installation, construction, operation, use, maintenance, repair, replacement, improvement, alteration, inspection, testing, operation and removal of the Permittee's Smart Meter Facilities on Street Light Poles in the Rights-of-Way, which shall be undertaken without risk or liability on the part of the City, provided, however, that Permittee does not hereby assume any responsibility or liability for the negligence or willful misconduct of any party other than Permittee or its employees, contractors, subcontractors or agents. All of Permittee's construction and installation work shall be performed at Permittee's sole cost and expense and in a good and workmanlike manner and in accordance with the rules and regulation of the CPUC and the Improvement Plans reviewed by the City Engineer, and in compliance with all applicable ordinances, regulations or law (to the extent not preempted by the exclusive jurisdiction of the CPUC).

Permittee shall remove all of Permittee's Smart Meter Facilities at its sole expense within one hundred eighty (180) days after the termination of the Agreement, unless an agreement is otherwise reached between the City and Permittee to abandon the Permittee's

Facilities in place. Permittee shall bear full responsibility for repairs to any damage to the Rights-of-Way caused by Permittee's or its employees', contractors', subcontractors' or agents' installation, construction, maintenance, repair, operation and removal of the Permittee's Smart Meter Facilities.

Section 8. Permittee to Bear All Costs. The Permittee, or any successor or authorized assign, shall bear all costs incurred in connection with Permittee's or its employees', contractors', subcontractors' or agents' planning, design, installation, construction, maintenance, repair, operation and removal of the Permittee's Smart Meter Facilities. City shall not be responsible or bear any cost for repair of any damage or movement of the Permittee's Smart Meter Facilities due to repair, maintenance and/or failure/collapse of any existing gas, water and sewer lines or any other improvements or works approximate to Permittee's Smart Meter Facilities, except for the active negligence or willful misconduct of the City, its officers, agents, employees, contractors or subcontractors.

Section 9. Intentionally Omitted.

Section 10. Future Rules or Orders. To the extent not preempted by the jurisdiction of the CPUC, the Permittee, or any successor or authorized assign, shall abide by any agreements, rules, regulations, orders, or directives governing the use of the Rights-of-Way as the City may find necessary or appropriate in the exercise of its police powers. Permittee shall bear all costs resulting from any relocation of Permittee's Smart Meter Facilities resulting from City's reasonable determination in the exercise of its police power over the Rights-of-Way that such relocation is necessary, provided, however, that if City requests relocation of such Smart Meter Facilities at the request of or for the benefit of or in order to facilitate development by a private developer, then such private developer, and not Permittee, shall pay all of Permittee's costs to relocate the Smart Meter Facilities. When all utilities within the said Rights-of-Way are subject to undergrounding at the request of the City in the exercise of its police power over such Rights-of-Way (rather than at the request of or for the benefit of or to facilitate development by a private developer), within a reasonable time after receipt of the City's written notice to do so and designation by the City Engineer of an alternate location in the Rights-of-Way for such Smart Meter Facilities that is acceptable to Permittee, Permittee shall relocate Permittee's Smart Meter Facilities at its sole cost and expense to such other location in the Rights-of-Way. Permittee shall prepare and submit for review, together with payment of all related reasonable fees, any and all plans and specifications required for relocation ("Relocation Drawings"). Permittee shall deliver the Relocation Drawings to the City Engineer for review at least thirty (30) days prior to commencement of relocation of the Smart Meter Facilities. City shall deliver to Permittee written notice approving or disapproving the Relocation Drawings within thirty (30) days after submittal of the Relocation Drawings, provided that City shall not unreasonably withhold, condition or delay its approval. It shall be reasonable for City to withhold its approval if the Relocation Drawings reflect any Problematic Condition. If City disapproves the Relocation Drawings, then City's written notice shall describe the basis for disapproval in reasonable detail.

Section 11. Permittee to Secure Approval and Permits. Not less than thirty (30) days prior to commencement of construction and installation of Permittee's Smart Meter

Facilities, Permittee shall, at its sole cost and expense, prepare and submit the Improvement Drawings to the City Engineer for review as described in Section 1 above. Permittee shall, at its sole cost and expense, submit traffic control plans for approval by City Engineer. The City reserves the right to inspect the installation and maintenance of Permittee's Smart Meter Facilities at any time. Permittee shall pay all reasonable plan check, inspection and other reasonable related fees prior to the issuance of any non-discretionary administrative permit that Permittee is required to obtain for the installation and construction of Permittee's Smart Meter Facilities under this Agreement. All work within the Rights-of-Way shall be performed in compliance with the Improvement Plans and reviewed by the City Engineer and non-discretionary administrative permits obtain by Permittee.

Section 12. As Built Drawings to be Provided. The Permittee shall provide as-built drawings, in a format reasonably acceptable to the City Engineer, detailing the location of Permittee's Smart Meter Facilities installed pursuant to this Agreement.

Section 13. Liability Insurance. Permittee shall cause any contractor or contractors acting on behalf of Permittee under this Agreement to take out and maintain at all times during the term of this Agreement comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of such Permittee contractor or contractors, its or their agents and employees, performed in connection with this Agreement, including, but not limited to, premises and automobile.

a. Permittee shall cause its contractor or contractors to maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined single limit per occurrence	\$1,000,000	
General aggregate	\$2,000,000	*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$1,000,000
General limit project specific aggregate	\$2,000,000

Automobile Liability Insurance \$1,000,000

* General aggregate per year, or part thereof, with respect to losses or other acts or omission of Permittee under this Agreement.

b. All insurance companies affording coverage to the Permittee's contractor or contractors shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by

the City, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this Agreement.

c. All insurance companies affording coverage to the Permittee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California and must carry a rating by Best of not less than "A- VII".

d. All insurance companies affording coverage shall provide 30 days written notice to the City of Oceanside should the policy be canceled before the expiration date, if such provision is available from such insurance companies. For the purposes of this notice requirement, any material changes pertinent to this Agreement in the policy prior to the expiration shall be considered a cancellation.

e. Permittee shall cause its contractor or contractors to provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, prior to commencement of any installation of the Smart Meter Facilities.

f. Permittee shall cause its contractor or contractors to provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date. Failure by the Permittee to cause its contractor or contractors to provide such a substitution and extend the policy expiration date within thirty (30) days after written notice from City shall be considered a default by Permittee under this Agreement.

g. Maintenance of insurance by the Permittee's contractor or contractors as specified in this Agreement shall in no way be interpreted as relieving the Permittee of any responsibility whatever to the extent that Permittee has such responsibility under this Agreement, and the Permittee may carry, at its own expense, such additional insurance as it deems necessary. City acknowledges that Permittee maintains a program of self insurance. Upon City's request, Permittee shall provide a letter describing Permittee's self insurance program.

h. If Permittee's contractor or contractors fail or refuse to take out and maintain the required insurance, or fail to provide the proof of coverage, City has the right to obtain the insurance. Permittee shall cause its contractor or contractors to reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give written notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Permittee's contractor or contractors on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Permittee's contractor or contractors to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. City may require the reasonable revision of amounts and coverage at any time during the term of this Agreement by giving Permittee sixty (60) days prior written notice to the extent required to assure protection from and against the kind and extent of risk existing as a result of Permittee's Smart Meter Facilities in the Rights-of-Way.

Section 14. Intentionally Omitted.

Section 15. Accident Reports. Permittee shall, within 48 hours after occurrence, report to City any accident causing property damage or any serious injury to persons resulting from any of Permittee's activities under this Agreement. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

Section 16. Indemnification of City. Permittee shall defend, indemnify and hold harmless the City and its council members, officers, agents and employees against all claims, losses, damages, costs, expenses, liabilities, causes of action, fines or penalties, including but not limited to reasonable attorney's fees (collectively, "Claims"), for injury to or death of persons or damage to property incurred by City arising from Permittee's use and occupation of the Rights-of-Way under this Agreement or arising from Permittee's Facilities on the Street Light Poles, except to the extent such Claim arise from the sole negligence or willful misconduct of the City, its officers, agents, or employees, provided, however, that Permittee's indemnification obligations shall not include any punitive, consequential or special damages, except to the extent asserted by a third party against the City arising from a Claim for which Permittee is obligated to indemnify the City under this paragraph.

Section 16.1 Duty to Defend. Permittee's indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the City, its officers, agents, or employees in defending against such Claims, whether the same proceed to judgment or not. Further, Permittee at its own expense shall, upon written request by the City, defend any such Claim brought against the City, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the Permittee.

Section 16.2 Waiver of Claims. Permittee hereby waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any equipment or any loss or degradation of the services as a result of any event or occurrence which is beyond the reasonable control of the City.

Section 17. Right to Pursue Remedies. If the Permittee fails to comply with any of the terms and conditions of this Agreement and/or any applicable ordinance, regulation or law, the City may pursue any remedies available to City at law or in equity, provided, however, that City may not revoke the authorization granted herein, and provided, further, that such pursuit of remedies is subject to the terms and conditions stated in Section 27, "Defaults and Termination".

Section 18. Terms and Conditions Specific to this Agreement. The terms and conditions of this Agreement shall apply solely to the Permittee's Smart Meter Facilities described in the Improvement Drawings and installation necessary for Permittee's Smart Meter

Facilities and shall not apply to, nor establish any precedent for, the conditions the City may impose upon Permittee in the event Permittee seeks to install other fixtures, facilities or equipment in connection with Permittee's transmission or distribution of gas or electricity within the City.

Section 19. Current Enforceability. The rights granted by this Agreement are granted based upon representations by Permittee that its use of the Street Light Poles in the Rights-of-Way shall be solely for the purposes stated in this Agreement.

Section 20. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the Laws of the State of California. Nothing in this section shall be interpreted to preclude either party's right to seek redress from the CPUC.

Section 21. Relocation of Facilities. Permittee agrees that whenever the City in the exercise of its police power over the Rights-of-Way reasonably determines that the relocation of any of the Permittee's Smart Meter Facilities is necessary to avoid or mitigate inconvenience to the public and/or public facilities, the City may require the relocation of any such Smart Meter Facilities at the Permittee's expense, without making any claim against the City for reimbursement or damage therefor, provided, however, that if City requests relocation of such Smart Meter Facilities at the request of or for the benefit of or in order to facilitate development by a private developer, then such private developer, and not Permittee, shall pay all of Permittee's costs to relocate the Smart Meter Facilities. Relocation(s) initiated for installation of public facilities to serve private development shall be at the expense of the developer.

Section 22. Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

Section 23. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings, whether oral or written, between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. Each party has relied on advice from its own attorneys, and the warranties, representations, and covenants of this Agreement itself.

The Permittee shall be responsible for complying with all Local, State, and Federal Laws whether or not said laws are expressly stated or referred to herein, to the extent that such Laws are not preempted by the exclusive jurisdiction of the CPUC.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 24. Taxes. Permittee shall pay, before delinquency, all personal property

taxes, assessments, and fees assessed or levied by the California State Board of Equalization upon Permittee or the Permittee's Smart Meter Facilities.

The parties agree that no possessory interest is created by this Agreement and that all Street Light Poles remain City's sole property. However, to the extent that a possessory interest is deemed created, Permittee acknowledges that notice is and was hereby given to Permittee pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Permittee's right to possession, occupancy, or use of any public property created by this Agreement.

Section 25. Notices. All notices, demands, requests, consents or other communications that this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed or sent by reputable overnight courier, such as FedEx, to the respective party as follows:

TO CITY:

City of Oceanside
Attention: Property Manager
300 North Coast Highway
Oceanside, CA 92054
Attn: Real Estate Manager
Tel: (760) 435-5012

TO PERMITTEE:

San Diego Gas & Electric Company
8335 Century Park Court
San Diego, CA 92123
Attn: Smart Meter Project Manager
Tel: (858) 541-5505

COPY TO:

San Diego Gas & Electric Company
101 Ash Street,
San Diego, CA 92101
Attn: Assistant General Counsel
Tel: (619) 699-5054

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, or with reputable overnight courier, such as FedEx, addressed to the offices of the party to whom the communication is to be sent, as designated above.

Section 27. Defaults and Termination. The following shall constitute an Event of Default under this Agreement: a failure by either party to perform or comply with any covenant or term hereof applicable to such party, which default is not cured within thirty (30) days of receipt of written notice of default, provided that if the default cannot reasonably be cured within said thirty (30) day period, then so long as such party commences the cure within said thirty (30) day period and diligently prosecutes such cure to completion, such party shall have such reasonable additional time necessary to complete such cure, and provided, further that the grace period for any monetary default is ten (10) days from receipt of notice.

If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within the time periods set forth herein.

Upon the occurrence of any Event of Default, the demanding party may seek any remedies available to the demanding party at law or in equity, other than termination of this Agreement. In no event shall this Agreement be terminated upon any Event of Default.

Section 28. Other Regulations. All Permittee's use of the Rights-of-Way under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law (to the extent that the same are not preempted by the exclusive jurisdiction of the CPUC).

Section 29. Related Actions. By the granting of this Agreement, neither City nor the Council of the City is obligating itself to any other governmental agent, board, commission, or agency with regard to the grant or taking of any other discretionary action relating to the use of the Rights-of-Way. Discretionary action includes, but is not limited to, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Permittee's Facilities within the Rights-of-Way.

Section 30. Use of the Rights-of-Way. Permittee acknowledges that the paramount use of Rights-of-Way is for public services. Permittee agrees to coordinate use of the Rights-of-Way with City so as not to unreasonably conflict with City's programs and activities.

Section 31. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

Section 32. Captions. The Agreement outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Agreement.

Section 33. Powers to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Permittee and the City.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

THE CITY OF OCEANSIDE

DATE: _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Paula Hamilton, ASSY.*
City Attorney

PERMITTEE:

SAN DIEGO GAS & ELECTRIC COMPANY

DATE: 8-17-11

By: *Charles Snyder*
Name: Charles Snyder
Title: Smart Meter Project Manager

NOTARY ACKNOWLEDGEMENTS OF PERMITTEE SIGNATURES MUST BE ATTACHED

State of California)
)
County of San Diego)

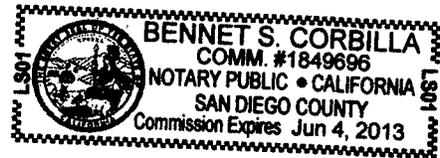
On Aug 17, 2011, before me, Bennet S. Corbilla, Notary Public,

Personally appeared Charles Snyder, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Bennet S. Corbilla
Signature of Notary Public



BENNETT & CORBILLO
COMM # 184888
SANTA BARBARA COUNTY
SANTA BARBARA, CA 93101
COMMERCIAL PHONE 805 963 1213

AP 1/2/201