

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS
County of Placer

TO: BOARD OF SUPERVISORS DATE: August 5, 2008
FROM:  KEN GREHM / KEVIN TABER
SUBJECT: PACIFIC GAS AND ELECTRIC SMARTMETER AGREEMENT

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution authorizing the Director of Public Works to execute a license agreement with Pacific Gas and Electric (PG&E) for the installation of "SmartMeters" at various locations within the County on County owned street light poles. PG&E will pay the County \$1,560 for the installation of the first two SmartMeters. The amount of additional revenue is unknown at this time.

BACKGROUND

PG&E is implementing a new gas meter reading program utilizing data collection units called "SmartMeters". PG&E's SmartMeter project will allow PG&E to collect customer meter data automatically, and on a much more frequent basis. Using today's manual meter reading process, PG&E is able to read meter data once a month for both electric and gas. With the SmartMeter system, PG&E will read gas meter data daily. The SmartMeter equipment consists of a data box (2'x1'x9"), a photocell adapter, and two whip antennas.

PG&E will attach the SmartMeters to existing street light poles, and currently there are only two poles they wish to utilize. One location is in Granite Bay on Auburn Folsom Road, the other is in West Roseville on Walerga Road. The agreement allows for future installations with prior approval by the County.

PG&E will pay the County a one time fee of \$780 for each SmartMeter installation. The agreement has a 20 year term. Subsequent payment for additional installations will be prorated based on the amount of time remaining in the 20 year term.

ENVIRONMENTAL IMPACT

This action is not a project as defined by Public Resources Code Section 21065 and is, therefore, exempt from environmental review under CEQA.

FISCAL IMPACT

PG&E will pay the County \$1,560 for the installation of the first two SmartMeters. This revenue will be appropriated as a final budget adjustment for 2008/09. The amount of additional revenue is unknown at this time.

Attachments: Resolution
Draft Agreement

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Before the Board of Supervisors County of Placer, State of California

In the matter of: A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO EXECUTE A LICENSE AGREEMENT WITH PACIFIC GAS AND ELECTRIC FOR INSTALLATION OF SMARTMETERS ON EXISTING COUNTY OWNED STREET LIGHT POLES

Resol. No:.....

Ord. No:.....

First Reading:.....

WHEREAS, COUNTY owns and operates certain streetlight facilities located in the geographic areas within the political jurisdiction of COUNTY; and

WHEREAS, PG&E desires to enter into an Agreement for the attachment of communication equipment used for the operation and maintenance of PG&E's SmartMeter network, to COUNTY's existing streetlight poles; and

WHEREAS, PG&E's SmartMeter equipment consists of telecommunications equipment including, but not limited to, a Data Collector Unit, two whip antennas, coaxial cable and photovoltaic adaptor ("SmartMeter Equipment"); and

WHEREAS, it is understood and agreed that this Agreement will permit the placement of the SmartMeter communication equipment on certain of COUNTY's existing streetlight poles; and

WHEREAS, COUNTY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the SmartMeter Equipment to COUNTY streetlight poles, subject to the terms and conditions set forth in the License Agreement.

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held August 5, 2008, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest:

Clerk of the Board

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board authorized the Director of Public Works to execute a license agreement with Pacific Gas and Electric for installation of SmartMeters on existing County owned street light poles, with PG&E paying the County \$1,560 for the installation of the first two SmartMeters.

DRAFT

AGREEMENT NO. _____

DRAFT

STREETLIGHT LICENSE AGREEMENT

THIS AGREEMENT is made and entered into on _____, by and between the **COUNTY OF PLACER** ("COUNTY" herein) and **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("PG&E" herein) each being referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, COUNTY owns and operates certain streetlight facilities located in the geographic areas within the political jurisdiction of COUNTY; and

WHEREAS, PG&E desires to enter into an Agreement for the attachment of communication equipment used for the operation and maintenance of PG&E's SmartMeter network, to COUNTY's existing streetlight poles; and

WHEREAS, PG&E's SmartMeter equipment consists of telecommunications equipment including, but not limited to, a Data Collector Unit, two whip antennas, coaxial cable and photovoltaic adaptor ("SmartMeter Equipment"); and

WHEREAS, it is understood and agreed that this Agreement will permit the placement of the SmartMeter communication equipment on certain of COUNTY's existing streetlight poles; and

WHEREAS, COUNTY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the SmartMeter Equipment to COUNTY streetlight poles, subject to the terms and conditions set forth in this License Agreement.

NOW, THEREFORE, incorporating the foregoing recitals herein, the Parties agree as follows:

1. **EFFECTIVE TERM OF AGREEMENT**. This Agreement shall be and remain in effect for a period of twenty (20) years from the date of execution.

1.1 This agreement shall extend thereafter for successive terms of one year each, unless otherwise terminated by either party on not less than six (6) months advance written notice to the other party prior to the date when such termination shall become effective.

2. **STREETLIGHT LICENSE**. COUNTY does hereby confer on PG&E a non-exclusive, revocable license to attach, replace, operate, maintain, and use SmartMeter Equipment to certain photocells, support arms and streetlight pole(s) owned by COUNTY. Permission to attach to COUNTY-owned streetlight facilities shall be memorialized in the form of the Streetlight Permit, attached to this Agreement as **Exhibit "A,"** and incorporated herein by reference. The specific locations for which a Streetlight Permit is requested are

included in Exhibit A, and are those specific locations that the Parties hereby agree are covered by this Agreement as of the date the Streetlight Permit is executed.

3. ANNUAL LICENSE FEE. As its entire consideration for the rights granted herein, PG&E shall pay to COUNTY a one-time Seven Hundred and Eighty DOLLAR (\$780) up front payment for each street light pole to which PG&E attaches its *SmartMeter* Equipment.

3.1 Such amount will be prorated for the first and, if applicable, final calendar year of the Effective Term on the basis of a 365 day year.

3.2 PG&E shall pay COUNTY a pro-rata portion of the Seven Hundred and Eighty (\$780) dollar attachment fee for all additional attachments installed under the terms of this agreement.

3.3 All payment obligations associated with the renewals of this agreement under §1.1 will be prorated in accordance with the payment obligations of §3 herein.

3.4 PG&E will provide a revised list of locations ("Exhibit A") as poles are added or deleted.

4. ADDITIONAL LOCATIONS. Prior to installing any *SmartMeter* Equipment on any additional COUNTY-owned street light poles, other than the locations identified in Exhibit "A", PG&E will submit to COUNTY a revised Exhibit "A" seeking permission to install such additional *SmartMeter* Equipment on specified COUNTY-owned street light poles.

4.1 COUNTY will use its best commercially reasonable efforts to respond, in writing, to each request submitted by PG&E within twenty (20) business days; provided that COUNTY is not required to approve, in whole or part, any such request, so long as its denial or delay in approving is not unreasonable or discriminatory to PG&E.

4.2 Each location approved by the COUNTY shall be memorialized in a Street Light Permit in the form of Exhibit "A" to this Agreement, and shall be incorporated by reference herein at the time it is executed and delivered.

4.3 PG&E may, from time to time, replace, modify, update and/or reposition existing *SmartMeter* Equipment without seeking COUNTY's prior approval and without incurring additional fees.

5. SAFETY PRECAUTIONS. PG&E shall perform all work on COUNTY-owned streetlight facilities in a workmanlike manner and in compliance with applicable federal, state, and local laws, rules and regulations. All work on such streetlight facilities shall be performed by PG&E's personnel or contractor operating from either a ladder or bucket truck.

6. RADIO FREQUENCY EMISSION REQUIREMENTS. PG&E will operate the PG&E *SmartMeter* Equipment in a manner that complies with the FCC's (or any more restrictive applicable standard subsequently adopted or promulgated by a

governmental agency with jurisdiction) Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power for density for transmitters in an inhabited area.

7. REMOVAL OF SMARTMETER EQUIPMENT. COUNTY will use its best commercially reasonable efforts to provide PG&E ten (10) business days prior written notice of any non-emergency work that will, or may, affect the SmartMeter Equipment and/or the PG&E SmartMeter gas network.

7.1 In the event that COUNTY is required by law or unavoidable circumstance to remove any SmartMeter Equipment attached to COUNTY Property on an emergency basis, COUNTY will use its best commercially reasonable efforts to notify PG&E of such circumstance as soon as practicable and will take all due care in removing and storing the SmartMeter Equipment.

7.2 PG&E will provide COUNTY written notice within ten (10) business days of removing any SmartMeter Equipment from any COUNTY Property specifying the SmartMeter Equipment removed and the COUNTY Property from which it was removed.

7.3 PG&E will, at its expense, remove all remaining SmartMeter Equipment from COUNTY Property within one hundred eighty (180) days of the termination or expiration of this Agreement.

7.4 In the event that PG&E fails to remove any SmartMeter Equipment from the COUNTY Property in a timely manner, COUNTY may at PG&E's expense, remove and store such SmartMeter Equipment.

8. SECURITY DEPOSIT OR PERFORMANCE BOND. Prior to attaching any SmartMeter Equipment to COUNTY Property, PG&E will provide the COUNTY with a performance bond guaranteeing its obligations herein.

9. INDEMNITY. PG&E shall indemnify, defend, and hold harmless COUNTY, its officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by PG&E, PG&E's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for any such claims, damage or liabilities caused by COUNTY's active negligence or willful misconduct.

10. ASSIGNMENT. Neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of the parties, which shall not be unreasonably withheld.

11. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their administrators, representatives, successors and assigns.

12. **COMPLIANCE WITH ALL LAWS.** PG&E shall, at PG&E's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force. Provided however, that PG&E shall not be required to apply for any encroachment permit for the SmartMeter Equipment authorized under this Agreement.

13. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

14. **EXHIBIT.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and the exhibit attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. The exhibit to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

15. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance.

16. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

17. **INSURANCE.** PG&E shall procure and maintain for the duration of this Agreement the following types and limits of insurance or self-insurance ("basic insurance requirements") herein:

17.1 **Automobile liability insurance,** providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and the policy shall:

17.1.1 Provide coverage for owned, non-owned and hired autos.

17.2 **Broad form commercial general liability insurance,** unless otherwise approved by the COUNTY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and the policy shall:

17.2.1 Provide contractual liability coverage for the terms of this Agreement.

17.2.2 Provide products and completed operations coverage.

17.2.3 Contain an additional insured endorsement in favor of the COUNTY, its mayor, council, officers, agents, employees and volunteers.

17.3 Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per accident; and the policy shall contain a waiver of subrogation in favor of the COUNTY, its mayor, council, officers, agents, employees and volunteers.

17.4 All policies required of the PG&E shall be primary insurance as to the COUNTY, its officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by the COUNTY, its officers, agents, employees, and designated volunteers shall be excess of the PG&E's insurance and shall not contribute with it.

17.5 Except for workers' compensation, insurance is to be placed with insurers with a Bests' rating as approved by COUNTY's Risk Manager, but in no event less than A:V. Any deductibles, self-insured retentions or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Bests' A:V, must be declared prior to execution of this Agreement and approved by the COUNTY in writing.

17.6 Unless otherwise approved by COUNTY's Risk Manager, all policies shall contain an endorsement providing the COUNTY with thirty (30) days written notice of cancellation or material change in policy language or terms. All policies shall provide that there shall be continuing liability thereon, notwithstanding any recovery on any policy.

17.7 The insurance required hereunder shall be maintained until all work required to be performed by this Agreement is satisfactorily completed as evidenced by written acceptance by the COUNTY.

17.8 PG&E shall furnish the COUNTY Risk Manager with a certificate of insurance and required endorsements evidencing the insurance required. The COUNTY may withdraw its offer of contract if certificates of insurance and endorsements and bonds required have not been provided as required by the Special Provisions.

17.9 Full compensation for all premiums which PG&E is required to pay on all the insurance described herein shall be considered as included in the prices paid for the various items of work to be performed under the Agreement, and no additional allowance will be made for additional premiums which may be required by extensions of the policies of insurance.

17.10 It is further understood and agreed by PG&E that its liability to the COUNTY shall not in any way be limited to or affected by the amount of insurance obtained and carried by the PG&E in connection with this Agreement.

17.11 PG&E shall have the right to self insure with respect to any of the insurance requirements required under this Agreement. By request, PG&E shall submit a

letter of self-insurance signed by a duly authorized representative, evidencing that the self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of the Agreement.

18. MERGER AND MODIFICATION. All prior agreements between the parties are incorporated in this License Agreement which constitutes the entire agreement. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend this License Agreement constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding involving this License Agreement. This License Agreement may be modified only in a writing approved by the COUNTY Council and signed by all the parties.

19. NEGATION OF PARTNERSHIP. COUNTY shall not become or be deemed a partner or joint venturer with PG&E or associate in any such relationship with PG&E by reason of the provisions of this License Agreement. PG&E shall not for any purpose be considered an agent, officer or employee of COUNTY.

20. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement. The acceptance of work or services, or payment for work or services, by COUNTY shall not constitute a waiver of any provisions of this Agreement.

21. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

COUNTY: COUNTY OF PLACER
11428 F Avenue
Attn: Kevin Taber
Public Works Manager
Auburn, California, 95603

PG&E: Land Department - Land Manager
245 Market Street, Mail Code N10A
San Francisco, CA 94107

22. TERMINATION. The parties hereto agree that either party may terminate this Agreement, as it relates to any individual location of the *SmartMeter* Equipment, upon one hundred eighty (180) days advance written notice to the other party. In the event that COUNTY terminates this Agreement as it relates to any individual location of the *SmartMeter* Equipment, COUNTY agrees to provide an alternative location for such *SmartMeter* Equipment that is reasonably acceptable to PG&E. COUNTY agrees that it will not terminate this agreement within the first five (5) years and PG&E relies on this representation as a basis for the capital expenditure associated with the facility

installations. With this exception, either party may terminate this Agreement in its entirety, at any time during the term hereof by giving written notice to the other party, not less than six (6) months prior to the requested date of such termination. Any termination of this Agreement shall not relieve PG&E of any obligations, whether of indemnity or otherwise, which have accrued prior to such termination or completion of removal of PG&E's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

22.1 Except as specifically set forth herein, COUNTY and PG&E agree that neither Party shall terminate this Agreement in the event of an alleged non-monetary breach nor default hereunder before the defaulting Party has been given notice of and a reasonable time and opportunity to respond to and cure any such non-monetary breach or default. For purposes of the foregoing, a reasonable time to cure any non-monetary breach or default shall be deemed to be thirty (30) days after notice, unless the nature of the default in question is such that while it is reasonably susceptible of being cured, it is not reasonably susceptible of being cured within such thirty (30) day period, in which case the curing thereof shall have commenced within such thirty (30) day period and shall hereafter be prosecuted to completion with reasonable diligence.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

"COUNTY "
COUNTY OF PLACER

"PG&E"
PACIFIC GAS & ELECTRIC
COMPANY

By: _____

By: _____

Attachment: Exhibit "A" – Street Light and Utility Pole Permit

