TO: Honorable Mayor and City Council Members  
Attention: David J. Van Kirk, City Manager

FROM: Dale I. Pfeiffer, Director Public Works

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PACIFIC GAS AND ELECTRIC (PG&E) TO ALLOW THE INSTALLATION OF PG&E SMARTMETER EQUIPMENT ON SPECIFIED CITY-OWNED STREET LIGHT POLES

DISCUSSION:

PG&E is automating the reading of gas and electric meters for residential customers. They have embarked on a 3 to 5 year program to eliminate manual meter reading for the 10.3 million residential customers in the PG&E service area that covers approximately 2/3 of the State of California. Anticipated benefits include more convenience and less intrusion for customers. Customers with pets will no longer need to tie up animals for monthly meter reads. Customers will also be able to monitor their energy use in real-time online. With this system, PG&E will provide faster outage detection and restoration times, gain the ability to turn service on and off remotely, reduce operating costs, and provide better energy management.

To automate the reading of their gas meters, PG&E needs to install pole-mounted “SmartMeter” telecommunication equipment. Each equipment module consists of a Data Collector unit, two (2) whip antennas, coaxial cable, and photovoltaic adapter. Wind load calculations and radio frequency specification reports were provided and reviewed by City staff. While most of this equipment will be placed on PG&E-owned poles, there are some areas where PG&E desires to use street light poles belonging to the City because of coverage issues. In the City of Vacaville, PG&E has identified two (2) such locations.

In June 2006, Vacaville agreed to participate in PG&E’s Advanced Metering Infrastructure (AMI) program that tested the technology associated with the remote reading of electric and natural gas meters. With the successful completion of that pilot program, Vacaville will now be one of many municipalities helping PG&E utilize that technology under the SmartMeter program. As of this writing, PG&E has executed ten (10) agreements with other municipalities such as the Cities of Bakersfield, Fresno, Redding, Antioch, Lodi, Galt, and Stockton. Agreements are pending or in progress with many other jurisdictions, including the Cities of Manteca, Tracy, Elk Grove, Rancho Cordova, Fairfield, and Auburn.

The “Street Light License Agreement” contains arrangements between PG&E and the City to allow PG&E equipment to be installed on specified City street light poles. The agreement provides for PG&E to pay an annual license fee of $39 per location per year for 20 years and specifies maintenance and liability responsibilities.

RECOMMENDATION:

By simple motion, that the City Council of the City of Vacaville adopt the subject resolution authorizing the City Manager to enter into an agreement with Pacific Gas and Electric Company (PG&E) to allow the installation of PG&E SmartMeter communication equipment on specified City-owned street light poles.
RESOLUTION NO. _______

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PACIFIC GAS AND ELECTRIC (PG&E) TO ALLOW THE INSTALLATION OF PG&E SMARTMETER EQUIPMENT ON SPECIFIED CITY-OWNED STREET LIGHT POLES

WHEREAS, City owns, operates and maintains certain street light poles located in the geographic areas within the political jurisdiction of City; 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 City’s existing street light 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 the Agreement will permit the placement of the SmartMeter communication equipment on certain of City’s street light poles; and

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vacaville, does hereby authorize the City Manager to enter into an agreement with Pacific Gas and Electric Company (PG&E) to allow the installation of PG&E SmartMeter communication equipment on specified City-owned street light poles.

I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a regular meeting of the City Council of the City of Vacaville held on the 26th day of February, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

____________________________
Michelle A. Thornbrugh, City Clerk
AGREEMENT NO. ______________

STREET LIGHT LICENSE AGREEMENT

THIS STREET LIGHT LICENSE AGREEMENT ("Agreement") is made and entered into on ____________, 2008, by and between the CITY OF VACAVILLE, a municipal corporation, ("CITY" 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, CITY owns, operates and maintains certain street light poles located in the geographic areas within the political jurisdiction of CITY; 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 CITY’s existing street light 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 CITY’s street light poles; and

WHEREAS, CITY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the SmartMeter Equipment to CITY-owned street light poles, subject to the terms and conditions set forth in this 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 an initial period of twenty (20) years from the date of execution, and shall extend thereafter for successive terms of one (1) 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. STREET LIGHT LICENSE. CITY does hereby grant to PG&E a non-exclusive, revocable license to attach, replace, operate, maintain, and use SmartMeter Equipment to certain photocells, support arms and street light pole(s) owned by CITY. Permission to attach to CITY-owned street light poles shall be memorialized in the form of the Street Light Permit, attached to this Agreement as Exhibit “A,” and incorporated herein by reference. The specific locations for which a Street Light 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 Street Light Permit is executed or the date the SmartMeter Equipment was installed, whichever is earlier.

3. **ANNUAL LICENSE FEE.** As its entire consideration for the rights granted herein, PG&E shall pay to CITY THIRTY NINE DOLLARS ($39.00) per year for each street light pole to which PG&E attaches its SmartMeter Equipment.

3.1 Such amounts will be calculated, in advance, as of January 1 of each calendar year throughout the Effective Term.

3.2 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.

3.3 PG&E may, at its option, pre-pay all or any amount of fees due under this Agreement. If this Agreement is terminated prior to the expiration of the Effective Term of such twenty (20) year term, CITY shall refund to PG&E a prorated portion of such payment based on the remaining years of the twenty (20) year term. Proration shall be based on the number of full years remaining on the agreement, and not be subject to credit for any partial year’s use.

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

4.1 CITY 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 CITY 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 CITY 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 with prior CITY notification and without incurring additional fees, with the condition that no disturbance shall be made to the existing streetlight or its photocell.

5. **SAFETY PRECAUTIONS.** PG&E shall perform all work on CITY-owned street light poles in a workmanlike manner and in compliance with applicable federal, state, and local laws, rules and regulations.
6. **RADIO FREQUENCY EMISSION REQUIREMENTS.** PG&E will operate the 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. **INTERFERENCE.** Except in the case of necessary public safety communication equipment, if equipment installed by the CITY or any third party subsequent to the installation of the SmartMeter Equipment causes interference, either electronically or physically, with previously installed SmartMeter Equipment, the CITY shall immediately take such reasonable steps as may be necessary or recommended by PG&E to eliminate such interference. If SmartMeter Equipment causes interference, either electronically or physically, with previously installed CITY radio transmitting equipment operating anywhere within the CITY, PG&E shall immediately take such reasonable steps up to and including removal of the SmartMeter Equipment, as may be necessary or required by CITY to eliminate such interference. If PG&E fails to promptly eliminate the interference, CITY may, at PG&E’s sole cost and expense, take whatever action CITY deems necessary to eliminate the interference.

8. **REPAIR/MAINTENANCE OF CITY-OWNED STREET LIGHT POLES.** For those streetlight poles owned, operated, and maintained by CITY, CITY agrees that it will maintain such streetlights in good working order during the effective term of the Agreement, unless otherwise abandoned by City as no longer necessary. If PG&E notifies CITY in writing that SmartMeter Equipment is non-operational due to required maintenance on streetlight pole(s), CITY will, at its option, either ensure that any necessary repairs are performed within ten (10) business days of PG&E’s notification, or grant to PG&E permission to make repairs at PG&E’s sole cost. If PG&E requests repair of streetlight pole(s) within 72 hours of PG&E’s initial notification, CITY will use its best commercially reasonable efforts to ensure that any necessary repairs are performed within the 72 hours at PG&E’s sole cost.

9. **REMOVAL OF SMARTMETER EQUIPMENT.** CITY 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.

   9.1 In the event that CITY is required by law or unavoidable circumstance to remove any SmartMeter Equipment attached to CITY-owned street light poles on an emergency basis, CITY 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.

   9.2 PG&E will provide CITY with at least ten (10) days written notice that PG&E will be removing any SmartMeter Equipment from CITY-owned street light poles, including the specific street light pole(s) from which the equipment will be removed. Additionally, PG&E will provide CITY written notice within ten (10) business
days following removal of any SmartMeter Equipment from any CITY-owned street light poles confirming completion of such removal.

9.3 PG&E will, at its expense, remove all remaining SmartMeter Equipment from CITY-owned street light poles within ninety (90) days of the termination or expiration of this Agreement.

9.4 In the event that PG&E fails to remove any SmartMeter Equipment from the CITY-owned street light poles within ninety (90) days of the termination or expiration of this Agreement, CITY may, at PG&E’s expense, remove and store for up to ninety (90) days, such SmartMeter Equipment. In the event that PG&E does not claim and remove its SmartMeter Equipment within ninety (90) days of written notice of removal by CITY, CITY may dispose of the SmartMeter Equipment in any manner at CITY’s sole discretion.

10. **INDEMNITY.** PG&E shall indemnify, defend, and hold harmless CITY, 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 CITY’s sole negligence or willful misconduct.

11. **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.

12. **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.

13. **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.

14. **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.
15. **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.

16. **GOVERNING LAW and VENUE.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

17. **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.

18. **INSURANCE.** PG&E shall maintain the following insurance or self-insurance throughout the term of this Agreement.

18.1 **Workers' Compensation and Employers' Liability:** (1) Workers' Compensation insurance complying with any applicable labor codes, acts, laws or statutes, state or federal, where Contractor performs work. (2) Employers' Liability insurance shall not be less than $1,000,000 for injury or death each accident.

18.2 **Commercial General Liability:** Coverage shall be for limits not less than $1,000,000 each occurrence and $2,000,000 aggregate for bodily injury, property damage and personal injury.

18.3 **Business Auto:** Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile liability, code 1 "any auto." The limit shall not be less than $3,000,000 each accident for bodily injury and property damage.

18.4 **Certification of Insurance:** 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 this Agreement.

18.5 **Self-Insurance:** PG&E shall have the right to self insure with respect to the insurance requirements required under this Agreement. PG&E's 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 this License.

18.6 **Other Insurance Provisions:** The general liability policy is to contain, or be endorsed to contain, the following provisions:
18.6.1 The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of PG&E; products and completed operations of PG&E; premises owned, occupied or used by PG&E; or automobiles owned, leased, hired or borrowed by PG&E.

18.6.2 PG&E's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees and volunteers shall be excess of PG&E's insurance and shall not contribute with it.

18.6.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

18.6.4 PG&E's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

18.7 All coverage: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

18.8 Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

19. MERGER AND MODIFICATION. All prior agreements between the parties are incorporated in this 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 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 Agreement. This Agreement may be modified only in a writing signed by all the parties.

20. NEGATION OF PARTNERSHIP. CITY 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 Agreement. PG&E shall not for any purpose be considered an agent, officer or employee of CITY.
21. 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 CITY shall not constitute a waiver of any provisions of this Agreement.

22. 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:

CITY: CITY OF VACAVILLE
Attn: Director of Public Works
650 Merchant Street
Vacaville, California, 95688

PG&E: PACIFIC GAS & ELECTRIC COMPANY
Attn: Land Department – Land Manager
245 Market Street, Mail Code N10A
San Francisco, CA 94107

23. 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 CITY terminates this Agreement as it relates to any individual location of the SmartMeter Equipment, CITY agrees to provide an alternative location for such SmartMeter Equipment that is reasonably acceptable to PG&E. 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 date when such termination shall become effective. 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.

23.1 Except as specifically set forth herein, CITY 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 written 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.

“CITY”
CITY OF VACAVILLE

By: ________________________
Name:  David J. Van Kirk
Title:  City Manager

APPROVED AS TO FORM:

By: ________________________
Name:  Melinda Stewart
Title:  Assistant City Attorney

"PG&E"
PACIFIC GAS AND ELECTRIC COMPANY

By: ________________________
Name: ________________________
Title: ________________________

Attachment: Exhibit "A" – Street Light Permit

SmartMeter™ is a trademark of SmartSynch, Inc. and is used by permission. "PG&E" refers to Pacific Gas and Electric Company, a subsidiary of PG&E Corporation. ©2007 Pacific Gas and Electric Company. All rights reserved.
AGREEMENT NO. ______________

STREET LIGHT LICENSE AGREEMENT

THIS STREET LIGHT LICENSE AGREEMENT ("Agreement") is made and entered into on ____________, 2008, by and between the CITY OF VACAVILLE, a municipal corporation, ("CITY" 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, CITY owns, operates and maintains certain street light poles located in the geographic areas within the political jurisdiction of CITY; 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 CITY’s existing street light 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 CITY’s street light poles; and

WHEREAS, CITY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the SmartMeter Equipment to CITY-owned street light poles, subject to the terms and conditions set forth in this 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 an initial period of twenty (20) years from the date of execution, and shall extend thereafter for successive terms of one (1) 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. STREET LIGHT LICENSE. CITY does hereby grant to PG&E a non-exclusive, revocable license to attach, replace, operate, maintain, and use SmartMeter Equipment to certain photocells, support arms and street light pole(s) owned by CITY. Permission to attach to CITY-owned street light poles shall be memorialized in the form of the Street Light Permit, attached to this Agreement as Exhibit “A,” and incorporated herein by reference. The specific locations for which a Street Light 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 Street Light Permit is executed or the date the SmartMeter Equipment was installed, whichever is earlier.

3. **ANNUAL LICENSE FEE.** As its entire consideration for the rights granted herein, PG&E shall pay to CITY THIRTY NINE DOLLARS ($39.00) per year for each street light pole to which PG&E attaches its SmartMeter Equipment.

   3.1 Such amounts will be calculated, in advance, as of January 1 of each calendar year throughout the Effective Term.

   3.2 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.

   3.3 PG&E may, at its option, pre-pay all or any amount of fees due under this Agreement. If this Agreement is terminated prior to the expiration of the Effective Term of such twenty (20) year term, CITY shall refund to PG&E a prorated portion of such payment based on the remaining years of the twenty (20) year term. Proration shall be based on the number of full years remaining on the agreement, and not be subject to credit for any partial year’s use.

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

   4.1 CITY 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 CITY 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 CITY 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 with prior CITY notification and without incurring additional fees, with the condition that no disturbance shall be made to the existing streetlight or its photocell.

5. **SAFETY PRECAUTIONS.** PG&E shall perform all work on CITY-owned street light poles in a workmanlike manner and in compliance with applicable federal, state, and local laws, rules and regulations.
6. **RADIO FREQUENCY EMISSION REQUIREMENTS.** PG&E will operate the 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. **INTERFERENCE.** Except in the case of necessary public safety communication equipment, if equipment installed by the CITY or any third party subsequent to the installation of the SmartMeter Equipment causes interference, either electronically or physically, with previously installed SmartMeter Equipment, the CITY shall immediately take such reasonable steps as may be necessary or recommended by PG&E to eliminate such interference. If SmartMeter Equipment causes interference, either electronically or physically, with previously installed CITY radio transmitting equipment operating anywhere within the CITY, PG&E shall immediately take such reasonable steps up to and including removal of the SmartMeter Equipment, as may be necessary or required by CITY to eliminate such interference. If PG&E fails to promptly eliminate the interference, CITY may, at PG&E’s sole cost and expense, take whatever action CITY deems necessary to eliminate the interference.

8. **REPAIR/MAINTENANCE OF CITY-OWNED STREET LIGHT POLES.** For those streetlight poles owned, operated, and maintained by CITY, CITY agrees that it will maintain such streetlights in good working order during the effective term of the Agreement, unless otherwise abandoned by City as no longer necessary. If PG&E notifies CITY in writing that SmartMeter Equipment is non-operational due to required maintenance on streetlight pole(s), CITY will, at its option, either ensure that any necessary repairs are performed within ten (10) business days of PG&E’s notification, or grant to PG&E permission to make repairs at PG&E’s sole cost. If PG&E requests repair of streetlight pole(s) within 72 hours of PG&E’s initial notification, CITY will use its best commercially reasonable efforts to ensure that any necessary repairs are performed within the 72 hours at PG&E’s sole cost.

9. **REMOVAL OF SMARTMETER EQUIPMENT.** CITY 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.

   9.1 In the event that CITY is required by law or unavoidable circumstance to remove any SmartMeter Equipment attached to CITY-owned street light poles on an emergency basis, CITY 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.

   9.2 PG&E will provide CITY with at least ten (10) days written notice that PG&E will be removing any SmartMeter Equipment from CITY-owned street light poles, including the specific street light pole(s) from which the equipment will be removed. Additionally, PG&E will provide CITY written notice within ten (10) business
days following removal of any SmartMeter Equipment from any CITY-owned street light poles confirming completion of such removal.

9.3 PG&E will, at its expense, remove all remaining SmartMeter Equipment from CITY-owned street light poles within ninety (90) days of the termination or expiration of this Agreement.

9.4 In the event that PG&E fails to remove any SmartMeter Equipment from the CITY-owned street light poles within ninety (90) days of the termination or expiration of this Agreement, CITY may, at PG&E’s expense, remove and store for up to ninety (90) days, such SmartMeter Equipment. In the event that PG&E does not claim and remove its SmartMeter Equipment within ninety (90) days of written notice of removal by CITY, CITY may dispose of the SmartMeter Equipment in any manner at CITY’s sole discretion.

10. INDEMNITY. PG&E shall indemnify, defend, and hold harmless CITY, 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 CITY’s sole negligence or willful misconduct.

11. 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.

12. 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.

13. 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.

14. 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.
15. **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.

16. **GOVERNING LAW and VENUE.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

17. **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.

18. **INSURANCE.** PG&E shall maintain the following insurance or self-insurance throughout the term of this Agreement.

18.1 **Workers' Compensation and Employers' Liability:** (1) Workers' Compensation insurance complying with any applicable labor codes, acts, laws or statutes, state or federal, where Contractor performs work. (2) Employers' Liability insurance shall not be less than $1,000,000 for each accident.

18.2 **Commercial General Liability:** Coverage shall be for limits not less than $1,000,000 each occurrence and $2,000,000 aggregate for bodily injury, property damage and personal injury.

18.3 **Business Auto:** Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile liability, code 1 "any auto." The limit shall not be less than $3,000,000 each accident for bodily injury and property damage.

18.4 **Certification of Insurance:** 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 this Agreement.

18.5 **Self-Insurance:** PG&E shall have the right to self insure with respect to the insurance requirements required under this Agreement. PG&E's 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 this License.

18.6 **Other Insurance Provisions:** The general liability policy is to contain, or be endorsed to contain, the following provisions:
18.6.1 The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of PG&E; products and completed operations of PG&E; premises owned, occupied or used by PG&E; or automobiles owned, leased, hired or borrowed by PG&E.

18.6.2 PG&E's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, employees and volunteers shall be excess of PG&E's insurance and shall not contribute with it.

18.6.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

18.6.4 PG&E's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

18.7 All coverage: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

18.8 Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

19. MERGER AND MODIFICATION. All prior agreements between the parties are incorporated in this 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 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 Agreement. This Agreement may be modified only in a writing signed by all the parties.

20. NEGATION OF PARTNERSHIP. CITY 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 Agreement. PG&E shall not for any purpose be considered an agent, officer or employee of CITY.
21. **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 CITY shall not constitute a waiver of any provisions of this Agreement.

22. **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:

CITY: CITY OF VACAVILLE  
Attn: Director of Public Works  
650 Merchant Street  
Vacaville, California, 95688

PG&E: PACIFIC GAS & ELECTRIC COMPANY  
Attn: Land Department – Land Manager  
245 Market Street, Mail Code N10A  
San Francisco, CA 94107

23. **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 CITY terminates this Agreement as it relates to any individual location of the SmartMeter Equipment, CITY agrees to provide an alternative location for such SmartMeter Equipment that is reasonably acceptable to PG&E. 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 date when such termination shall become effective. 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.

23.1 Except as specifically set forth herein, CITY 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 written 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.

“CITY”
CITY OF VACAVILLE

By: ________________________
Name: David Van Kirk
Title: City Manager

APPROVED AS TO FORM:

By: ________________________
Name: Melinda Stewart
Title: Assistant City Attorney

“PG&E”
PACIFIC GAS AND ELECTRIC COMPANY

By: ________________________
Name: ________________________
Title: ________________________

Attachment: Exhibit "A" – Street Light Permit

SmartMeter™ is a trademark of SmartSynch, Inc. and is used by permission. "PG&E" refers to Pacific Gas and Electric Company, a subsidiary of PG&E Corporation. ©2007 Pacific Gas and Electric Company. All rights reserved.
EXHIBIT A

STREET LIGHT and UTILITY POLE PERMIT

PART 1

REQUEST FOR ACCESS

To: CITY OF VACAVILLE: Date
Street: 650 Merchant Street
Vacaville, CA. 95688
Attn: Director of Public Works

In accordance with that certain Streetlight and Utility Pole License Agreement between the City of Vacaville and PG&E dated ________________ (the “Agreement”) we hereby request permission to place attachments on the City streetlight designated below.

1. Location of the streetlight

<table>
<thead>
<tr>
<th>PG&amp;E</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>NLC#</td>
<td></td>
</tr>
<tr>
<td>10001</td>
<td>RICE LANE, VACAVILLE</td>
</tr>
<tr>
<td>11713</td>
<td>E SIDE FOXBORO PARKWAY, VACAVILLE</td>
</tr>
</tbody>
</table>

2. Schematic drawing of the attachments to be contacted under this permit are attached. Location of the streetlight shown as a ● on the map attached.

Permittee: Pacific Gas and Electric Company
Authorizing Engineer Name: Dan Partridge
Address: 1850 Gateway Blvd, Concord, CA 94520
Company or Department: SmartMeter Operations
Phone # (925) 270-2820

PART 2

AUTHORIZATION

Subject to the terms and conditions of the Agreement, you are hereby authorized to install the attachments described in this Exhibit.

CITY OF VACAVILLE:

BY: ___________________________________ Execution Date: ________________