

TO: James L. App, City Manager
FROM: Ed Gallagher, Community Development Director
SUBJECT: Southern California Gas Company Advanced Meters
DATE: April 1, 2014

Needs: For City Council consideration of an agreement with Southern California Gas Company ("Gas Company") to install communications devices on eight (8) street light poles owned by the City in public rights-of-way throughout the City in conjunction with Gas Company's upgrade of all residential and business gas meters.

- Facts:**
1. Gas Company is an investor-owned public utility that provides gas utility services to residents of the City.
 2. On April 17, 1979, the City granted to the Gas Company a franchise to lay and use pipes and appurtenances necessary and convenient for the operation of a gas utility across public right-of-ways in the City.
 3. Gas Company is upgrading all local meters to transmit usage data wirelessly. Data collector units (DCUs) will allow for the future wireless control and monitoring of natural gas transmission pipelines and valves.
 4. Advanced meters are cost-effective for the Gas Company and can provide customers with more detailed information that may lead to opportunities for conservation.
 5. In order for the Advanced Meter system to work properly, the Gas Company must install eight DCUs in public rights-of-way throughout the City. DCUs can be installed upon existing City street light poles, approximately 30 feet high, fitted with antennas and a cabinet.
 6. The City Engineer has reviewed and approved the locations of the eight proposed poles to be fitted with DCUs.
 7. Gas Company has approved and executed the proposed Agreement.

**Analysis &
Conclusion:**

In May 2012, Gas Company representatives met with Doug Monn and John Falkenstien to announce its plans for implementation of the Advanced Meter program. Mr. Falkenstien visited the sites proposed for DCUs with the Gas Company engineers. It was determined through these site visits that existing street light poles could be used to house the DCUs in lieu of installing new poles.

The City Attorney has worked with the Gas Company to form an Agreement that would reimburse the City for finalizing the Agreement and for ongoing monitoring of these facilities over the 20-year term of the Agreement.

Policy

Reference: Ordinance No. 421 N. S. Southern California Gas Company Franchise Agreement

Fiscal

Impact: Minimal fiscal impact on the City. Southern California Gas bears all costs of installation, must repair any damage caused by any installation, cannot interfere with the street light operations and must indemnify the City for any claims. In addition, Southern California Gas is paying \$36,000 to the City in advance for the 20-year term to cover costs incurred in drafting the Agreement, license fee and City's staff time for routine inspections and monitoring.

- Options:**
- a. Authorize the City Manager to enter into the Street Light Attachment License Agreement with Southern California Gas Company to allow the installation of communication devices on eight (8) City street light poles.
 - b. Amend, modify, or reject the above option.

Prepared by: John Falkenstien, City Engineer

Attachments: (3)

- (1) Agreement
- (2) Resolution
- (3) Proposed Locations of DCUs

**STREET LIGHT ATTACHMENT LICENSE AGREEMENT
BY AND BETWEEN
THE CITY OF EL PASO DE ROBLES, CALIFORNIA
AND
SOUTHERN CALIFORNIA GAS COMPANY**

This Street Light Attachment License Agreement ("Agreement") is entered into this ___ day of _____, 2014, by and between the City of El Paso de Robles, a California municipal corporation, hereinafter referred to as the ("City") and Southern California Gas Company, a California corporation hereinafter referred to as ("Gas Company"). The effective date of this Agreement shall be the date indicated hereinabove (the "Effective Date").

R E C I T A L S

WHEREAS, Gas Company is an investor-owned public utility that provides gas utility services to residents of City.

WHEREAS, on April 17, 1979, City granted to Gas Company a franchise to lay and use pipes and appurtenances (as defined in the franchise) necessary and convenient for the operation of a gas utility under, along, across or upon public streets, ways, alleys and places (collectively, "Rights-of-Way") in the City for transmitting and distributing gas (the "Franchise").

WHEREAS, Gas Company desires to construct facilities in the Rights-of-Way within the City to install advanced meter network communications devices, including but not limited to data collector units ("DCU's), antennas, gas repeaters and/or radio frequency local area network ("RFLAN") range extenders, and other advanced meter facilities, in connection with and necessary for Gas Company's operation, transmission and distribution of gas in the City ("Advanced Meter Facilities").

WHEREAS, Gas Company desires and City is willing to allow the Gas Company to install its Advanced Meter Facilities, which are further described herein, upon a designated portion of street light poles ("Street Light Poles") owned by the City and situated on portions of the Rights of Way. This Agreement pertains to the Street Light Poles at the sites identified on "Exhibit A" and incorporated herein by this reference. ("Licensed Sites").

WHEREAS, City and Gas Company have agreed to enter into this Agreement regarding Gas Company's use and attachment of Advanced Meter Facilities to City-owned Street Light Poles in the 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. Incorporation of Recitals.

The recitals above are true and correct and are incorporated herein by reference.

Section 2. Grant; Improvement Plans; Inspections

(a) **License.** Subject to the terms and conditions contained herein, City hereby grants Gas Company a non-exclusive license to install Advanced Meter Facilities on the Licensed Sites shown on Exhibit A located in such Rights-of-Way as described and illustrated in those certain improvement plans (the "Improvement Plans") (defined in paragraph (b) below), and to operate, use, maintain, repair, replace, inspect, test and remove such Advanced Meter Facilities on the terms and conditions set forth herein.

(b) **Review of Improvement Plans.** Gas Company shall, at its sole cost and expense, prepare and submit copies of the Improvement Plans for each of the Licensed Sites to the City Engineer for review. City Engineer shall review the Improvement Plans and deliver to Gas Company written notice approving or disapproving the Improvement Drawings provided that City shall not unreasonably withhold, condition or delay its approval. The City-approved Improvement Plans shall be attached as Exhibit B hereto.

(c) **Inspections.** The City and its authorized officers, employees, agents or contractors shall have the right to enter into and access the Licensed Sites at any time for any purpose including, but not limited to: (1) to inspect the Licensed Sites and Advanced Meter Facilities for Gas Company's compliance with the terms of this Agreement and related permits; (2) to make repairs, alterations or additions to the Street Light Poles or maintain or use the Street Light Poles in a manner that does not cause any impairment, interruption or interference with the operation of the Advanced Meter Facilities by Gas Company. If City wishes to access the DCU, City agrees to arrange for a coordinated Gas Company presence.

Section 3. Term and Renewal. The term of this Agreement ("Term") shall commence on the first day of the month following the Effective Date for 20 years. Provided that Gas Company is not in default under this Agreement, and Gas Company has the necessary franchises, permits and approvals required by federal, state and/or local law, regulation or ordinance, City and Gas Company may negotiate in good faith to renew and/or extend this Agreement on mutually agreeable terms and conditions.

Section 4. Scope of Agreement.

By entering into this Agreement, Gas Company acknowledges that the Fees charged by City for Gas Company's use of the Street Light Poles pursuant to this Agreement 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 Gas Company, 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 Gas Company other than the relationship of City and Gas Company.

Gas Company hereby acknowledges, agrees and covenants that this Agreement does not

authorize or bestow any rights to Gas Company to install any facilities other than the Advanced Meter Facilities on the Licensed Sites, nor does it authorize or bestow any rights to Gas Company to use the Advanced Meter Facilities for any other purpose including by way of illustration providing commercial telecommunications services or wireless services of any kind to third parties.

Section 5. Compensation.

(a) Fees. During the 20-year Term of this Agreement, Gas Company shall pay to the City an annual attachment fee in the amount of thirty-nine dollars (\$39) per pole) for a twenty (20) year term the initial year of this Agreement (the "Attachment Fee") as compensation for Gas Company's use of the eight (8) Street Light Poles for installation of Advanced Meter Facilities as identified in the Improvement Drawings. The parties agree that the Attachment Fee for the initial 20-year Term of this Agreement may be paid in advance. In addition to the Attachment Fee, Gas Company agrees to reimburse City in the amount set forth in Exhibit C, attached hereto and incorporated herein by reference, within thirty (30) business days of the date of this Agreement. Gas Company shall pay any subsequent fees for work performed by City under this Agreement within thirty (30) days of the date of any invoice from City.

(b) Early Termination: Should City terminate this Agreement for any reason, except for the reasons set forth in Section 19.(c) and further provided that Gas Company is not in default of this Agreement, City shall reimburse Gas Company the prorated amount for the Attachment Fee, rounded up to the next calendar year.

Checks for any amount owed by Gas Company shall be made payable to the City of Paso Robles and delivered to the Director of Administrative Services at 821 Pine Street, Suite A, Paso Robles, CA 93446. City may change the place and time of payment at any time upon 30-days written notice to Gas Company.

Section 6. Delinquent Payment. Gas Company assumes all risk of loss and responsibility for delinquent payments. If Gas Company fails to make payments when due a delinquent payment charge on any unpaid amount shall accrue from the due date until paid at the higher of a rate of one and one-half percent (1½ %) per month or the maximum rate allowable by law until paid.

Section 7. Workmanship and Responsibility of Gas Company. All of Gas Company's construction and installation work shall be performed at Gas Company's sole cost and expense and in a good and workmanlike manner and in accordance with the rules and regulations of the CPUC, the permits issued by the City, and the Improvement Plans approved by the City Engineer, and in compliance with all applicable ordinances, regulations or laws.

Gas Company and its employees, agents and contractors shall comply with all applicable local, state, and federal laws and regulations, including without limitation those laws which govern worker health and safety and reporting the use, handling, treatment, removal, or disposal of toxic or hazardous substances, materials or wastes, and shall obtain all required regulatory and governmental permits and licenses necessary to perform the work authorized herein and shall

take all required steps to minimize dust and noise in conformance with City ordinances and any other applicable governmental standards.

Gas Company shall be responsible for preventing and resolving any technical interference problems with other equipment located at or near the Licensed Sites, and shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations at or near the Licensed Sites. Specifically, the Gas Company's installation of Advanced Meter Facilities shall not interfere with the normal operations of the City's streetlight functions. In the event a streetlight pole is damaged or required to be replaced or removed the cost and physical relocation of the Advanced Meter Facilities are the sole responsibility of the Gas Company. The Gas Company will have five (5) business days from notification by the City to remove its equipment and Gas Company will attempt to relocate it on the replacement streetlight or adjacent pole.

Gas Company shall remove all of Gas Company's Advanced Meter Facilities at its sole expense within sixty (60) days after the termination of the Agreement, unless the City authorizes in writing the Gas Company to abandon the Gas Company's Advanced Meter Facilities in place. Gas Company shall bear full responsibility for repairs to any damage to the Street Light Poles and the Rights-of-Way caused by Gas Company's or its employees', contractors', subcontractors' or agents' installation, construction, maintenance, repair, operation and removal of the Gas Company's Advanced Meter Facilities.

Section 8. Gas Company to Bear All Costs. The Gas Company, or any successor or authorized assign, shall bear all costs incurred in connection with Gas Company's or its employees', contractors', subcontractors' or agents' planning, design, installation, construction, maintenance, repair, operation and removal of the Gas Company's Advanced Meter Facilities, including the electricity and other utilities services it consumes in its operation of the Advanced Meter Facilities. City shall not be responsible or bear any cost for repair of any damage or movement of the Gas Company's Advanced Meter Facilities due to repair, maintenance and/or failure/collapse of the Street Light Poles, any existing gas, water and sewer lines or any other improvements or works approximate to Gas Company's Advanced Meter Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Advanced Meter Facilities or from vandalism or unauthorized use of the Advanced Meter Facilities, except for damage solely caused by the gross negligence or willful misconduct of the City, its officers, agents, employees, contractors or subcontractors. The City will in no event be liable for indirect or consequential damages.

Section 9. Relocations. Gas Company shall bear all costs resulting from any relocation of Gas Company's Advanced Meter Facilities resulting its own determination, or from City's exercise of its rights pursuant to the Franchise. or whenever the City reasonably determines that the removal and/or relocation is needed because any part of the Advanced Meter Facilities is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities; or to protect or preserve the public health and safety. City shall provide Gas Company with 30 days written notice of such relocation, unless there are emergency circumstances.

Section 10. Gas Company to Secure Approval and Permits. Gas Company shall not perform any construction and installation of Gas Company's Advanced Meter Facilities at any Licensed Site without having first obtained all necessary approvals and permits from the City and the approval of the Improvement Plans by the City Engineer as described in Section 1 above. Further, Gas Company shall, at its sole cost and expense, submit traffic control plans for approval by City Engineer. All work within the Rights-of-Way shall be performed in compliance with the Improvement Plans and permits obtain by Gas Company.

Section 11. Indemnification of City. Gas Company 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 Gas Company's Advanced Meter Facilities being located on the Street Light Poles, except to the extent such Claim arise from the sole gross negligence or willful misconduct of the City, its officers, agents, or employees, provided, however, that Gas Company'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 Gas Company is obligated to indemnify the City under this paragraph.

Section 12. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the Laws of the State of California.

Section 13. Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

Section 14. 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 Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Attn: Director of Public Works
Tel: (805) 237- 3861

TO GAS COMPANY:

Southern California Gas Company
555 West Fifth Street
Los Angeles, CA 90013
Attn: David Mercer, Network Technology Manager
Tel: (213) 244-5415

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 15. Other Regulations. All Gas Company's use of the City Street Light Poles 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 Paso Robles now in force, or hereinafter prescribed or promulgated by resolution or ordinance (to the extent that the same are not inconsistent with or preempted by the jurisdiction of the California Public Utilities Commission) or by State or Federal law.

Section 16. 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 Gas Company and the City.

Section 17. Assignment or Transfer of Agreement. 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, conditioned or delayed. 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 Gas Company's parent Gas Company, or (b) any merger, consolidation or reorganization of, by or with Gas Company or transfer of all or substantially all of the stock or shares in Gas Company or assets of Gas Company.

Section 18. Entire Agreement; Successors and Assigns. 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. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 19. Defaults and Termination.

(a) Definition. A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure such within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

(b) Remedies. Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may,

subject to the terms of Section 8, terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach. The prevailing party in any dispute shall be entitled to recover all costs, including reasonable attorneys' fees.

(c) **City Termination Right.** In addition to the remedies set forth above, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Advanced Meter Facilities from the Licensed Sites; or (ii) if Gas Company's Franchise is terminated, revoked, expired, or otherwise abandoned.

Section 20. Taxes and Liens. Gas Company agrees that it will be solely responsible for the payment of any and all taxes, fees and assessments levied on its ownership, use and maintenance of the Advanced Meter Facilities or that may be levied in connection with this Agreement. Pursuant to Section 107.6 of the California Revenue and Taxation Code, the City hereby advises, and Gas Company recognizes and understands, that Gas Company's use of the City's Rights-of-Way, the Street Light Poles, and/or other City property and facilities may create a possessory interest subject to real property taxation and that Gas Company may be subject to, and responsible for, the payment of real property taxes levied on such interest. Gas Company shall not permit or suffer any liens to be imposed upon any Licensed Site or any portion thereof, without promptly discharging the same.

Section 21. Minimum Insurance Requirements. Gas Company shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Article.

(a) **Minimum Insurance.** Gas Company shall at all times during the Term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by Gas Company. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per-accident for bodily injury and property damage covering any vehicle utilized by Gas Company in performing the work covered by this Agreement.

(iii) **Workers' Compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) Gas Company's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of Gas Company's insurance and shall not contribute with it.

(3) Any failure of Gas Company to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) Gas Company's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Worker's Compensation and Employers Liability Coverage.**

The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by Gas Company in the City's Rights-of-Way.

(iii) **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or, reduced in coverage or in limits, Gas Company shall, within two (2) business days of notice from the insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(c) **Acceptability of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-:VII.

(d) **Verification of Coverage.** Gas Company shall furnish to City with certificates of insurance or self-insurance, as required by this Section. The Certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to find coverage on its behalf. All certificates are to be received and approved by the City before work commences. Notwithstanding anything to the contrary contained herein, Gas Company may, at its option, elect to self-insure and will provide evidence thereof satisfactory to City..

Section 22. No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the Licensed Sites for the installation,

maintenance or use of the Advanced Meter Facilities.

Section 23. No Waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

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 PASO ROBLES

DATE: _____

By: _____
James L. App, City Manager

APPROVED AS TO FORM:

By: _____
Iris P. Yang, City Attorney

SOUTHERN CALIFORNIA GAS COMPANY

DATE: _____

By: _____
Tina M. Costa
Contracts & Special Projects Manager,
Advanced Meter Project

Exhibit "A"

Advanced Meter Facilities may be installed on specific City-owned Street Light Poles located in the Rights of Way as identified below.

Gas Company ID #	City Pole ID #	Latitude	Longitude	Street Location
RL016	1090	35.60944444	-120.67041666	Rambouillet Road
RL017	674	35.61401111	-120.65215555	Commerce Way
RL018	641	35.62518888	-120.67086111	Nickerson Drive
RL020	2410	35.63203200	-120.69172600	Spring Street
RL028	2614	35.63964444	-120.65868333	Union Road
RL029	1351	35.64158611	-120.68861666	Riverside Avenue
RL034	49830	35.64669400	-120.67234100	Buena Vista Drive
RL037	1864	35.63535800	-120.6703730	Union Road

EXHIBIT "B"

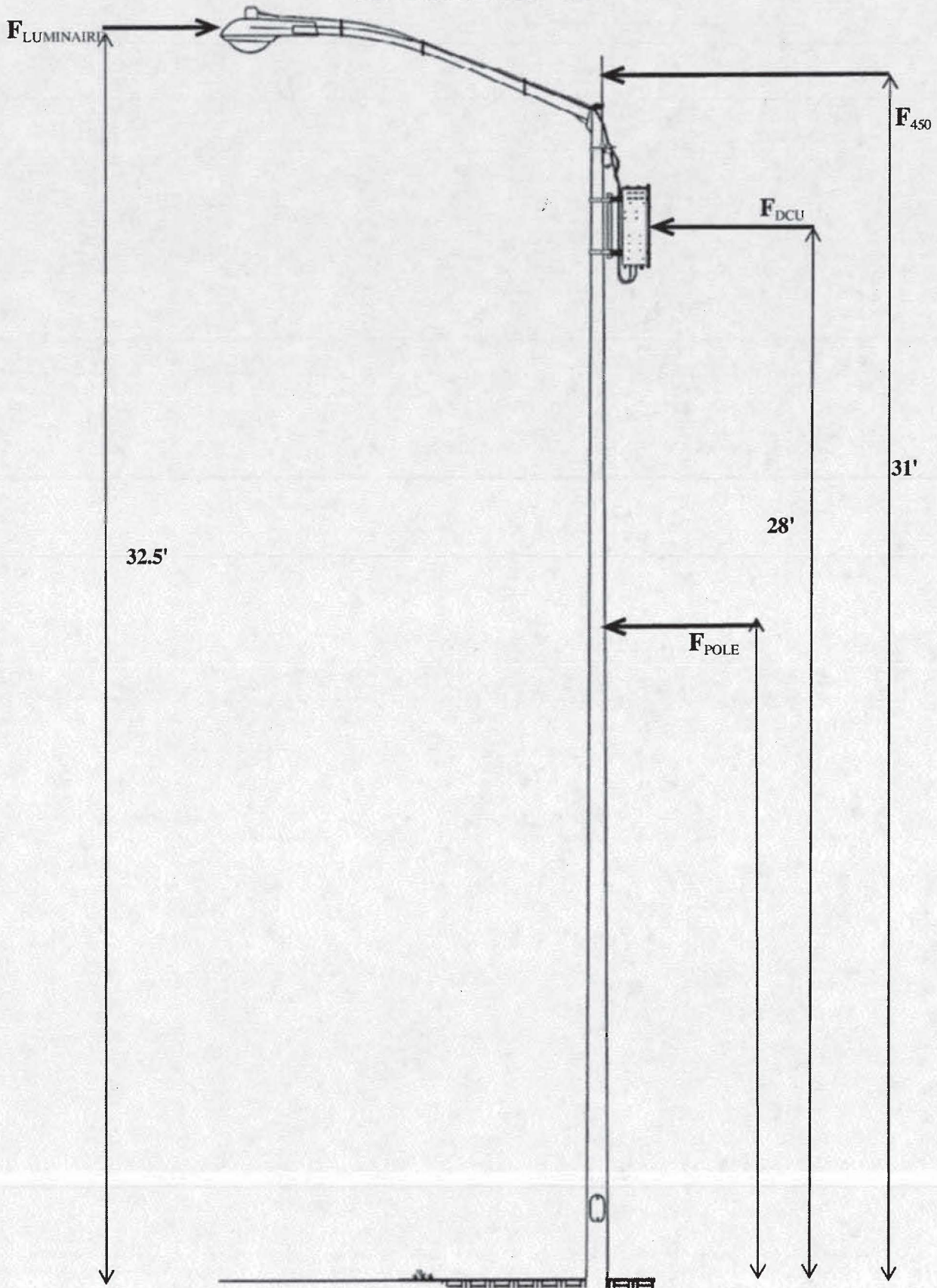


EXHIBIT C

The fees for City's initial processing and review of the Agreement for all costs incurred prior to the Effective Date of this agreement, including Improvement Plans and inspections for the attachments Advanced Meter equipment to eight (8) Street Light Poles: for a total of \$5,760.

In addition, reasonable costs incurred by City subsequent to the date of this Agreement related to any necessary maintenance inspections related to Gas Company equipment shall be paid by Gas Company. Gas Company, shall pay a lump-sum amount of \$24,000 in advance to cover City's anticipated routine administrative maintenance costs for the term of this 20 year Agreement in regard to the eight (8) poles. As used herein, "routine administrative costs" include but are not limited to periodic inspections by City personnel of the Licensed Sites and monitoring Gas Company compliance with the terms of this Agreement. No other routine administrative costs shall be charged to Gas Company. "Routine administrative costs" shall not include any costs incurred by City to enforce the terms of this Agreement or to cure any breach of the Agreement. Gas Company shall pay all costs within thirty (30) days of execution of this Agreement. City staff time is currently billed at the rate of \$125 charged by City to third parties..

