

**ATTACHMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LEMOORE CALIFORNIA
AND
SOUTHERN CALIFORNIA GAS COMPANY**

This Attachment Agreement (“Agreement”) is entered into this ____ day of September, 2012, by and between the City of Lemoore, a California municipal corporation, hereinafter referred to as the (“City”) and Southern California Gas Company, a California corporation hereinafter referred to as the (“Gas Company ”). Hereinafter the term “**Parties**” shall refer collectively to all the foregoing named Parties. 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 October 19, 1961, City granted to Gas Company a franchise to use and lay pipes and appurtenances 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 has been authorized by the California Public Utilities Commission to implement its Advanced Meter Program, which consists of, among other things, the installation of advanced meter equipment, 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, the installation of Advanced Meter Facilities requires the use of existing or new infrastructure, such as poles, towers, streetlights or buildings of sufficient height and at appropriate locations in order to be effective.

WHEREAS, In order to reduce the number of new Advanced Meter Facility installations with the City Rights-of-Way, City desires to allow the Gas Company to install its Advanced Meter Facilities, which are further described herein, within property owned by City at three sites identified on “Exhibit A” and incorporated herein by this reference (“Installation Sites”).

WHEREAS, City and Gas Company have agreed to enter into this Agreement regarding Gas Company’s use and attachment of Advanced Meter Facilities at the Installation Sites 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:

1. **Effective Date.** This Agreement shall become effective as of the date of its execution by or on behalf of all the Parties hereto ("**Effective Date**").
2. **Term.** The commencement date shall be first day of the month following the Effective Date of this Agreement and run co-terminus with the Franchise Agreement.
3. **Authorization.** Subject to the terms and conditions contained herein, City hereby authorizes Gas Company to install Advanced Meter Facilities upon an existing Light Standard to be located within the boundaries as described and illustrated in those certain improvement drawings (the "Improvement Drawings") as reviewed by and on file as a public record with the City Engineer of the City of Lemoore ("City Engineer"), and to operate, use, maintain, repair, replace, improve, alter, inspect, test and remove such Advanced Meter Facilities on the terms and conditions set forth herein. City shall deliver to Gas Company written notice approving or disapproving the Improvement Drawings within thirty (30) days after submittal of the Improvement Drawings, provided that City shall not unreasonably withhold, condition or delay its approval.
4. **Scope of Agreement.** This Agreement authorizes the Gas Company to attach the Advanced Meter Facilities in the general locations identified on Exhibit "A" attached hereto, and to undertake all activities related to the installation, maintenance, operation, use, repair, replacement, improvement, alteration, inspection, testing and removal of Gas Company's Advanced Meter Facilities, as identified in said Improvement Drawings and any Additional Improvement Drawings.

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 provide cable television service or commercial telecommunications services.

5. Compensation - Rent.

a. The Gas Company shall pay to the City a one-time fee of \$780 (\$39 x 20 years) per location (as compensation for the Gas Company's use of the Leased Property. The Fee shall be due no later than the Commencement Date.

b. If the Gas Company fails to timely pay the Fee in a timely manner, the term of the Agreement, a delinquent payment charge on any unpaid amount shall accrue from the due date until paid at the lower of the rate of one and one-half percent (1½ %) per month or the maximum rate allowable by Law until paid.

c. 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 lower of a rate of one and one-half percent (1½ %) per month or the maximum rate allowable by Law until paid.

6. Authority to Allow Attachments. The City hereby represents and warrants to the Gas Company that it has all rights necessary to allow for the installation of the Advanced Meter Facilities at the Installation Sites, and agrees to indemnify, defend and hold harmless the Gas Company from and against losses, liability or claims from owner of the real property where the Installation Sites are located and that are related to the rights conferred to the Gas Company under this Agreement.

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 regulation of the CPUC and the Improvement Plans reviewed by the City Engineer, and in compliance with all applicable ordinances, regulations or law (to the extent not inconsistent with or preempted by the jurisdiction of the CPUC).

Gas Company shall remove all of Gas Company's Advanced Meter Facilities at its sole expense within one hundred eighty (180) days after the termination of the Agreement, unless an agreement is otherwise reached between the City and Gas Company to abandon the Gas Company's Facilities in place. Gas Company shall bear full responsibility for repairs to any damage to 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.

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. 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 any existing gas, water and sewer lines or any other improvements or works approximate to Gas Company's Advanced Meter Facilities, except for the active negligence or willful misconduct of the City, its officers, agents, employees, contractors or subcontractors.

- 9. Interference.** The Gas Company installation and use of its Advanced Meter Facilities under this Agreement shall not damage or interfere in any way with City's operations. The City at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the City rights-of-way, which may temporarily interfere with the Gas Company's leasehold improvements as may be necessary in order to carry out any of such activities. The City agrees to give 30 day advance notice of such interference to the Gas Company and to reasonably cooperate with the Gas Company to carry out such activities with a minimum amount of interference with the Gas Company's operations.
- 10. Gas Company to Secure Approval and Permits.** Not less than thirty (30) days prior to commencement of construction and installation of Gas Company's Advanced Meter Facilities, Gas Company shall, at its sole cost and expense, prepare and submit the Improvement Drawings to the City Engineer for review as described in Section 1 above. 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 reviewed by the City Engineer and non-discretionary administrative permits obtain by Gas Company.
- 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 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.
- 12. Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the Laws of the State of California. Nothing in this section shall be interpreted to preclude either party's right to seek redress from the CPUC.

13. **Amendment of Agreement.** This Agreement may not be amended except pursuant to a written instrument signed by both parties.
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 Lemoore, CA 93245
Attn: Jeff Briltz
Tel: (559) 924-6700

TO THE GAS CO.:

David Mercer
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.

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

17. **Assignment or Transfer of Authorization.** This Agreement may be assigned or transferred to any qualified person or entity subject to the prior written approval of the City, which shall not be unreasonably withheld, 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 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.

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.

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 LEMOORE

DATE: _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

GAS COMPANY:

SOUTHERN CALIFORNIA GAS COMPANY

DATE: _____

By: _____
Tina Costa
Site Acquisition Manager