

**REPORT TO MAYOR AND COUNCIL**

**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: February 9, 2010

**SUBJECT: ADOPTING RESOLUTION NO. 10-12 APPROVING A STREET LIGHT LICENSE AGREEMENT WITH PG&E FOR THEIR SMART METER NETWORK; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

**Report in Brief**

PG&E has submitted an application to install communication equipment on one existing city-owned street light pole as part of their Smart Meter Network to provide a wireless network to remotely read the meters for all customers within the City.

Staff recommends that the City Council adopt Resolution No. 10-12 approving a Street Light License Agreement with PG&E; and authorize the City Manager to execute the agreement.

**Background**

PG&E submitted a request to the City to install new communication equipment on a city-owned street light on Bassett Drive. This installation is part of their Smart Meter Network that provides a wireless network to remotely read the meters for all customers with the City of Concord.

PG&E's Smart Meter program is a system of automated metering infrastructure and a supporting communications network. The system will collect customer energy use data electronically and does so more frequently than the traditional manual meter readings.

**Discussion**

PG&E's request includes a proposal to enter into a license agreement with the City that would include the following provisions:

1. This agreement would be for a 20-year period, with the option for additional mutually agreed 5-year extensions thereafter.
2. PG&E is authorized to install and maintain Smart Meter equipment on one city-owned street light as shown on Exhibit A of the agreement.
3. PG&E is required to pay an upfront cost of \$780 (\$39 per year for 20 years) for the street light used for their equipment.

**ADOPTING RESOLUTION NO. 10-12 APPROVING STREET LIGHT  
AGREEMENT FOR PG&E'S SMART METER NETWORK**

February 9, 2010

Page 2

4. Prior to installing equipment on any additional city-owned street lights, PG&E shall submit a revised Exhibit A for review and approval by the City.
5. PG&E shall remove all Smart Meter Equipment within 180 days after termination of this agreement.
6. PG&E shall provide the necessary insurance coverage and shall indemnify and hold harmless the City against all claims and liability.
7. PG&E shall obtain the necessary permits from the City and pay all required fees before proceeding with the installation of the Smart Meter Equipment.

**Fiscal Impact**

PG&E will make an up front payment of \$39 per year for the equipment installed on the City's street light. The City will also collect \$1,548 per Resolution No. 78-6042 Fees and Charges for processing this agreement. PG&E will be required to obtain an encroachment permit, pay the necessary permit fees, and pay an additional \$39 per year for each additional installation on a city-owned street light.

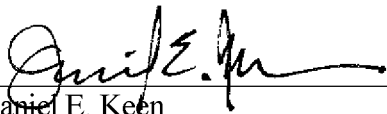
**Public Contact**

Posting of the Council agenda.

**Recommendation for Action**

Staff recommends the City Council adopt Resolution No. 10-12 approving a Street Light License Agreement with PG&E; and authorize the City Manager to execute the Agreement.

Prepared by: Christina Rodgers  
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\_\_\_\_\_  
Daniel E. Keen  
City Manager  
[dan.keen@ci.concord.ca.us](mailto:dan.keen@ci.concord.ca.us)

Reviewed by: Alex Pascual, PE, City Engineer  
Dir. of Public Works & Engineering  
[alex.pascual@ci.concord.ca.us](mailto:alex.pascual@ci.concord.ca.us)

Enclosures: Attachment 1 – Resolution 10-12  
Attachment 2 – Street Light License Agreement

1                                   **BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD**  
2                                   **COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

3 **A Resolution Approving a Street Light License**  
4 **Agreement with PG&E for the Installation of**  
5 **Communication Equipment on Existing City-Owned**  
6 **Street Light Poles as Part of PG&E’s Smart Meter**  
7 **Network**

**Resolution No. 10-12**

8                   **WHEREAS**, PG&E desires to enter into an agreement for the installation of communication  
9 equipment on existing city-owned street light poles as part of their Smart Meter Network system; and

10                   **WHEREAS**, the City owns, operates, and maintains certain street light facilities within the  
11 City and is willing to grant PG&E a non-exclusive, revocable license for the attachment of the Smart  
12 Meter communication equipment on certain city-owned street light poles identified on Exhibit A and  
13 subject to the terms and conditions set forth in this License Agreement.

14                   **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
15 **RESOLVE AS FOLLOWS:**

16                   **Section 1.** That the City Council hereby approves the License Agreement with PG&E with  
17 Exhibit A for the installation of Smart Meter communication equipment.

18                   **Section 2.** That the City Council authorizes the City Manager to execute the License  
19 Agreement with PG&E.

20                   **Section 3.** This resolution shall become effective immediately upon its passage and adoption.

21                   **PASSED AND ADOPTED** by the City Council of the City of Concord on February 2, 2010,  
22 by the following vote:

23 **AYES:**           Councilmembers -

24 **NOES:**           Councilmembers -

25 **ABSTAIN:**       Councilmembers -

26 **ABSENT:**        Councilmembers -

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**I HEREBY CERTIFY** that the foregoing Resolution No. 10-12 was duly and regularly adopted at a regular joint meeting of the City Council and the Redevelopment Agency of the City of Concord on February 2, 2010.

\_\_\_\_\_  
Mary Rae Lehman  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Craig Labadie  
City Attorney

**AGREEMENT NO. XXDC-00-0088**

**STREETLIGHT LICENSE AGREEMENT**

**THIS AGREEMENT** is made and entered into on February 2, 2010, by and between the **CITY OF CONCORD**, a [charter city and] 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 streetlight facilities 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 certain utility infrastructure support equipment used for the operation and maintenance of PG&E's SmartMeter network, to CITY's existing streetlight poles; and

**WHEREAS**, PG&E's SmartMeter equipment consists of certain utility infrastructure support 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 equipment on certain of CITY's existing streetlight poles; and

**WHEREAS**, CITY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the SmartMeter Equipment to CITY 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 five years 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. The associated license fee shall be as set forth in section 3.3.

**2. STREETLIGHT LICENSE.** CITY 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 CITY. Permission to attach to CITY-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. LICENSE FEE.** As its entire consideration for the rights granted herein, PG&E shall pay to CITY 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 CITY 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 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 without seeking CITY's prior approval and without incurring additional fees. In no event shall PG&E install any equipment

that is intended for commercial purposes including but not limited to, internet services without applying and receiving approval for a franchise from the City.

**5. SAFETY PRECAUTIONS.** PG&E shall perform all work on CITY-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. In the event the SmartMeter Equipment interferes with a pre-existing communications facility such as a wireless internet service provider or police and fire communications equipment or facilities, PG&E shall either take steps to eliminate the interference or relocate its equipment to a streetlight facility that does not cause interference. Failure to eliminate the interference with higher priority services including police, fire and ambulance within 30 days following notice by the City will be grounds for immediate termination of this agreement.

**7. 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 and/or the PG&E SmartMeter network.

**7.1** In the event that CITY is required by law or unavoidable circumstance to remove any SmartMeter Equipment attached to CITY Property 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.

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

**7.3** PG&E will, at its expense, remove all remaining SmartMeter Equipment from CITY 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 CITY Property in a timely manner, CITY may at PG&E's expense, remove and store such SmartMeter Equipment.

**8. 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. It is further understood and agreed by PG&E that its liability to the CITY 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.

**9. 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.

**10. 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.

**11. 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. However, PG&E shall not be required to apply for any encroachment permit for the SmartMeter Equipment authorized under this Agreement.

**12. 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.

**13. 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.

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

**15. 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.

**16. 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:

**16.1 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:

**16.1.1** Provide coverage for owned, non-owned and hired autos.

**16.2 Broad form commercial general liability insurance,** unless otherwise approved by the CITY'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:

**16.2.1** Provide contractual liability coverage for the terms of this agreement.

**16.2.2** Provide products & completed operations coverage.

**16.3 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...

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

**16.5** Except for workers' compensation, insurance is to be placed with insurers with a Bests' rating as approved by CITY's Risk Manager, but in no event less than A:V.

**16.6** Unless otherwise approved by CITY's Risk Manager, all policies shall contain an endorsement providing the CITY 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.

**16.7** 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 CITY.

**16.8** 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.

**16.9** 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.

**17. 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 and signed by all the parties.

**18. NEGATION OF PARTNERSHIP.** CITY shall not become or be deemed a partner or joint venture 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 CITY.

**19. 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.

**20. 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 CONCORD  
Attn: Alex Pascual, PE, City Engineer  
Director of Public Works and Engineering  
1950 Parkside Drive, MS/45,  
Concord, CA 94519**

**PG&E: Pacific Gas and Electric Company  
Land Department  
c/o Dawn Plise  
5555 Florin Perkins Road  
Sacramento, CA 94015**

**21. 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. City 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.

**21.1** 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 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 OF CONCORD**

**PACIFIC GAS & ELECTRIC COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment: Exhibit "A" – Streetlight License



**EXHIBIT A**

**STREETLIGHT and UTILITY POLE PERMIT**

**PART 1 REQUEST FOR ACCESS**

To: CITY OF CONCORD:  
Street: 1950 Parkside Drive  
Concord, CA 94519

Date: \_\_\_\_\_

In accordance with that certain Streetlight and Utility Pole License Agreement between the City of CONCORD ("City") and PG&E dated \_\_\_\_\_ (the "Agreement") we hereby request permission to place attachments on the City streetlights designated below.

**1. Location of the streetlights:**

**ELECTRIC**

PG&E NLC#	Location
21795	IFO 1483 BASSET

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

Permittee: Pacific Gas and Electric Company  
Authorizing Engineer Name: Bill Monlux  
Address: 1850 Gateway Blvd, Concord, CA 94520

Company or Department: SmartMeter Operations  
Phone # (925) 270-2819

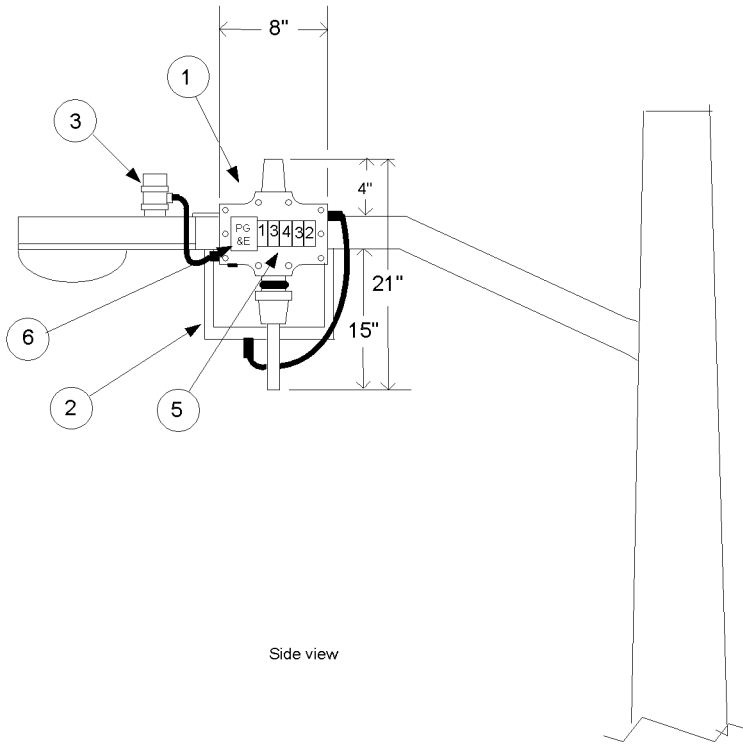
**PART 2 AUTHORIZATION**

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

CITY OF CONCORD:

BY: \_\_\_\_\_

Execution Date: \_\_\_\_\_

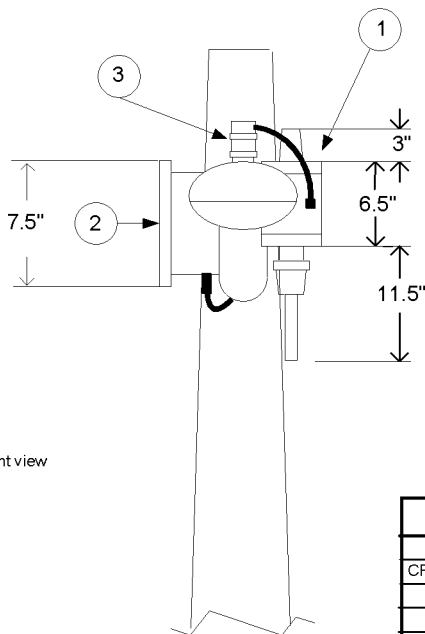


Side view

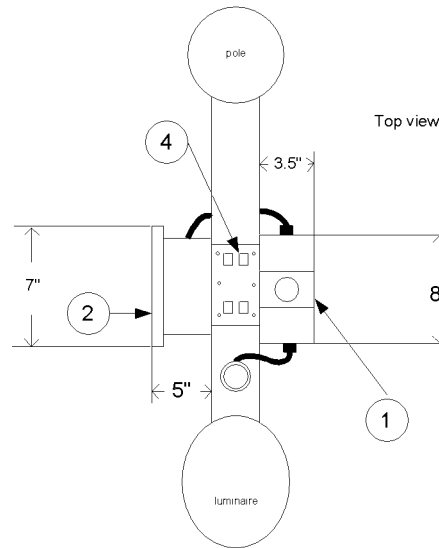


Example of actual field installation in SF

#	DESCRIPTION
1	PG&E SMARTMETER ACCESS POINT
2	BACKUP BATTERY PACK
3	PHOTO CELL POWER TAP
4	MOUNTING PLATE HARDWARE
5	OPERATING NUMBER
6	PG&E ID sticker
Note	RELAY INSTALL HAS NO BATTERY PACK



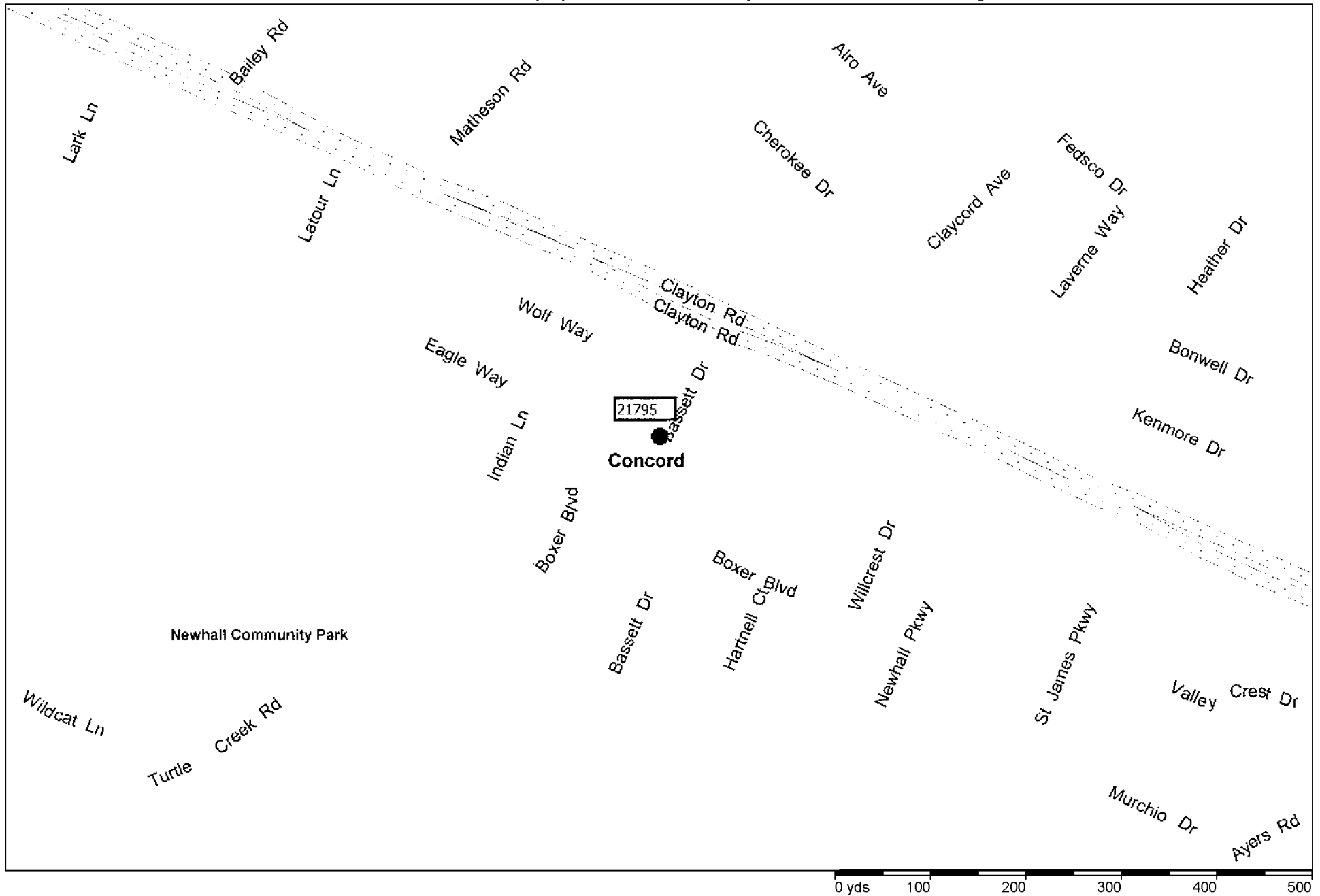
Front view



Top view

DESCRIPTION			DATE	APPROVED	PG&E	
CREATED FROM PREVIOUS DWGS			06/23/09	JL	TITLE: SMARTMETER SSN ACCESS POINT ON STREETLIGHT POLE - PHOTO CELL POWERED	
					SIZE	DRAWING #
					SSN23P	
					REV	A
					DRAWING FOR TYPICAL INSTALLATION	
					ENGINEER	
					JOEL IBARBIA	
					SCALE: NONE	WEIGHT:
						SHEET 23

# Exhibit A, PG&E SmartMeter Equipment on the City of Concord Streetlights, 12-02-09



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Exhibit A, PG&E SmartMeter Equipment on the City of Concord, 12-02-09

NLC	Description	City	Street	Equipment	TechIdentNo.	Latitude	Longitude	Mounting Type	Ownership	Pole Construction	Power Source	Service
21795	NLC 21795; Street Light RLY; CONCORD	CONCORD	IFO 1483 BASSET DR*	42644084	2451	37.958206	-121.977883	Street Light	CONCORD	Steel/Concrete	Secondary	Electric

\* MV-90 Site(s)