

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2015 ("Effective Date"), by and between SOUTHERN CALIFORNIA EDISON, a California corporation ("SCE"), and the CITY OF LANCASTER, a Municipal Corporation and Charter City ("Buyer"). SCE and Buyer are referred to herein individually as a "Party," and together as "Parties".

### RECITALS

- A. SCE currently owns nineteen thousand five hundred twenty six (19,526) LS-1 electric streetlight facilities located in the City of Lancaster, of which, seventeen thousand eight hundred and fifty six (17,856) are to be purchased by Buyer.
- B. Buyer has expressed a desire to purchase the Facilities (defined below) from SCE, and SCE is willing to sell the Facilities to Buyer, on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the respective covenants and agreements contained in this Agreement, SCE and Buyer each agree as follows:

1. **DEFINITIONS.** The following terms shall have the meanings ascribed to them below for purposes of this Agreement.

**"Agreement"** has the meaning given in the first paragraph.

**"Applicable Requirements"** means all laws, statutes, ordinances, rules, regulations, requirements or orders of any Governmental Authority now in force or that may later be in force, and the terms and conditions of any permit, certificate, license or other requirement.

**"Bill of Sale"** means a document setting forth the Purchase Price and Severance Costs as well as any Taxes for which Buyer is responsible with respect to the Facilities specified to be transferred to Buyer in each Phase (including Reconfigured Facilities in the final Phase), which document shall be substantially in the form of **Exhibit B** attached hereto.

**"Business Day"** means a day other than Saturday, Sunday or a day on which (i) banks are legally closed for business in the State of California; or (ii) SCE is closed for business.

**"Buyer"** has the meaning given in the preamble paragraph.

**"CEQA"** has the meaning given in Section 5.2.

**“Claims”** has the meaning given in Section 7.1.

**“Commencement”** has the meaning given in Section 6.2.

**“Commencement Date”** has the meaning in Section 6.1.

**“CPUC”** means the California Public Utilities Commission, or its regulatory successor, as applicable.

**“CPUC Approval”** means a final, unconditional and unappealable decision of the CPUC under Section 851 of the Public Utilities Code (including exhaustion of all administrative and judicial remedies or the running of time periods and statutes of limitation for rehearing and judicial review without rehearing or judicial review being sought) approving this Agreement and the transactions contemplated hereby on terms and conditions acceptable to SCE and Buyer, in their good faith discretion, including approval of SCE’s proposed accounting and rate making treatment of the sale in accordance with CPUC’s decisions.

**“CPUC Approval Date”** means the date on which the CPUC Approval occurs.

**“Effective Date”** has the meaning given in the preamble paragraph.

**“Environmental Requirements”** means any applicable federal, state and local statutes, regulations or ordinances now in force or that may later be in force relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or ground water, including federal, state and local laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into air, surface water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Environmental Requirements include without limitation: the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.); and the Resource Conservation and Recovery Act (42 U.S.C. 6901et seq.)

**“Excluded Taxes”** means (a) taxes (other than any sales, use, gross receipts, or any taxes in the nature of sales, use or gross receipts taxes) imposed on SCE that are capital gains taxes, minimum or alternative minimum taxes, accumulated earnings taxes, franchise taxes or taxes on or measured by gross or net income, capital or net worth of SCE; and (b) personal property taxes to the extent the payment is addressed in Section 3.3(b), and is not required to be reimbursed to SCE by Buyer.

**“Facilities”** has the meaning given in Section 2.2 and further described in Exhibit A.

**“Governmental Authority”** means any federal, state, local or other governmental, regulatory or administrative agency, commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority, but excluding Buyer.

**“Hazardous Substances”** means any hazardous or toxic material or waste, which is or becomes regulated by Environmental Requirement. Without limiting the generality of the foregoing, Hazardous Substances includes any material or substance: (a) now or hereafter defined as a “hazardous substance,” “hazardous waste,” “hazardous material,” “extremely hazardous waste,” “restricted hazardous waste” or “toxic substance” or words of similar import under any applicable Environmental Requirements; or (b) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof, or which cause or are listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or (c) the presence of which poses or threatens to pose a hazard to the health or safety of persons or the environment; or (d) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (e) which contains lead-based paint or other lead contamination, polychlorinated biphenyls (“PCBs”), or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (f) which contains radon gas; or (g) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and (h) other potentially hazardous substances, materials, products or conditions.

**“Inventory, Planning and Inspection Activities”** means the activities referenced in Section 6.2(a) and set forth in Exhibit D to be performed by Buyer and SCE during the Inventory, Planning and Inspection Period.

**“Inventory, Planning and Inspection Period”** has the meaning set forth in Section 6.2(a). ”

**“Land”** means the real property on which the Facilities are located, together with any other real property that is encumbered by Land Rights.

**“Land Rights”** means the easements, leases, permits, franchise agreements or other agreements that grant SCE the right to locate the Facilities on the Land and/or permit access to the Facilities by SCE.

**“Local Service Planning Office”** means SCE’s local service planning office located at Antelope Valley Service Center, Attn: District Manager, 42060 10th Street West, Lancaster, CA 93534, (661) 726-5617.

**“Phase”** means the nine (9) periods of five (5) months each, not to exceed a total of twenty-four (24) months, during which the Parties will undertake certain activities as

set forth in this Agreement with regard to the Facilities identified in each such Phase in **Exhibit C**. The Parties may mutually agree at any time to change the Phase Commencement Date and/or the Phase Closing Date for any or all Phases.

**“Phase Commencement Date”** means the first day of each Phase as set forth in **Exhibit C**.

**“Phase Completion”** means the completion of all activities for each Phase as set forth in Sections 6.2 and 6.4 of this Agreement.

**“Phase Closing Date”** means the last day of each Phase as set forth in **Exhibit C** on which the closing of the purchase and sale of the Facilities in such Phase shall occur.

**“Potential Environmental Hazards”** means electric fields, magnetic fields, electromagnetic fields, electromagnetic radiation, power frequency fields, and extremely low frequency fields, however designated, and whether emitted by electric transmission lines, other distribution equipment or otherwise.

**“Purchase Price”** has the meaning given in Section 3.1.

**“Reconfigured Facilities”** means any additional facilities the Parties identify during the Inventory, Planning and Inspection Period of any Phase which serve purposes in addition to street lighting, which the Parties agree that SCE will reconfigure to remove such other (non-street light) uses, and which will be purchased by Buyer from SCE in the final Phase. Buyer shall coordinate all activities relating to Reconfigured Facilities with SCE’s Local Service Planning Office.

**“SCE Parties”** means SCE, its affiliates, and each of their respective past, present and future officers, directors, partners, employees, agents, representatives, shareholders, attorneys, affiliates, parent and subsidiary corporations, divisions, insurance carriers, heirs, legal representatives, beneficiaries, executors, administrators, predecessors, transferees, successors and assigns.

**“Severance Activities”** means the activities referenced in Section 6.2(a) and set forth in **Exhibit D** to be performed by SCE and Buyer during each Phase (after the applicable Inventory, Planning and Inspection Period expires) with respect to the Facilities to be transferred from SCE to Buyer in such Phase.

**“Severance Costs”** has the meaning in Section 3.1.

**“Tax Claim”** has the meaning given in Section 3.3(e).

**“Taxes”** mean all federal, state, local or foreign income, ad valorem, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property including assessments,

special assessments, special district assessments, escape assessments, benefit assessments and maintenance assessments, fees or other charges or surcharges of any nature based on the use or ownership of real property), personal property, sales, use, documentary transfer, registration, value added, alternative and add-on minimum, estimated taxes, and all other taxes of any kind whatsoever, including all interest, penalties, fines and additions thereto, whether disputed or not, including all items for which liability arises as a transferee or successor-in-interest.

## **2. PURCHASE AND SALES OF FACILITIES.**

**2.1 Purchase and Sale.** Subject to the terms and conditions of this Agreement, SCE agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase and acquire from SCE, all of SCE's right, title and interest in the Facilities.

**2.2 Description of Facilities.** The "Facilities" consist of Seventeen Thousand Eight Hundred And Fifty Six (17,856) electric streetlight facilities owned by SCE and located within the Buyer's service territory. A detailed description and listing of the Facilities to be purchased and sold is provided **Exhibit A**. The Parties believe that **Exhibit A** contains a reasonably accurate inventory and map of the LS-1 streetlight facilities owned by SCE within the Buyer's service territory that are considered for sale.

## **3. PURCHASE PRICE AND OTHER COSTS.**

**3.1 Purchase Price.** Subject to adjustment as provided in this **Section 3.1**, the total purchase price for all Facilities described in **Exhibit A** ("**Purchase Price**") is Eleven Million Seven Hundred Ninety Thousand Dollars (\$11,790,000).

(a) The Parties shall mutually agree on the Purchase Price, Severance Costs and any additional costs for any Reconfigured Facilities transferred to Buyer in the final Phase in accordance with **Section 6.2(b)**.

(b) If, within thirty (30) days after the Phase Closing Date for the final Phase, the Parties determine that the actual number of Facilities (excluding Reconfigured Facilities) that have been transferred to Buyer pursuant to this Agreement exceeds 17,856 by five percent (5%) or more then, within sixty (60) days after the Phase Closing Date for the final Phase, the Parties will amend the applicable Bill(s) of Sale, and the Buyer will make a true-up payment to SCE using a price of \$660.00 per pole.

(c) If, within thirty (30) days after the Phase Closing Date for the final Phase, the Parties determine that the actual number of Facilities (excluding Reconfigured Facilities) that have been transferred to Buyer pursuant to this Agreement is less than 17,856 by five percent (5%) or more then, within sixty (60) days after the Phase Closing Date for the final Phase, the Parties will amend

the applicable Bill(s) of Sale, and SCE will make a true-up payment to Buyer using a price of \$660.00 per pole.

**3.2 Severance Costs.** In addition to the Purchase Price, Buyer shall pay to SCE, SCE's good faith estimate of the cost of SCE's Severance Activities with respect to the Facilities, which the parties agree is equal to a total amount of \$410,000 ("**Severance Costs**"). Buyer shall pay the Severance Costs in nine (9) [**SCE discussing internally**] equal installments, as invoiced by SCE in each Phase.

**3.3 Taxes.**

(a) Except for any Excluded Taxes for which Buyer will have no liability, Buyer shall pay all Taxes arising in connection with the sale and transfer of the Facilities, this Agreement or the transactions contemplated herein, or the receipt of the Purchase Price or other amounts hereunder, which Taxes are levied or imposed on or with respect to SCE, Buyer or all or any part of the Facilities or any use thereof on or after the applicable Phase Closing Date.

(b) State and local personal property Taxes relating to the Facilities for the tax year (ending June 30) will be prorated between Buyer and SCE on the following basis: SCE is to be responsible for all such Taxes for the period up to the Phase Closing Date for such Facilities; and Buyer is responsible for all such Taxes for the period on and after the Phase Closing Date for such Facilities. All Taxes assessed on an annual basis will be prorated on the assumption that an equal amount of Taxes applies to each day of the year, regardless of how many payments are billed or made, except that Buyer will bear all supplemental or other state and local personal property Taxes with arise out of change in ownership of the Facilities. In addition, Buyer acknowledges that the Facilities are assessed by the California State Board of Equalization as of January 1 of each year, and, if the Phase Closing Date occurs between January 1 and June 30, SCE must pay personal property taxes arising out of the ownership of the Facilities for the subsequent fiscal year. If the Phase Closing Date occurs between January 1 and June 30, Buyer will deposit with SCE the full amount to pay personal property taxes for the tax year beginning on July 1, in addition to the prorated amount of personal property taxes for the current tax year (ending June 30), and SCE will pay the personal property taxes for these tax years before they become delinquent; provided however, SCE may pay such taxes in installments as permitted by law. If the personal property tax amounts owing for the tax year beginning on July 1 are not available as of the Phase Closing Date, then the amount due from Buyer to SCE for such tax year will be estimated on the basis of the prior year's personal property taxes and such amount will be subject to adjustment after the Phase Closing Date. If the Phase Closing Date occurs between July 1 and December 31, Buyer will deposit with SCE the prorated amount of personal property taxes for the tax year in which the Phase Closing Date occurs and SCE will pay the personal property taxes for such tax

year before they become delinquent; provided however, SCE may pay such taxes in installments as permitted by law.

(c) SCE will be entitled to any refunds or credits of Taxes relating to the Facilities that are allocable to the period prior to the Phase Closing Date. Buyer will promptly notify and forward to SCE the amounts of any such refunds or credits to SCE within five (5) Business Days after receipt thereof. Buyer will be entitled to any refund or credit of Taxes relating to the Facilities that are allocable to the period on and after the Phase Closing Date. SCE agrees to reasonably cooperate with Buyer's efforts to obtain such refund or credit.

(d) After each Phase Closing Date, Buyer will notify SCE in writing, within five (5) Business Days after Buyer's receipt of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative proceeding that involves Taxes relating to the Facilities for the period prior to the Phase Closing Date, and furnish SCE with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facilities for the period prior to the Phase Closing Date.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any judicial or administrative proceeding that involves Taxes relating to the Facilities for the period either entirely prior to the Phase Closing Date or both prior to and after the Phase Closing Date (collectively, "**Tax Claim**"), the Parties will reasonably cooperate with each other in contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction as evidence to any such Tax Claim contest and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at proceedings relating to such Tax Claim. SCE will control all proceedings taken in connection with any Tax Claim that pertains entirely to the period prior to the Phase Closing Date, and SCE and Buyer will jointly control all proceedings taken in connection with any Tax Claim pertaining to the period both prior to and after the Phase Closing Date. Buyer has no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Phase Closing Date; and neither Party has the right to settle or otherwise compromise any Tax Claim which pertains to the periods both prior to and after the Phase Closing Date without the other Party's prior written consent.

(f) The obligations of the Parties pursuant to the Section 3.3 shall survive the termination of this Agreement.

#### **4. CONDITIONS PRECEDENT**

**4.1 Conditions to Buyer's Obligations.** Buyer's obligation under this Agreement to purchase the Facilities is subject to the fulfillment or waiver of each of the following conditions precedent:

(a) SCE shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement to be performed or complied with by SCE at or prior to the Commencement Date and each Phase Closing Date.

(b) No suit, action or other proceeding shall be pending before any court or Governmental Authority which seeks to restrain or prohibit any of the transactions contemplated by this Agreement or to obtain material damages or other material relief in connection with this Agreement or the transactions contemplated hereby.

(c) Buyer shall have obtained financing necessary to pay the Purchase Price and the Severance Costs.

**4.2 Conditions to SCE's Obligations** SCE's obligation under this Agreement to sell the Facilities to Buyer is subject to the fulfillment or waiver of each of the following conditions precedent:

(a) Buyer shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement to be performed by Buyer at or prior to the Commencement and each Phase Closing.

(b) No suit, action or other proceeding shall be pending before any court or Governmental Authority which seeks to restrain or prohibit any of the transactions contemplated by this Agreement or to obtain material damages or other material relief in connection with this Agreement or the transactions contemplated hereby.

**4.3 CPUC Approval.** The obligation of each Party to consummate the purchase and the sale of the Facilities is conditioned upon obtaining CPUC Approval. SCE agrees to make reasonable efforts to draft and file an application seeking CPUC approval within ninety (90) days following the Effective Date of this Agreement. Buyer agrees to cooperate with SCE's efforts to obtain CPUC Approval, including by promptly reviewing and commenting on the application for CPUC Approval. Buyer acknowledges and agrees that SCE makes no representation or warranty with respect to the likelihood of obtaining CPUC Approval, and Buyer hereby waives all Claims against SCE that may arise as a result of the need for CPUC Approval or SCE's failure to obtain CPUC Approval.



**4.4 Satisfaction or Waiver of Conditions Precedent.** Buyer may waive in writing any of the conditions precedent set forth in Section 4.1, and SCE may waive in writing any of the conditions precedent set forth in Section 4.2. Neither Party shall have the right to waive the condition precedent set forth in Section 4.3. Subject to the foregoing, in the event that any of the conditions precedent set forth in this Section 4.1 or Section 4.2 have not been satisfied or waived on or before the Commencement Date or any Phase Closing Date (as the same may be extended), then the Party whose obligations are subject to such condition precedent shall have the right to rescind this Agreement ab initio upon written notice to the other Party, and SCE and Buyer shall thereupon return to the other Party all performances received from the other Party (except for the Severance Costs actually paid), and each Party shall be released from all other obligations under this Agreement, except those which expressly survive termination.

## **5. CONDITION OF FACILITIES AND LAND RIGHTS**

### **5.1 Compliance with Applicable Requirements and Governmental Approvals.**

Except for CPUC Approval, Buyer is solely responsible for complying, at Buyer's sole expense, with all Applicable Requirements and obtaining all authorizations, consents, licenses, permits and approvals of Governmental Authorities and third persons in connection with the consummation of the transactions contemplated by this Agreement and with Buyer's operation of the Facilities, whether as result of the PCB content or otherwise. Without limiting the foregoing, Buyer is responsible for any costs of complying with the California Environmental Quality Act ("CEQA"), if and to the extent applicable to the sale and transfer of the Facilities, and satisfying, at Buyer's sole expense, any and all mitigation measures under CEQA that may apply to Buyer's acquisition or operation of the Facilities. Buyer shall promptly notify SCE of any and all mitigation measures that may affect SCE. If SCE determines in good faith that any such mitigation measures may adversely affect SCE, SCE shall have the right without liability to Buyer to terminate this Agreement upon written notice to Buyer. In the event of such termination, SCE and Buyer shall each be released from all obligations under this Agreement, except those that expressly survive termination. Buyer's obligations under this Section 5.2 shall survive the termination of this Agreement.

### **5.2 Disclosure Regarding Hazardous Substances.**

SCE hereby discloses to Buyer that Potential Environmental Hazards and Hazardous Substances, including PCBs, may be present at, in, on, under, about, contained in, or incorporated in the Facilities. Buyer represents that it is purchasing the Facilities for Buyer's own use, and not for resale (provided that Buyer contemplates that Buyer may transfer title to the Facilities in connection with financing and/or refinancing of the Facilities). If Buyer sells the Facilities, or any part thereof, it shall disclose, in writing, to all potential Buyers, prior to the sale, that Potential Environmental Hazards and Hazardous Substances, including PCBs, may be present at, in, on, under, about, contained in, or incorporated in the Facilities, or portions thereof. Further, in the event the Facilities (or any portion thereof) are

sold, conveyed or transferred in any manner to a person other than SCE, Buyer shall incorporate in the agreement effectuating such transfer, language substantially in the same form as this paragraph. Buyer's obligations under this Section 5.3 shall survive the termination of this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, SCE approval shall not be required for any conveyance of the Facilities, whether or not such conveyance is made in connection with a financing or refinancing of the Facilities or any part thereof.

**5.3 Disclaimers Regarding the Facilities and the Land.** BUYER ACKNOWLEDGES THAT IT IS RELYING UPON ITS OWN INDEPENDENT INVESTIGATION IN DECIDING TO PURCHASE THE FACILITIES. BUYER EXPRESSLY DISCLAIMS RELIANCE ON ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES, EITHER EXPRESS OR IMPLIED, BY SCE, ITS OFFICERS, DIRECTORS, COUNSEL, REPRESENTATIVES OR AGENTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SCE EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF THE FACILITIES, THE PROSPECTS (FINANCIAL AND OTHERWISE) OF THE FACILITIES, THE QUALITY OF WORKMANSHIP OF THE FACILITIES, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. SCE FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING POTENTIAL ENVIRONMENTAL HAZARDS, THE PRESENCE OF HAZARDOUS SUBSTANCES, COMPLIANCE OF THE FACILITIES OR THE LAND WHERE THE FACILITIES ARE LOCATED WITH ENVIRONMENTAL REQUIREMENTS, OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL REQUIREMENTS. NO SCHEDULE OR EXHIBIT TO THIS AGREEMENT, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY SCE, WILL CAUSE OR CREATE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SCE EXPRESSLY DISCLAIMS: (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR MATERIALS.

**5.4 "AS IS" SALE.** THE FACILITIES ARE BEING TRANSFERRED "AS IS, WHERE IS, AND WITH ALL FAULTS" IN THEIR EXISTING CONDITION, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND BY SCE, EXPRESS, IMPLIED OR STATUTORY, AND WITHOUT RECOURSE AGAINST SCE.

**5.5 Specific Disclaimer Regarding Land Rights.** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SCE IS NOT ASSIGNING OR OTHERWISE TRANSFERRING ITS RIGHT, TITLE AND INTEREST IN AND TO ANY LAND RIGHTS (OR ANY CLAIM, RIGHT OR BENEFIT ARISING UNDER

OR RESULTING FROM SUCH LAND RIGHTS) IN CONNECTION WITH ITS SALE OF THE FACILITIES TO BUYER, AND BUYER ASSUMES ANY AND ALL RISKS AND LIABILITIES IN CONNECTION WITH THE ABSENCE OF ADEQUATE OR APPROPRIATE LAND RIGHTS.

**5.6 Maintenance of Facilities Pending Commencement.** From the Effective Date until the Phase Closing Date, SCE will, at its expense, operate and maintain the Facilities in accordance with SCE's rate "Schedule LS-1 LIGHTING - STREET AND HIGHWAY - UNMETERED SERVICE COMPANY-OWNED SYSTEM," and consistent with SCE's custom and past practices.

**5.7 New Facilities.** Until the Commencement Date, SCE may continue to install new streetlights in the City of Lancaster in accordance with SCE's standard practices and tariffs and CPUC rules and regulations.

## **6. COMMENCEMENT AND POST-COMMENCEMENT ACTIVITIES.**

**6.1 Commencement Date.** The "**Commencement Date**" shall be the date that is sixty (60) days after the CPUC Approval Date. The application seeking CPUC Approval will request such approval within six months of the date the application is filed. SCE makes no representations as to when or in what manner the CPUC will act on the application.

**6.2 The Phases.** The first Phase shall commence on the Commencement Date ("**Commencement**"), and each successive Phase shall follow consecutively thereafter or on such earlier date as mutually agreed by the Parties as to the Facilities identified for each Phase in **Exhibit C**. The Parties shall take the following actions during each Phase for the Facilities to be transferred to Buyer in such Phase:

- (a) For a period not to exceed four months following the commencement of each Phase (each, an "**Inventory, Planning and Inspection Period**"), the Parties will perform their respective Inventory, Planning and Inspection Activities set forth in **Exhibit D**, including identifying any Reconfigured Facilities. For each Phase, SCE's Local Service Planning office shall provide written notice to Buyer before the expiration of the Inventory, Planning and Inspection Period identifying any potential Reconfigured Facilities and stating the work necessary to reconfigure such facilities for sale to Buyer and the estimated time and cost to complete the work ("**Reconfigured Facilities Notice**").
- (b) For a period of ten (10) Business Days following Buyer's receipt of the Reconfigured Facilities Notice, Buyer shall have the right to accept or reject the Reconfigured Facilities described in the Reconfigured Facilities Notice, which acceptance or rejection shall be evidenced by a written notice delivered to SCE's Local Service Planning Office.

- (c) At any time prior to the applicable Phase Closing, each Party shall perform and complete its respective Severance Activities for all Facilities in the applicable Phase, excepting only the Reconfigured Facilities identified in the Reconfigured Facilities Notice for that Phase, which Reconfigured Facilities shall be added to the final Phase. Prior to or during the final Phase, each Party shall perform and complete its respective Severance Activities for any Reconfigured Facilities.
- (d) Not later than thirty (30) days prior to each Phase Closing Date, SCE shall deliver to Buyer an original Bill of Sale duly executed by SCE. The Parties agree that delivery of the Bill of Sale shall be effective upon the earlier of (i) delivery to Buyer by hand of an original Bill of Sale or (ii) Buyer's receipt of a facsimile or other electronic transmission of the Bill of Sale. If delivery is made by facsimile or other electronic transmission, SCE shall concurrently send the original Bill of Sale to Buyer by registered or certified mail or overnight courier.
- (e) SCE shall notify Buyer in writing prior to each applicable Phase Closing Date if SCE obtains actual knowledge, at any time during the Phase in which the Facility will be purchased by the City, of any material damage to a Facility or any third-party formal claim that the condition of a Facility caused property damage, injury or death.
- (f) At any time prior to any Phase Closing, Buyer may elect at its sole and absolute discretion to remove any of the Facilities (except for Reconfigured Facilities) from any Phase and deduct on a pro rata basis the value of such Facilities from the Purchase Price.
- (g) By each Phase Closing Date, Buyer shall pay to SCE in U.S. dollars the Purchase Price, Severance Costs, and the Taxes (but not Excluded Taxes) for the Facilities to be transferred to Buyer in such Phase.
- (h) After completion of the final Phase, SCE's Local Service Planning Office will invoice Buyer separately for any Reconfigured Facilities.

**6.3 Assumption of Liabilities.** On each Phase Closing Date, Buyer will assume all obligations and liabilities of any kind or nature whatsoever related to, arising from, or associated with ownership or possession of the Facilities transferred to Buyer in such Phase.

**6.4 Post-Phase Activities.**

- (a) Within ninety (90) days after each Phase Closing Date, but effective as of each such Phase Closing Date, SCE will change the charge for electricity furnished to the Facilities transferred to Buyer in such Phase from the Streetlight Rate Schedule LS-1 to the Streetlight Rate Schedule "LS-2

LIGHTING - STREET AND HIGHWAY CUSTOMER-OWNED INSTALLATION - UNMETERED SERVICE" Multiple Service – Rate B and provide written notice to Buyer of such change ("Notice of Rate Change").

- (b) Within ninety (90) days after each Phase Closing Date, SCE shall provide an updated map and inventory of the Facilities transferred pursuant to such Phase to Buyer.

Within sixty (60) days of Buyer's receipt of the Notice of Rate Change, Buyer shall confirm that the change has been effected ("Rate Change Confirmation") or advise SCE in writing that it has not ("Rate Change Error Notice"). In the event Buyer issues a Rate Change Error Notice, the Parties shall engage in the Dispute Resolution process to resolve the deficiency(ies) identified in the Rate Change Error Notice pursuant to Section 9.11 until Buyer issues a Rate Change Confirmation.

- 6.5 Prohibition on Connecting Non-Conforming Load.** Buyer acknowledges and agrees that Buyer's purchase of the Facilities does not entitle Buyer to connect non-conforming load to the Facilities or supporting circuits beyond SCE's initial point of connection. If Buyer wishes to connect such non-conforming load, Buyer agrees to comply with SCE's applicable filed tariffs.

## **7. RELEASE.**

- 7.1 Release.** Buyer, for itself, and for any future owners of all or a part of the Facilities, and each of their respective predecessors, successors, assigns, licensees, officers, directors, employees, agents, partners, shareholders, transferees, parent and subsidiary corporations, legal representatives, heirs, beneficiaries, executors and administrators hereby fully and forever releases, discharges and covenants not to sue the SCE Parties of, from or for any and all losses (including diminution in the value of the Land) and all other costs, claims, demands, actions, suits, orders, causes of action, obligations, controversies, debts, expenses, accounts, damages (including consequential or direct damages), judgments and liabilities of whatever kind or nature (including fines and civil penalties), and by whomsoever asserted, in law, equity or otherwise, whether known or unknown, (each a "**Claim**" and, collectively, "**Claims**") arising from or in any way connected with the Facilities, including without limitation any Claims relating to SCE's maintenance of the Facilities prior to each Phase Closing Date, Claims relating to Potential Environmental Hazards, and Claims relating to the presence of PCBs or any other Hazardous Substances in the Facilities, and/or in, on or about the Land.

- 7.2 Waiver of Civil Code § 1542.** With respect to the matters being released in Paragraph 7, and as to those matters only, Buyer does knowingly, after having first obtained the advice of its attorneys, waive all of the provisions of California Civil Code § 1542 ("Section 1542"). Section 1542 reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Buyer acknowledges and agrees that: (a) the releases set forth in Paragraph 7 are intended to extend to and extinguish all claims, causes of action, etc. that are encompassed within the terms of the releases, including those that are not presently known to or suspected by Buyer and (b) it may hereafter discover facts in addition to or different from those which it now believes concerning the subject matter of this Agreement, and that notwithstanding any such new or different facts, the releases contained herein will remain effective. Buyer further acknowledges and agrees that the foregoing waiver of Section 1542 is an essential and material term of this Agreement, without which said consideration would not have been given. Buyer has been advised by its legal counsel regarding this release and waiver and understands and acknowledges the significance and consequences of this release and waiver of Section 1542.

**8. INDEMNITY.** Buyer shall, at its sole cost and expense, indemnify, protect, defend and hold the SCE Parties harmless, to the fullest extent permitted by law, from and against any and all Claims (including the payments of damages, both actual and consequential, the payment of penalties and fines, the payment of the actual fees and expenses of experts, attorneys and others, and the payment of the cost of environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work and other “response costs” under CERCLA or any other Environmental Requirements) arising from or in any way connected with: (a) any activities or failures to act in connection with this Agreement by Buyer, its employees, agents, or contractors; or (b) the ownership, possession, use or operation of the Facilities transferred to Buyer from and after the Phase Closing Date applicable to such Facilities; or (c) Potential Environmental Hazards relating to the Facilities or the presence, disposal, dumping, escape, seepage, leakage, spillage, discharge, emission, pumping, emptying, injecting, leaching, pouring, release or threatened release of PCBs or any other Hazardous Substances in connection with the Facilities, to the extent such Hazardous Substances were present or affecting the Facilities and/or in, on, or about the Land as of the applicable Phase Closing Date; or (d) the failure of the Facilities to comply with any Applicable Requirements; or (e) Buyer’s breach of any of its obligations under this Agreement. If any action or proceeding is brought against any one or more SCE Parties for any Claim against which Buyer is obligated to indemnify or provide a defense hereunder, Buyer, upon written notice from SCE, shall defend the SCE Parties. Buyer’s obligation to defend includes the obligation to defend claims and participate in administrative proceedings, even if they are false or fraudulent. The indemnity, defense and other obligations of Buyer in this Section 8 shall survive the termination of this Agreement.

**9. MISCELLANEOUS.**

**9.1 Time of Essence.** Time is of the essence of this Agreement and each and every provision hereof.

**9.2 FORCE MAJEURE.** Except for the payment of money when due, performance by either Party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to force majeure events beyond the control of such Party, including, without limitation, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, government imposed moratorium legislation, actions of failures to act by any regulatory authority with jurisdiction over SCE (including the CPUC), freight embargoes, lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, that are not attributable to the fault of the Party claiming an extension of time. An extension of time for any such force majeure cause shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided, however, that the Party claiming the existence of the delay first provides the other party with written notice of the occurrence of the delay, within ten (10) days of the commencement of such occurrence of a force majeure event and, thereafter, takes prompt and reasonable action within its control to remedy such force majeure event.

**9.3 Further Assurances.** Each Party hereto agrees to execute and deliver to the other Party such further documents or instruments as may be necessary or appropriate in order to carry out the intentions of the Parties as contained in this Agreement.

**9.4 Binding Effect; Assignment.** This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Buyer shall have no right to assign this Agreement or any of its rights or obligations under this Agreement.

**9.5 Severability.** If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and the provisions of this Agreement are intended to be and shall be severable.

**9.6 Survival.** The covenants, agreements, obligations, indemnities and releases contained in Sections 3.3, 5, 6.3, 6.4, 6.5, 7 and 8 of this Agreement shall survive the termination of this Agreement.

**9.7 Governing Laws.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California without reference to its conflicts of laws provisions.

**9.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**9.9 Notices.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be either personally delivered or transmitted by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, such as FedEx or Airborne Express, addressed to the Parties as follows:

If to SCE: Account Services Department  
Attention: John King  
Southern California Edison  
4777 Irwindale Avenue, Mail Stop 6042 A  
Irwindale, CA, 91706

and

Antelope Valley Service Center  
Attn: District Manager  
42060 10th Street West, Lancaster, CA 93534

If to Buyer: Barbara Boswell  
Finance Director  
44933 N. Fern Avenue  
Lancaster CA 93534

The date of any notice or communication shall be deemed to be the date of receipt if delivered personally, or the date of the receipt or refusal of delivery if transmitted by mail or overnight courier. Any Party may change its address for notice by giving notice to the other Party in accordance with this Section 9.7.

**9.10 Attorneys' Fees.** In the event that either Party shall bring an action to enforce its rights under this Agreement, the prevailing Party in any such proceeding shall be entitled to recover its reasonable attorneys' fees, investigation expenses and all other out of pocket expenses, including in connection with any appeal thereof. Any such attorneys' fees, costs and expenses incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be recoverable from the other provision of this Agreement and to survive and not be merged into any such judgment. For purposes hereof, the reasonable fees of each Party's in-house attorneys are recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of Los Angeles



with approximately the same number of attorneys as are employed by the Party's law department. The covenants of SCE and Buyer contained in this Section 9.8 shall survive the termination of this Agreement

**9.11 Limitation on Liability.** Buyer expressly agrees that the obligations and liabilities of SCE under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, affiliates, members, representatives, stockholders or other principals or representatives of SCE. SCE expressly agrees that the obligations and liabilities of Buyer under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, affiliates, members, representatives, stockholders or other principals or representatives of Buyer. The limitations contained in this Section 9.9 shall survive the termination of this Agreement.

**9.12 Exhibits.** The following Exhibits are attached hereto and incorporated by reference into this Agreement.

Exhibit A	Description of the Facilities
Exhibit B	Form of Bill of Sale
Exhibit C	Phases
Exhibit D	Inventory, Planning and Inspection Activities
Exhibit E	Communications Equipment
Exhibit F	Pole Attachment License Agreement

**9.13 Dispute Resolution.** In the event any dispute arises concerning the enforcement and/or interpretation of this Agreement, the Parties agree to attempt initially to settle such claims or disputes in good faith between themselves. Said obligation to discuss settlement of such claims or disputes shall be initiated by written notice of such claim or dispute. Should the Parties not settle such claims or disputes within thirty (30) days of the date of mailing of such notice or within such additional time period to which the Parties agree in writing (the "Negotiation Period"), the Parties may mutually agree to submit any such claim or dispute to mediation. In such case, the Parties will select an independent mediator within thirty (30) days of the expiration of the Negotiation Period (the "Selection Period"), either by mutual agreement or, in the absence of agreement on a mediator, by requesting during the Selection Period that the American Arbitration Association in Los Angeles, California appoint a mediator. The mediation shall be commenced within thirty (30) days of the selection of a mediator by the Parties or the American Arbitration Association. Except as provided herein or by written agreement of the Parties, the mediation shall be conducted in Los Angeles pursuant to the rules of the American Arbitration Association. If the Parties are unable to settle the dispute through discussions or in mediation, each Party shall have the right to pursue all of its remedies at law or in equity. The covenants of Buyer and SCE contained in this Section 9.13 shall survive the termination of this Agreement.

**9.14 Communications Equipment.** Buyer acknowledges that the Facilities have certain SCE-owned and operated radio equipment attached to them as identified in **Exhibit E** (“Communications Equipment”). Concurrently with each Phase Closing Date, Buyer shall grant to SCE a cost-free license to leave in place, operate, maintain, replace and remove any Communications Equipment attached to Facilities included in such Phase pursuant to the Pole Attachment License Agreement attached hereto as **Exhibit F**. Buyer also agrees to enter into future Pole Attachment License Agreements to grant SCE a cost-free license to operate, maintain, replace and remove new and additional Communications Equipment on the Facilities as reasonably requested by SCE.

**9.15 Interpretation.** The language in all parts of this Agreement shall be construed according to its normal and usual meaning and not strictly for or against either SCE or Buyer. The headings of the paragraphs of this Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any terms or provisions hereof. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.”

**9.16 Authority.** Each Party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized by such Party and each person signing this Agreement on its behalf is duly and validly authorized to do so.

**9.17 Prior Agreements.** This Agreement and the exhibits hereto contain the entire agreement and understating of the Parties relating to the subject matter hereto and shall supersede any prior written or oral agreements or communications between the Parties pertaining to such subject matter.

**IN WITNESS WHEREOF**, the Parties hereto have caused this agreement to be duly executed as of the date and year first written above.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SCE:

SOUTHERN CALIFORNIA EDISON,  
a California corporation

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

Its: \_\_\_\_\_

BUYER:

CITY OF LANCASTER,  
a California charter city and municipal  
corporation

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

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON & RAUTH

By: \_\_\_\_\_  
Allison E. Burns, City Attorney

**Exhibit A**  
**Description of Facilities**

On file in the City Clerk Department

**Exhibit B**  
**Form of Bill of Sale**

**BILL OF SALE**

Pursuant to that certain Purchase And Sale Agreement, dated \_\_\_\_\_, 2014 (“Agreement”), by and between Southern California Edison, a California corporation (“SCE”), and the City of Lancaster, a Municipal Corporation and Charter City (“Buyer”), effective as of \_\_\_\_\_, 20\_\_\_\_ **[Insert Phase Closing Date]**, SCE hereby sells, assigns, transfers and delivers to Buyer all of SCE’s right, title and interest in and to the property described in Attachment A (“Facilities”), attached hereto and hereby incorporated herein by this reference. All capitalized terms not defined in this Bill of Sale shall have the meanings given them in the Agreement.

THE FACILITIES ARE BEING TRANSFERRED “AS IS, WHERE IS, AND WITH ALL FAULTS” IN THEIR EXISTING CONDITION, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND BY SCE, EXPRESS, IMPLIED OR STATUTORY, AND WITHOUT RECOURSE AGAINST SCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SCE EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF THE FACILITIES, THE PROSPECTS (FINANCIAL AND OTHERWISE) OF THE FACILITIES, THE QUALITY OF WORKMANSHIP OF THE FACILITIES, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. SCE FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING POTENTIAL ENVIRONMENTAL HAZARDS, THE PRESENCE OF HAZARDOUS SUBSTANCES, COMPLIANCE OF THE FACILITIES OR THE LAND WHERE THE FACILITIES ARE LOCATED WITH ENVIRONMENTAL REQUIREMENTS, OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL REQUIREMENTS. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SCE IS NOT ASSIGNING OR OTHERWISE TRANSFERRING ITS RIGHT, TITLE AND INTEREST IN AND TO ANY LAND RIGHTS (OR ANY CLAIM, RIGHT OR BENEFIT ARISING UNDER OR RESULTING FROM SUCH LAND RIGHTS) IN CONNECTION WITH ITS SALE OF THE FACILITIES TO BUYER, AND BUYER ASSUMES ANY AND ALL RISKS AND LIABILITIES IN CONNECTION WITH THE ABSENCE OF ADEQUATE OR APPROPRIATE LAND RIGHTS.

This Bill of Sale is executed pursuant to the authorization contained in the order of the California Public Utilities Commission in its Decision No. \_\_\_\_\_, dated \_\_\_\_\_, and is subject to all the terms and conditions of the Agreement, including the provisions set forth above.

The parties represent that they are duly authorized to execute this Bill of Sale.

SOUTHERN CALIFORNIA EDISON COMPANY,  
a California corporation

By: \_\_\_\_\_  
(Name of Business Unit VP)  
(Title of VP)

Accepted and Agreed:

BUYER:

(CUSTOMER NAME),  
a California corporation

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

Name: \_\_\_\_\_

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

## Exhibit C Phases

		Standard Timeframe									
		Phase Start Date	Inventory and Inspection Period		Severance Period		Invoice Creation Period		Payment Period		Phase Closing Date
Phase	Quantity		Start	End	Start	End	Start	End	Start	End	
1	2,000	1/4/2016	1/4/2016	2/29/2016	3/1/2016	3/31/2016	4/1/2016	4/29/2016	5/2/2016	5/31/2016	5/31/2016
2	4,000	3/1/2016	3/1/2016	4/29/2015	5/2/2015	5/31/2016	6/1/2016	6/30/2016	7/1/2016	7/29/2016	7/29/2016
3	6,000	5/2/2016	5/2/2016	6/30/2016	7/1/2016	7/29/2016	8/1/2016	8/31/2016	9/1/2016	9/30/2016	9/30/2016
4	8,000	7/1/2016	7/1/2016	8/31/2016	9/1/2016	9/30/2016	10/3/2016	10/31/2016	11/1/2016	11/30/2016	11/30/2016
5	10,000	9/1/2016	9/1/2016	10/31/2016	11/1/2016	11/30/2016	12/1/2016	12/30/2016	1/2/2017	1/31/2017	1/31/2017
6	12,000	11/1/2016	11/1/2016	12/30/2016	1/2/2017	1/31/2017	2/1/2017	2/28/2017	3/1/2017	3/31/2017	3/31/2017
7	14,000	1/2/2017	1/2/2017	2/28/2017	3/1/2017	3/31/2017	4/3/2017	4/28/2017	5/1/2017	5/31/2017	5/31/2017
8	16,000	3/1/2017	3/1/2017	4/28/2017	5/1/2017	5/31/2017	6/1/2017	6/30/2017	7/3/2017	7/31/2017	7/31/2017
9	18,000	5/1/2017	5/1/2017	6/30/2017	7/3/2017	7/31/2017	8/1/2017	8/31/2017	9/1/2017	9/29/2017	9/29/2017

12 Month Accelerated Timeframe

Phase	Quantity
Oct-2015	1500
Nov-2015	1500
Dec-2015	1500
Jan-2016	1500
Feb-2016	1500
Mar-2016	1500
Apr-2016	1500
May-2016	1500
Jun-2016	1500
Jul-2016	1500
Aug-2016	1500
Sep-2016	1500

6 Month Accelerated Timeframe

Phase	Quantity
Oct-2015	3000
Nov-2015	3000
Dec-2015	3000
Jan-2016	3000
Feb-2016	3000
Mar-2016	3000

Total 18000

**Exhibit D**  
**Planning, Inspection and Severance Activities**

Section Reference	Activity	SCE Responsibility	City Responsibility
2.2	Provide Buyer with draft phase maps	X	
6.2(a)	Field validation to identify applicable LS-1 Streetlights	X	
6.2(a)	Identify/Confirm Points of Demarcation (POD)	X	
6.2(a)	Confirm every pole in the City has been accounted for	X	
6.2(a)	Confirm actual phase maps and transition timelines	X	X
6.2(a)	Communicate with the Buyer any additional relocation/reconfiguration costs (assets and operational)	X	
6.2(b)	Buyer accepts or refuses any additional relocation/reconfiguration costs (assets and operational)- please see above		X
6.2 (c)	Update the inventory (if applicable)	X	
3.1(c)	Update the Purchase Price for the Final Phase (as applicable if pole count varies by 5% or more)	X	
6.2(a)	Provide revised maps and inventory list to Buyer (if applicable)	X	
6.2(b)	Buyer signs off on updated inventory list (if applicable)		X
6.2(d)	Bill of Sale to Buyer for current Phase	X	
6.2(a)	SCE Pole tag removal	X	
6.2(a)	Buyer installs its pole tags		X
6.2(e)	Buyer payment		X
6.4(a)	Convert from LS-1 to LS-2B rate at completion of each Phase	X	
6.4(b)	Provide updated LS-2 B maps and inventory list to Buyer	X	
6.4(c)	Buyer confirms rate change has gone into effect		X
6.4(d)	Phase is complete	X	X

Exhibit D



**Exhibit E**  
**Communications Equipment**

36PR0028	34 40 29 N	118 17 19 W	C/O AVE K & 90 ST W.	AVE K N/S 30' E/O C/L 90TH ST W
36PR0036	34 41 27 N	118 05 58 W		PINE CT N/W COR 17TH ST E
36PR0047	34 41 44 N	118 08 17 W	IN ALLEY	BEECH AVE E/S 245' S/O MILLING ST
36PR0048	34 40 22 N	118 09 02 W	N/S COMMERCE CTR DR 755' W/O 10TH ST W	N/S COMMERCE CTR DR 755' W/O 10TH ST W
36PR7103	34 38 58 N	118 14 10 W		S/S 60TH ST W & 45' N/O AVE L-12
36PR7107	34 39 44 N	118 04 37 W		30TH ST E W/S 567FT N/O AVE L
36PR7110	34 41 50 N	118 04 45 W	F/O SIGN "TIERRA BONITA PARK" NEXT TO FIRE HYDRANT	LANCASTER BLVD N/S, 697' E/O 27TH ST EAST
36PR7112	34 41 23 N	118 09 40 W	17TH ST W E/S 25' & 68' N/O AVE J	17TH ST W E/S 25' & 68' N/O AVE J
36PR7113	34 41 04 N	118 08 59 W		W/S 10TH ST W N/O AVE J-5

Exhibit E

**Exhibit F**  
**Pole License Attachment Agreement**

Exhibit F

**NO-FEE  
LIGHT POLE LICENSE AGREEMENT  
FOR WIRELESS ATTACHMENT  
BETWEEN  
THE CITY OF LANCASTER  
AND  
SOUTHERN CALIFORNIA EDISON**

This No-Fee Light Pole License Agreement (“Agreement”) is made as of \_\_\_\_\_, 2015 (“Effective Date”), by and between the City Of Lancaster, a Municipal Corporation (“Licensor”), and Southern California Edison Company, a California corporation (“Licensee”), individually “Party” and collectively “Parties.”

Licensor herein provides Licensee a no-fee license to attach certain wireless communication equipment to light poles that are owned by Licensor and used by Licensor to provide street lighting services to customers.

The terms and conditions of this Agreement are as follows:

**1. DEFINITIONS**

Terms with the initial letter or letters capitalized, whether in the singular or plural, shall have the following meanings:

- a. Applicable Requirement: Any law, code, regulation, ordinance, statute or requirement of a governmental or quasi-governmental authority, regulatory agency or any other similar authority with jurisdiction or control over access to or use of the Light Pole, an Attachment, Work on a Light Pole or operation of an Attachment...
- b. Attachment: A wireless communicating device and all of its associated ancillary equipment which are owned by Licensee and serve the purpose(s) presently served by those fixtures identified in Exhibit A hereto.
- c. Custom Light Pole: A specialized light pole, owned and installed by Licensor and paid for by Licensee, for the purposes of accommodating Licensee’s Attachment and for Licensor to provide street lighting services.
- d. Equipment: All ancillary equipment owned and utilized by Licensee in connection with an Attachment, and installed on third party property.
- e. Light Pole: A Licensor Light Pole or a Custom Light Pole.
- f. Licensor Light Pole: A standard light pole owned by Licensor used to provide street lighting services.
- g. Work: Any work performed by Licensee relating to an Attachment, including the installation, repair, removal or replacement of the Attachment or Equipment.

## **2. TERM**

The initial term of this Agreement shall be ten (10) years, with automatic renewal terms of ten (10) years each, provided, however, that either Party may terminate this Agreement by written notice to the other Party given not more than one year and not less than ninety (90) days prior to the expiration of the initial term or any succeeding term ("Termination Notice"). Upon the issuance of a Termination Notice by either Party, only Licensee's rights to install Future Attachments as described in this Agreement shall terminate, but Licensee's rights under this Agreement with regard to then-installed Attachments and Upgraded Attachments shall not terminate.

## **3. ATTACHMENTS**

The installed Attachments are listed in Exhibit A hereto. During the term hereof, Licensee shall have the right (i) to upgrade Attachments to new technology that serves the same purpose as the Attachments listed on Exhibit A ("Upgraded Attachments"), and (ii) to install new Attachments that are not listed in Exhibit A ("Future Attachments"), so long as such Upgraded Attachments and Future Attachments serve the same purpose as the Attachments listed on Exhibit A and do not interfere in any manner with any then-existing Licensor equipment. All installations of Upgraded Attachments and Future Attachments shall be performed in a good and workmanlike manner and Licensee shall indemnify, defend and hold harmless Licensor, its elected officials, staff, directors, invitees, employees, agents, contractors, successors and assigns, from any and all costs, liabilities, claims and expenses, including those from death or injury to any person or from a loss or damage to any real, personal or other property, to the extent arising out of or pertaining to any act or failure to act by any of Licensee's employees, agents, or contractors in relation to the Upgraded Attachments and Future Attachments.

## **4. LICENSEE'S ATTACHMENT RIGHTS**

Licensee shall have a no-fee license to use the Attachment for wireless communications, and to maintain, remove, repair or replace the Attachment, as described herein (collectively, the "Attachment Rights"). All costs and expenses incurred by Licensee as a result of Licensee's exercise of its Attachment rights hereunder shall be the sole responsibility of Licensee.

## **5. CONDITIONS AND RESTRICTIONS ON LICENSE RIGHTS**

In addition to the other terms and conditions of this Agreement, Licensee's exercise of its Attachment Rights shall be subject to the following conditions and restrictions:

- a. Licensee shall operate its Attachment for wireless communication equipment.
- b. Licensee shall be solely responsible for separately obtaining any electric utility or other services required for operation of its Attachment, if secondary power from the streetlight is inaccessible.
- c. Licensor shall not be required to modify the Light Pole to accommodate use by the Licensee.
- d. Licensor shall not install any Equipment for the Licensee, Licensee shall be solely responsible for the installation of any Equipment.

e. Subject to paragraph 5.f. below, Licensee's rights regarding Upgraded Attachments and/or Future Attachments shall not interfere with Licensor's municipal operations. If a new Attachment made under this Agreement interferes with Licensor's ability to use a Light Pole, then Licensor will inform the Licensee and Licensee shall remedy the interference in a reasonably prompt period of time after receiving notice of the interference from Licensor.

f. Licensor shall not install any devices, and Licensor shall not allow third parties to install any devices that interfere with Licensee's Attachment. If Licensor interferes with Licensee's wireless communication, then Licensee will inform the Licensor and Licensor shall immediately remedy the interference.

g. Prior to commencing any work or activity affecting any Light Pole, Licensee shall provide Licensor with not less than three (3) business days prior notice.

## **6. ATTACHMENT**

a. Licensee shall be allowed to install Future Attachments at additional locations under this Agreement upon reasonable prior notice to Licensor; provided, however, Licensor may disapprove proposed Future Attachments in the event Licensor reasonably determines the proposed Future Attachments may interfere with any municipal operations or Licensor equipment. Licensee shall provide Licensor the structure number and address or location description where the Attachment will be installed.

b. Licensee shall use commercially reasonable efforts to perform any Work in a manner which will not cause any interruption of Licensor's street-lighting services or other equipment.

c. All Work shall be performed at Licensee's sole risk and cost and shall be performed in a good and workmanlike manner and Licensee shall indemnify, defend and hold harmless Licensor, its elected officials, staff, directors, invitees, employees, agents, contractors, successors and assigns, from any and all costs, liabilities, claims and expenses, including those from death or injury to any person or from a loss or damage to any real, personal or other property, to the extent arising out of or pertaining to any Work, or any act or failure to act by any of Licensee's employees, agents, or contractors in relation to the Upgraded Attachments and Future Attachments.

d. The performance of any Work shall comply with the requirements for such Work as contained in applicable industry standards, specific work requirements imposed by Licensor or a third party, or in any Applicable Requirements associated with the Work.

e. Upon written notification from Licensor or a government authority that the Attachment or any Equipment is out of compliance with any Applicable Requirement or is unsafe or hazardous, Licensee shall promptly take whatever actions are necessary to come into full compliance with such Applicable Requirements or to remedy the unsafe or hazardous condition, as the case may be. Notwithstanding any other provision of this Agreement, if at any time, in Licensor's sole judgment, an unsafe or dangerous condition exists, Licensor shall immediately notify Licensee and Licensee shall have twenty-four (24) hours from such notice to remedy the unsafe or dangerous condition. If Licensee does not remedy the unsafe or dangerous condition within such twenty-four (24) hour period, then Licensor may correct such condition and notify Licensee of such correction within three (3) business

days. If at any time, in Licensor's sole judgment, an imminent threat to human life or safety exists, Licensor may correct such condition and notify Licensee of such correction within three (3) business days.

f. Licensee shall not drill, burn or punch any holes in a Light Pole, without first obtaining written consent from Licensor, which consent shall not be unreasonably withheld. Licensee shall reimburse Licensor for any damage to any Licensor Light Pole in connection with the use, repair, restoration or replacement of a Light Pole by Licensee.

g. Licensee shall follow Licensor's established procedures to request Licensor to replace a Licensor Light Pole with a Custom Light Pole, and Licensee shall be solely responsible for all costs of such request and any resulting replacement.

## **7. REMOVAL OF AN ATTACHMENT FROM A LIGHT POLE**

a. Licensee may at any time remove an Attachment from any Light Pole .

b. Nothing in this Agreement shall be construed to limit Licensor's rights, at any time, to remove a Light Pole from service or to require Licensee to remove its Attachment from a Light Pole that is being removed from service. In the event Licensor requires Licensee to remove its Attachment from a Light Pole that is being removed from service, then Licensor will notify Licensee ninety (90) days prior to the removal and use reasonable efforts to supply Licensee with an alternative Light Pole for such Attachment. Licensee shall complete removal of its Attachment within ninety (90) days of Licensor's request to do so.

c. Whenever Licensee removes an Attachment, Licensee shall restore the Light Pole to its original condition, reasonable wear and tear excepted, except where Licensor notifies Licensee that restoration is unnecessary because the Light Pole is being removed from service or Licensor agrees otherwise.

d. When a Light Pole that contains an existing Attachment is relocated or replaced by Licensor, and there is a suitable other location for a new Light Pole or an existing Light Pole which could be used by Licensee for its Attachment, then Licensor and the Licensee may agree that Licensee may so use the other location or Light Pole and amend Exhibit A to reflect the transfer of Licensee's Attachment Rights. Except in emergency situations, Licensor will notify Licensee ninety (90) days prior to relocation or replacement of Light Pole.

## **8. RISK OF LOSS; RESTORATION OR REPAIR OF LIGHT POLE**

In the event a Light Pole is damaged or destroyed, restoration of Licensor's use of a Light Pole shall take priority over Licensee's restoration of its use; provided, however, that Licensor shall not unreasonably delay Licensee's opportunity to restore the use of its Attachment. Licensor shall permit Licensee to make repairs to restore use of the Attachment, as long as such restoration efforts do not interfere with Licensor's restoration activities. In addition, Licensee shall fully cooperate with Licensor if Licensor performs any repairs or other work on the Light Pole, which work may require a temporary shut down of Licensee's Attachment. The Licensor shall notify the Licensee at least 48 hours prior to planned repairs that will require a shut down of the Licensee's Attachment.

## **9. REGULATORY MATTERS**

To the extent that this Agreement is subject to the jurisdiction of any regulatory authority, Licensor and Licensee acknowledge that this Agreement may be subject to such changes, modifications or termination as that regulatory authority may direct from time to time in the exercise of its jurisdiction.

## **10. INDEMNIFICATION AND LIMITATION OF LIABILITY**

a. Licensee shall indemnify, defend and hold harmless Licensor, its elected officials, staff, directors, invitees, employees, agents, contractors, successors and assigns, from any and all costs, liabilities, claims and expenses, including those from death or injury to any person or from a loss or damage to any real, personal or other property, to the extent arising from any negligent act or omission by Licensee, or by any of Licensee's employees, agents, or contractors in performing this Agreement.

b. Licensee shall promptly notify Licensor of the existence of any matters to which Licensee's indemnity obligations apply. Upon demand by Licensor, Licensee shall defend at its own expense with mutually acceptable counsel any such matter; provided that Licensor shall at all times also have the right to fully participate in the defense and consent to any settlement or compromise.

c. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING LOSS OF THE OTHER PARTY'S CUSTOMERS OR GOOD WILL, OR LOST REVENUE OR PROFITS), FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, ARISING IN ANY MANNER FROM THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS HEREUNDER, REGARDLESS OF THE CAUSE OR FORESEEABILITY THEREOF.

## **11. TITLE AND RISK OF LOSS**

a. Licensor shall have and retain sole and exclusive ownership of all Light Poles, and Licensor's ownership shall not be affected by Licensee's Attachment to the Light Pole.

b. Except as otherwise provided for herein, Licensee shall retain its ownership of the Attachment and any Equipment at all times.

## **12. INSURANCE**

At all times during the term of this Agreement, Licensee shall maintain and shall require its subcontractors that perform any Work pursuant to this Agreement to maintain insurance coverage as described below:

a. Worker's Compensation Insurance with statutory limits, in accordance with the laws of the State of California, and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000). Licensee shall require its insurer to waive all rights of subrogation against Licensor, its officers, agents and employees.

b. Comprehensive Bodily Injury and Property Damage Liability Insurance, including owner's and contractor's protective liability, product/completed operations liability, contractual liability

and automobile liability, with a combined single limit of not less than two million dollars (\$2,000,000) for each occurrence. Such insurance shall (i) name Licensor, its officers, agents, and employees as additional insureds, but only for Licensee's acts or omissions; (ii) be primary for all purposes; and (iii) contain standard cross-liability provisions.

Written proof of compliance with the requirements of this Section, consisting of Certificates of Insurance and a copy of the Additional Insured Endorsement to Licensee's insurance policy(s), in a form acceptable to Licensor, shall be provided to and approved by Licensor prior to any Attachment or the installation of any Equipment upon an Light Pole and prior to the expiration of each policy year thereafter. The Certificates of Insurance shall provide that this insurance shall not be terminated, canceled or reduced except on thirty days' prior written notice to Licensor. Failure to provide and maintain such insurance shall constitute a default under this Agreement.

### **13. REMEDIES IN THE EVENT OF DEFAULT**

If either Party fails to comply with a material term or condition of this Agreement, the non-breaching party shall provide written notice to the defaulting party of such non-compliance. The breaching party shall then have thirty (30) days (except in the case of health and safety issues [or graffiti], which shall require cure within forty-eight (48) hours) from receipt of such notice to reasonably cure such non-compliance. If such a cure is not completed within the thirty (30) day period (or 48 hour period as provided above), or if a cure is not possible within such period and the breaching party has not taken steps to effect such cure, then the non-breaching party may pursue its legal remedies relating to such non-compliance.

### **14. DISPUTE RESOLUTION**

a. Except as may otherwise be set forth expressly herein, all disputes arising under this Agreement shall be resolved as set forth in this Section 14. To be eligible for resolution under this Section 14, all disputes concerning payments must be invoked within sixty (60) business days of the payment due date.

b. Licensor and Licensee shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between an authorized representative of each of the Parties. Any dispute which cannot be resolved between the authorized representative shall be referred to an officer or designee of Licensee and the City Council of Licensor. Licensor or Licensee shall give the other Party written notice of any dispute following expiration of the applicable cure period pursuant to Section 13. Within twenty (20) days after delivery of such notice, the designated parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, the Parties will consider and decide whether the dispute should be submitted to JAMS, or its successor, for mediation.

c. All negotiations and any mediation conducted pursuant to this Section 18 shall be confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, which section is incorporated in this Agreement by reference.



d. Notwithstanding the foregoing provisions, either Licensor or Licensee may seek immediate equitable relief, a preliminary injunction or other provisional judicial remedy.

e. Licensor and Licensee shall continue to perform their obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

f. If Licensor and Licensee, after good faith efforts to resolve a dispute under the terms of this Agreement (as provided in Subpart b above), cannot agree to a resolution of the dispute, either party may pursue whatever legal remedies may be available to such party, at law or in equity, before a court of competent jurisdiction and with venue in Los Angeles County, California.

## 15. TAXES AND LIENS

Licensee shall pay when due any and all taxes or assessment resulting from any Attachment on any Light Pole including, but not limited to, special assessments and governmental fees of any kind whatsoever which may be levied or assessed upon any personal property which Licensee has caused to be placed or maintained upon Licensor's facilities, or against Licensee's business and shall keep Licensor's property and facilities, including any Light Poles, free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use, occupancy, or maintenance of Licensor's facilities or property by Licensee or by any person claiming under Licensee. It is further agreed that in the event Licensee fails to pay the above-mentioned taxes, assessments, or liens when due, Licensor shall have the right to pay the same and invoice Licensee for the amount thereof and Licensee shall pay the same upon demand together with interest at the maximum rate allowed by law from the date of such expenditure by Licensor.

## 16. NOTICES

Notices hereunder must be in writing and transmitted by United States mail or by personal delivery to Licensor. Such notices shall be deemed given: (a) upon receipt in the case of personal delivery or confirmed facsimile transmittal; (b) two (2) days after it is sent by certified mail, with a return receipt requested, (c) three (3) days after deposit in the mail, or the next day in the event of overnight delivery.

If to Licensor: City of Lancaster  
[Insert address]

Attn:  
Phone:  
Fax:

If to Licensee: Southern California Edison Company  
[Insert address]

Attn:  
Phone:  
Fax:

## 17. DISCLAIMER

LICENSOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER CONCERNING THE SUITABILITY OR CONDITION OF ANY LIGHT POLE. FURTHERMORE, IT IS SPECIFICALLY UNDERSTOOD AND HEREBY ACKNOWLEDGED BY LICENSEE THAT ANY LIGHT POLE MADE AVAILABLE HEREUNDER, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, WILL BE PROVIDED BY LICENSOR ONLY ON AN "AS-IS" BASIS AND WITHOUT ANY WARRANTY BY LICENSOR ABOUT THE CONDITION OF THE LIGHT POLE OR ITS SUITABILITY FOR LICENSEE'S PURPOSES. FURTHER, LICENSEE'S RIGHTS HEREUNDER SHALL BE SUBORDINATE TO LICENSOR'S USE OF THE LIGHT POLE FOR STREET LIGHTING SERVICES.

## 18. GENERAL PROVISIONS

a. California Law. This Agreement, and performance pursuant to it, shall be governed, interpreted, construed, and regulated by the laws of the State of California, without reference to its conflicts of laws provisions.

b. Assignment. Neither Party may assign, transfer, sublease, or sublet any right, obligation, or privilege given to it hereunder without the prior written consent of the other Party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties hereto.

c. Interpretation. The language of each part of this Agreement shall be construed simply and according to its fair meaning, and shall never be construed either for or against either Party, regardless of which Party may have drafted the provision.

d. Nature of Rights. Nothing in this Agreement shall preclude Licensor from granting any third-party permission to use available capacity on a Light Pole in ways that do not interfere with the rights granted to Licensee under this Agreement.

e. Invalidity of Provisions. To the extent that any terms or provisions of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid, (i) such invalidity shall not affect, release or modify any other terms or provisions, and (ii) in lieu of each such provision which is invalid, illegal or unenforceable, there shall be substituted or added as part of this Agreement a legal, valid and enforceable provision which shall be selected to be as similar as possible, in achieving the economic and business objectives of the Parties, to such illegal, invalid or unenforceable provision.

f. Waiver. The failure of either Party to enforce any provision of this Agreement or the waiver thereof in any instance, including but not limited to the right to terminate, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

g. Incorporation Clause. This Agreement, including attached Exhibits, incorporate all the covenants and understandings between Licensor and Licensee regarding the subject matter of this Agreement. No other verbal agreements or understandings exist between the Parties nor shall any be binding upon either Licensor or Licensee unless reduced to writing and signed by the Parties. Any

addition, variation or modification to this or any other Agreement shall be ineffective unless made in writing and signed by the Parties.

h. Radio Frequency Emission (“RFE”) Compliance. Licensee shall be responsible, at its sole cost and expense, for ensuring compliance with all regulations relating to RFE. Licensor will cooperate with Licensee, where possible, to allow Licensee to place required signage on a Light Pole where this is necessary to comply with RFE regulations. In addition, Licensee shall use its best efforts to minimize the RFE impact on health of workers and on future uses of the Light Pole.

i. Exhibits. Exhibits referenced herein are incorporated by said reference. Licensee shall provide any updates of Exhibit A to Licensor within thirty (30) days of Licensor’s written request, delivered pursuant to Section 16 of this Agreement, but not more often than once each calendar quarter. Specifically included as exhibits to this Agreement hereto are:

Exhibit A: List of Installed Attachments

j. Confidentiality. Notwithstanding any language to the contrary in any applicable non-disclosure or confidentiality agreement between the Parties, Licensor may, without the prior consent of the Licensee, provide confidential or proprietary information related to this Agreement to a governmental or regulatory entity that requests such information.

**SIGNATURES**

By signing below, the signatories hereto represent and warrant that they have been duly authorized to sign this Agreement on behalf of the Party for whom they sign.

**CITY OF LANCASTER,  
a Municipal corporation**

**SOUTHERN CALIFORNIA EDISON  
COMPANY, a California corporation**

By: \_\_\_\_\_  
Print  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

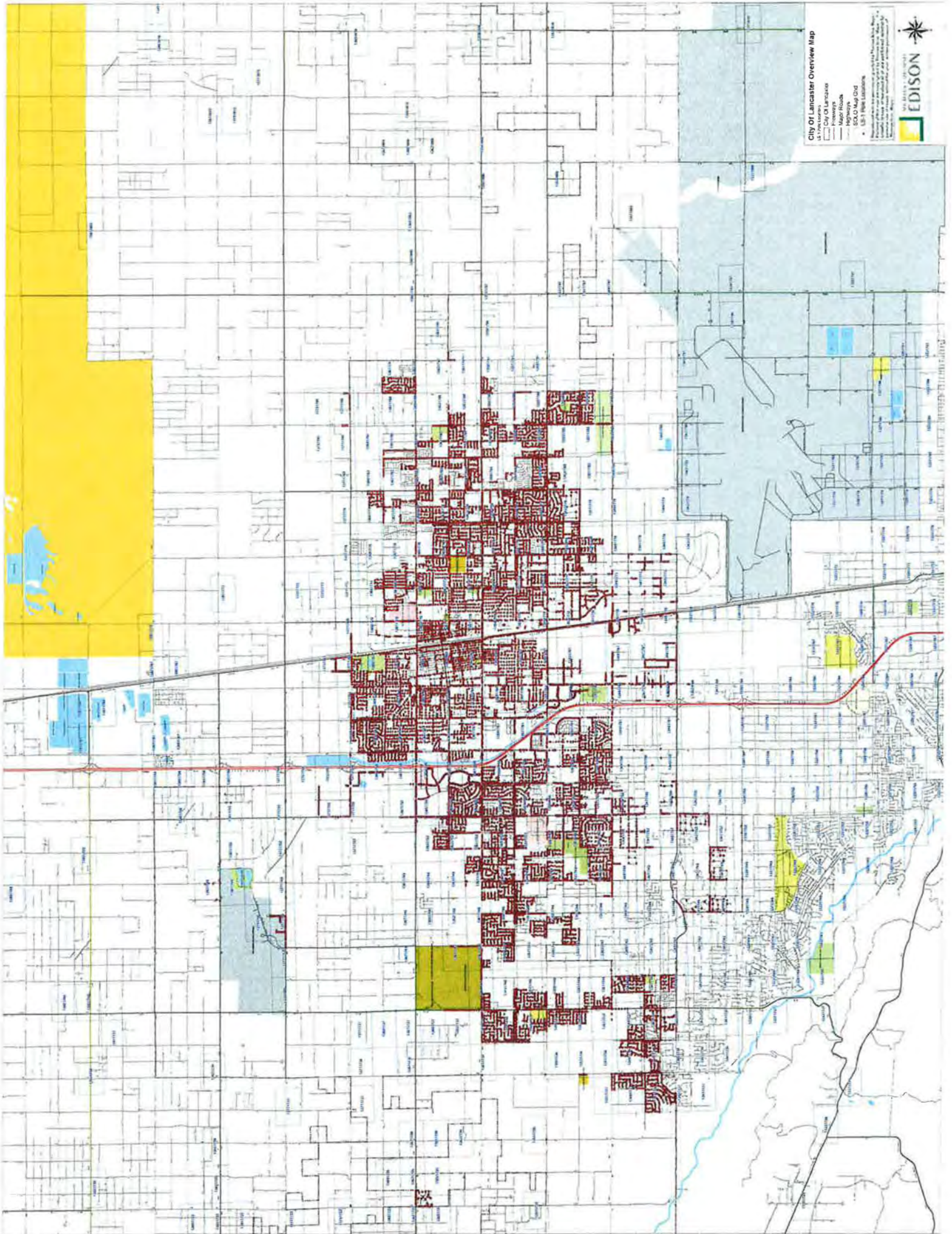
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**List of Attachments**

SmartConnect Installed Devices

NetComm Installed Devices



City of Lancaster Overview Map

- City of Lancaster
- City of Lancaster
- Major Road
- SOCO Map Grid
- US-1 Right-of-Way



EDISON  
The Electric Company of Lancaster, PA  
Lancaster, PA 17303  
717.391.1234  
www.edison.com