

LIGHTING CONTRACT
between
THE CITY OF LONG BEACH ("City")
and
CITY LIGHT & POWER, INC. ("CLP")
24289

THIS LIGHTING CONTRACT (herein "Contract"), dated for reference purposes only on November 21, 1995 is made in duplicate, pursuant to a resolution of the City Council of the City of Long Beach, by and between the CITY OF LONG BEACH, a municipal corporation, (herein "City") and CITY LIGHT & POWER, INC., a Colorado corporation (herein "CLP").

R E C I T A L S:

A. Most of the streets and many of the other public facilities within the City are currently lighted by low pressure sodium vapor lighting with series circuitry. The City has determined that low pressure sodium vapor lighting is less desirable from aesthetic and safety standpoints and that the City is required to pay substantial tariffs to Southern California Edison Company ("SCE") by reason of the existing series circuitry which would not be paid if the lighting were converted to multiple circuitry.

B. The City distributed a request for proposals dated October 18, 1994 requesting proposals for delivery to the City of street and other lighting provided by means of separately metered high pressure sodium vapor luminaires and related equipment and the operation, maintenance and repair of all fixtures and equipment required to provide such lighting. Such request contemplated that the provider would purchase or lease the street lights and lighting equipment now owned by the City and convert the existing equipment as required to deliver the lighting specified in the proposal. Based on proposals received in response to such request, City staff selected CLP to deliver street and other lighting to the City for the price and on the terms and conditions summarized in a letter of understanding executed by the City and CLP on October 16, 1995 ("Letter of Understanding").

C. Concurrently with the execution of this Contract, the City and CLP have entered into the following: (a) an assessment contract (the "Assessment Contract") whereby CLP will (i) conduct an inventory and a condition assessment of the "Street Light System" (as defined in the Assessment Contract) and, at City's option, the "Other Lights" (as defined in the Assessment Contract), and an audit of the energy bills paid by the City to SCE during the last fiscal year to verify the assumptions made by CLP and the City in establishing the costs to be incurred by the City to procure the desired street lighting (and, if applicable, the other lighting) for the City; (ii) prepare a database based on such information to specifically locate and identify all Existing Street Lights (and,

if applicable, the Other Lights) now owned by the City for addition to the City's existing geographical information system ("GIS"); and (iii) prepare detailed drawings, schematics and specifications for the "Conversion" (as hereinafter defined) sufficient for submission to contractors for solicitation of meaningful bids for performance of the Conversion; and (b) a Lease (the "Lease") whereby the City has leased to CLP the Existing Street Lights and the Other Lights now owned by the City, subject to CLP's provision of lighting for the City pursuant to this Contract.

D. The specialized services to be performed under this Contract require unique skills. The City, in selecting CLP, has ascertained that CLP and its employees are qualified, licensed, if so required, and experienced in performing such specialized services.

NOW, THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CLP

1.1 Scope of Services. In compliance with all terms and conditions of this Contract and subject to satisfaction or waiver of the conditions precedent listed in Exhibit "A" attached hereto and incorporated herein ("Conditions Precedent"), CLP shall perform the following (hereinafter collectively referred to as the "services" or "work"):

(a) Faithfully and continuously provide street lighting and other lighting for the City and its residents and guests from both the Existing Street Lights and the Other Lights (the "Existing System"), which Existing Street Lights (and, if the Assessment is expanded to include the Other Lights, the Other Lights) shall be more particularly described in the GIS to be prepared by CLP, prior to the "Effective Date" (as defined in Section 3.2 below) hereof, meeting all of the specifications, system reliability standards and maintenance and operation standards for such lighting described in Exhibit "B" attached hereto and incorporated herein; and

(b) Promptly commencing and diligently pursuing to completion over a term of not more than five (5) years following the Effective Date, a conversion of all or a substantial portion of the Street Light System (and, at City's Option, the Other Lights, subject to agreement with CLP on the additional expense to be incurred to convert some or all of the Other Lights) to separately metered high pressure sodium lighting with multiple circuitry (the "Conversion") in accordance with the description of the Conversion contained in Exhibit "C" attached hereto and incorporated herein; and

(c) Reviewing and auditing on a monthly basis the energy bills received by the City from SCE or other energy provider which relate to the energy supplied to the Existing System as modified by CLP as part of the Conversion (hereinafter referred to as the "Lighting Systems") to assure that the City has been accurately

charged for energy provided to the Lighting Systems, and to approve each such bill for payment by the City; and

(d) Analyzing and proposing to the City recommendations concerning energy monitoring, management and conservation including, without limitation, purchase of energy from alternate sources with the continuing goal of reducing the City's energy costs for the Lighting System.

As a material inducement to the City to enter into this Contract, CLP represents and warrants that CLP is a provider of first class work and services and CLP is experienced in performing the work and services contemplated herein and, in light of such status and experience, CLP covenants that it shall follow the highest professional standards in performing the work and services required hereunder. For purposes of this Contract, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Maintenance of Local Office. Prior to the Effective Date and throughout the term of this Contract, CLP shall continuously occupy and adequately staff an office or offices within the boundaries of the City to (i) perform the complaint response services and supervise the maintenance and operational services more particularly described in Exhibit "B" and (ii) supervise, administer and manage the Conversion.

1.3 Compliance with Law. All products delivered and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time the product is delivered or the service is rendered.

1.4 Licenses, Permits, Fees and Assessments. CLP shall obtain all licenses, permits and approvals as may be required by law for the performance of the obligations of CLP under this Contract. CLP shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for CLP's performance of the services required by this Contract, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder. Notwithstanding the foregoing, the City agrees to waive its right to collect those fees otherwise payable to the City as a condition to issuance of those permits, inspections and/or approvals, if any, required to be obtained by CLP from the City (but not from any other agency) to perform the Conversion.

1.5 Familiarity with Work. By executing this Contract, CLP warrants that CLP (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully

considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Contract.

1.6 Care of Work. CLP shall adopt reasonable methods during the life of the Contract to furnish continuous protection to the Lighting Systems, and the equipment, materials, papers, documents, plans, studies, and other components thereof or relating thereto to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the services and work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both parties shall use reasonable care and diligence to perform their respective obligations under this Contract. Both parties shall act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Contract. Unless hereafter specified, neither party shall be responsible for the services of the other.

1.8 Additional Services.

(a) Special Services.

(i) In the event the City authorizes installation, relocation or removal of lighting or approves the undergrounding of cable, conduit or equipment in connection with a new development or changes in requirements for an existing development, CLP shall perform such work upon execution of an amendment to the Contract. The amendment shall identify the amount to be paid for the work and the additional cost or savings to be charged or credited under the Contract, as applicable, for the maintenance and operation of any additional or changed lighting. CLP and the City agree that the amounts charged by CLP for installation, relocation and removal of lighting shall be reasonably competitive with those charged by third parties and that the changes in costs payable under the Contract shall be based on unit costs charged for maintenance of lighting then subject to the Contract.

(ii) For planning purposes, the City will route copies to CLP of all submissions from City's Department of Planning and Building which will require new installations or relocations of street lights and other lights included in the Lighting Systems. It is understood that CLP will use this information for personnel hiring, materials planning, engineering and inventory for the forthcoming calendar year. CLP will accommodate subsequent changes in the City's estimates in a reasonable manner.

(iii) There will be two (2) types of work orders:

- A. Work orders requesting cost estimates for performing work: These orders authorize CLP to prepare drawings to estimate cost but do not authorize construction. The drawing will be submitted to the City with the cost estimate. The City will furnish to CLP the necessary rights-of-way, easements and permits if the job is to be constructed as specified on the submitted drawings.
- B. Work orders authorizing relocation, removals, etc., which customarily do not require permits, rights of way or easements.

(iv) Work orders authorizing construction shall be accompanied by the necessary permits, rights of way or easements required for the work to be performed. Work orders will be recorded and processed by CLP in the order received unless efficient use of work force dictates another procedure as determined by CLP. Where the City requests expedited treatment of work orders, other street light work may be displaced to the extent reasonably practicable by CLP.

(b) Special Events. CLP shall accommodate the City's requests for temporary take downs, disconnections, installation of banners or other similar activities affecting the Lighting Systems which are associated with City-authorized special events. CLP shall perform the work requested by the City by work order as an accommodation, if the work can be accomplished with existing staff on normal work time. For work requiring overtime or special equipment not readily available, the City will pay to CLP its reasonable out of pocket costs to perform such work, which costs shall be estimated by CLP, in advance, upon City's request.

2.0 COMPENSATION

2.1 Consideration Payable for Services Under Contract. The City will pay to CLP the following consideration for CLP's performance of all services:

(a) Basic Fee. An annual fee ("Basic Fee"), payable in monthly installments, in arrears, as set forth in Exhibit "D" attached hereto and incorporated herein ("Payment Schedule") commencing on the Effective Date, if such date falls on the first day of the month and, if not, then on the first day of the month next succeeding

the Effective Date. The City's obligation to pay the Basic Fee is contingent on the City's annual appropriation of funds for such purpose during each fiscal year of the term hereof.

(b) Energy Costs. The City will pay all energy costs owing to SCE or other energy provider in connection with the Lighting Systems during the term of the Contract subject to CLP's prior review and approval of the accuracy of amounts charged by SCE. All invoices for energy provided to the Lighting Systems ("Energy Bills") shall be billed to the City in care of CLP. CLP shall forward a copy of the invoice to the City upon receipt and advise City within ten (10) days of receipt of CLP's approval of the invoice for payment. If any portion of the Energy Bill is not approved by CLP for payment, the City shall pay the approved portion and CLP shall prepare a written explanation to the energy provider to explain the basis for disapproval of the bill. The City may, at its option, elect to pay the disapproved portion of the Energy Bill under protest. Such election shall not alter CLP's responsibility for identifying and resolving questions and disputes concerning the Energy Bills. No additional consideration shall be payable to CLP for discovering any discrepancies or errors in the Energy Bills or recovering refunds or credits from the energy provider, which services are included in that for which the Basic Fee is paid.

2.2 Consideration for Arrangement of Reduced Rates. If CLP reduces the energy rates which would otherwise be then payable by the City for energy for the Lighting Systems, for any period following the first year of the Contract, through successful negotiations with SCE or by energy wheeling with an alternate energy provider, or if CLP should otherwise be directly responsible for reducing the rates payable by the City for energy for the Lighting Systems during the term of the Contract, then the City shall pay to CLP a sum equal to twenty-five percent (25%) of the savings realized by the City by reason of the reduced energy rate during the period of time such rates would not have otherwise been available to the City ("Rate Savings Fee"). CLP shall provide to the City monthly statements which identify any amounts which CLP determines are payable pursuant to this Section 2.2 along with such documentation as the City shall reasonably request. City shall pay amounts owing to CLP within thirty (30) days following receipt of such statement and supporting documentation.

2.3 Tax Reporting. As required by federal and state law, City is obligated to and will report the payment of compensation to CLP on Form 1099-Misc. CLP shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. CLP's Social Security Number or Employer Identification Number is [REDACTED] CLP acknowledges and agrees

that City has no obligation to pay CLP hereunder until CLP provides one of the aforesaid numbers.

3.0 EFFECTIVE DATE; TERM

3.1 Conditions Precedent. The effectiveness of this Contract is subject to satisfaction or waiver of the Conditions Precedent by the party(ies) benefitted thereby, not later than June 1, 1996. Those Conditions Precedent described in Sections 2, 4, 5 and 6 of Exhibit "A" are for the benefit of both the City and CLP. The Conditions Precedent described in Sections 1 and 3 of Exhibit "A" are for the benefit of the City only. CLP shall diligently and timely complete all actions to be performed by it which are described in Exhibit "A". Each party shall provide notice to the other, within fifteen (15) business days of request, of whether the Conditions Precedent established for its benefit have been satisfied or, if not, what actions need to be taken for such approval. Unless otherwise specifically provided, neither CLP nor City shall unreasonably withhold any approvals required for satisfaction of the Conditions Precedent. The term "Satisfaction Notice" shall mean the notice by which either the City or CLP confirms satisfaction of the Conditions Precedent created for its benefit.

3.2 Effective Date; Cancellation of Contract. The term "Effective Date" shall mean the first date when the City and CLP have each executed and delivered to the other the Satisfaction Notice. Notwithstanding anything to the contrary contained in this Contract, if a Satisfaction Notice is not executed and delivered by each party to the other on or before June 1, 1996, this Contract shall automatically terminate on that date and be of no force or effect.

3.3 Time of Essence. Time is of the essence in the performance of this Contract.

3.4 Term. CLP shall provide the lighting and other services provided for hereunder for a term commencing the first day of the calendar month immediately following the Effective Date and continuing for a term expiring twenty-five (25) years thereafter. At the request of either party following the Effective Date, the City and CLP shall execute a document captioned "Term", in the form of Exhibit "E" attached hereto and incorporated herein, which states the Effective Date and the commencement date and the expiration date of the term of this Contract.

3.5 Force Majeure. Except as stated in Article 4, the time for performance of specific services rendered pursuant to this Contract (but not the term of the Contract or the outside date to complete the Conversion) shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of CLP, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires,

earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if CLP shall, within ten (10) days of the commencement of such delay, notify the Contract Officer of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay and reasonably extend the time for performing the services for the period of the enforced delay when and if in the reasonable judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Contract. In no event shall CLP be entitled to recover damages against the City for any delay in the performance of this Contract, however caused, CLP's sole remedy being extension of the time for performance pursuant to this Section.

4.0 PERFORMANCE OF CONVERSION

4.1 Preparation of Development Plans. A preliminary description of the Conversion is set forth in Exhibit "C". During performance of the assessment identified in the Assessment Contract, CLP shall prepare and submit to the City the "Development Plans" (as defined in Section 3 of Exhibit "A"). The Development Plans shall be sufficiently specific to allow CLP to procure bids from contractors that provide a reliable measure of the cost of completing the Conversion.

4.2 City Approval of Development Plans. The City shall notify CLP of its approval of the Development Plans or of those changes or additions required to be made to the Development Plans to make the Development Plans acceptable to the City, within forty-five (45) days following receipt of the completed set of Development Plans. CLP shall incorporate all changes reasonably requested by the City as a condition to its approval and resubmit the Development Plans to the City within no more than fifteen (15) days after receipt of the City's notice of required corrections. The City will cooperate in requesting its Department of Planning and Building to concurrently review the plans and specifications to the extent required for issuance of required City permits and approvals and to use reasonable efforts to expedite the processing time as to those permits required for commencement of the Conversion. Fees otherwise payable to the City (but not any other agency) shall be waived.

4.3 Performance of Conversion. As material consideration for the City's entering into this Contract with CLP, CLP shall commence the Conversion promptly following the Effective Date and shall complete the Conversion as soon thereafter as possible, but in no event later than the fifth (5th) anniversary of the Effective Date (which completion date shall not be extended by force majeure causes or for any other cause.) The Conversion shall be performed in strict compliance with the approved Development Plans and the terms of the Lease.

4.4 Certificate of Completion. Upon completion of the Conversion, the City shall furnish to CLP, at CLP's request, a certificate of completion ("Certificate of Completion"). The Certificate of Completion shall state that it constitutes determination of satisfactory completion of the Conversion required by the terms of this Contract. The City shall not unreasonably withhold a Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion within thirty (30) days after notice from CLP, or any Qualified Lienholder, the City shall provide a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the actions CLP must take to obtain a Certificate of Completion. If the reason for such refusal is confined to minor so-called "punchlist" items, the City will issue its Certificate of Completion upon the posting of a bond in an amount representing 150% of the fair value of the work not yet completed or other assurance reasonably satisfactory to the City. A Certificate of Completion is not a notice of completion as referred to in California Civil Code §3093.

5.0 COORDINATION OF WORK

5.1 Representative of CLP. The following principals of CLP are hereby designated as being the principals and representatives of CLP authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Bill Simmons

Martin St. Peter

Jim Mosier

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter this Contract. Therefore, the foregoing principals shall be responsible during the term of this Contract for directing all activities of CLP and devoting sufficient time to personally supervise the services hereunder. For purposes of this Contract, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by CLP without the express written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Engineer or his designee. It shall be CLP's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and CLP shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer, unless City Council approval is required by law.

5.3 Independent CLP. In performing services hereunder, CLP is and shall act as an independent contractor and not an employee, representative, or agent of City. CLP shall have control of CLP's work and the manner in which it is performed. CLP shall be free to contract for similar services to be performed for others during this Contract provided, however, that CLP acts in accordance with Section 6.3 of this Contract. CLP acknowledges and agrees that (a) City will not withhold taxes of any kind from CLP's compensation, (b) City will not secure workers' compensation or pay unemployment insurance to, for or on CLP's behalf, and (c) City will not provide and CLP is not entitled to any of the usual and customary rights, benefits or privileges of City employees. CLP expressly warrants that neither CLP nor any of CLP's employees or agents shall represent themselves to be employees or agents of City.

6.0 PROHIBITION AGAINST ASSIGNMENT

6.1 Prohibition on Transfer. This Contract contemplates the personal services of CLP and CLP's employees, and the parties acknowledge that a substantial inducement to City for entering this Contract was and is the professional reputation and competence of CLP and CLP's employees. CLP shall not assign its rights or delegate its duties hereunder, or any interest herein, or any portion hereof (hereinafter "transfer") except in those limited circumstances specifically described in this Article 6. In no event may the rights of CLP hereunder be held by a person or entity that is not the tenant under the Lease.

6.2 Transfers of Underlying Ownership. So long as CLP is a corporation which, under the then current laws of California, is not deemed a public corporation, or is a non-incorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) shall be deemed a transfer within the meaning and provisions of this Section 6.2, provided, however, that a transfer or assignment of stock in CLP shall not be deemed to be a transfer within the meaning of this Article VI as long as William F. Simmons continues to own at least fifty-one percent (51%) or more of CLP's issued and outstanding stock after such transfer or assignment; and further provided that a transfer or assignment of stock in CLP which occurs as a result of a death of any shareholder of CLP shall not be deemed to be a transfer within the meaning and provisions of this Article VI. Notwithstanding the foregoing, CLP shall have the right, without the City's consent, to assign this Contract to (a) any corporation which owns 100% of CLP's stock; (b) any corporation in which CLP owns 100% of the stock thereof; (c) any company which directly or indirectly has a controlling interest in CLP which is at least a 51% interest or in which CLP has a controlling interest which is at least a 51% interest; (d) a corporation which succeeds to the assets or business of CLP's parent as a result of merger or consolidation; (e) a corporation or

other business entity acquiring all or substantially all of CLP's assets or capital stock; provided, in each instance, (i) CLP's rights under the Lease shall have been concurrently assigned to such assignee and its duties delegated to such assignee; (ii) CLP shall not be in default under this Contract; (iii) CLP shall give the City at least thirty (30) days' prior notice of said transfer; (iv) the assignee shall furnish to City, at least thirty (30) days prior to the transfer, a written instrument, reasonably satisfactory to the City, by which such assignee assumes and agrees to perform all covenants and conditions of CLP contained in this Contract; and (v) in the event of an assignment to a parent or subsidiary entity and in the event of an assignment to a company acquiring all or substantially all of the assets or capital stock of CLP, the assignee has a net worth (in 1995 dollars) equal to or greater than the net worth of CLP at the time CLP entered into this Contract. Any transfer not specifically authorized hereunder shall be void, shall constitute a material breach of this Contract, and shall, at the option of the City, terminate this Contract. Neither this Contract nor any interest therein shall be transferable as to the interest of CLP by operation of law.

6.3 Conditions to Permitted Transfers. Any transfer shall be subject to all of the terms and conditions of this Contract. A transfer shall not release CLP from liability for the continued performance of the terms, covenants and provisions on the part of CLP to be kept and performed, and the transfer documents shall so provide. Thereafter, the City and the transferee may modify, amend, change or supplement this Contract without notice to or consent of CLP and without releasing CLP and its successors from its liabilities and obligations under this Contract, which liabilities and obligations shall remain in full force and effect and CLP shall thereafter be liable to perform the obligations of CLP under this Contract, as so modified, amended, changed, or supplemented.

6.4 Right to Encumber. Notwithstanding the prohibitions on transfer provided above, nothing in this Contract shall restrict CLP from collaterally assigning to a "Qualified Lienholder" (as hereinafter defined) the right to receive the "Assignable Portion" (as hereinafter defined) of the consideration payable to CLP under this Contract. The collateral assignment shall be evidenced by a security agreement, collateral assignment or other appropriate instrument (the "Encumbrance") in favor of a Qualified Lienholder provided, however, that (a) no more than one (1) Qualified Lienholder shall be permitted to have an Encumbrance on the Contract at any one time; and (b) a "Leasehold Mortgage" (as defined in the Lease) must be concurrently created and maintained in favor of the Qualified Lienholder in CLP's interest in the Lease prior to issuance of the Certificate of Completion for the Conversion.

6.5 Qualified Lienholder Defined. As used in this Contract, the term "Qualified Lienholder" shall mean any institutional lender which is now or in the future the holder and owner of the debt secured by a Contract or any other lender which

has been approved in advance by the City, which approval will not be unreasonably withheld.

6.6 Assignable Portion Defined. As used in this Contract, the "Assignable Portion" shall mean that portion of the Basic Fee listed in Exhibit "D" as the "Assignable Portion".

6.7 Consent of Qualified Lienholder. This Contract may not be terminated, surrendered or amended, nor may any provisions hereof be waived or deferred by the City or CLP, without the prior written consent of any Qualified Lienholder which has requested notice in accordance with Section 6.8, except as otherwise provided in Section 6.9.

6.8 Notice to Qualified Lienholder. After the execution of this Contract, the City shall send to any Qualified Lienholder a copy of all notices sent by the City to CLP affecting or pertaining to the Contract. No notice from the City to CLP shall be effective unless and until a copy has been delivered by the City to any such Qualified Lienholder in accordance with the terms hereof. However, the City shall have no duty to send a copy of any notice to any Qualified Lienholder which does not by notice to the City request such notice and specify the address to which copies of same are to be sent pursuant to this Section 6.8. Any Qualified Lienholder's address for receipt of notices may be changed by notice to the City.

6.9 Termination and Other Remedies. Notwithstanding anything to the contrary in this Contract, the following shall apply:

(a) The City may terminate this Contract or exercise any other remedies available to the City hereunder and at law and in equity because of a default hereunder, only after the City has sent to any Qualified Lienholder a copy of the notice delivered to CLP pursuant to the terms hereof (or within a reasonable period of time following the occurrence of such default, if CLP is not entitled to receive notice thereof hereunder), specifying such default, and (a) if such default is a failure by CLP to pay any monies to the City or to any other party as required hereunder, any Qualified Lienholder fails to cure such default within thirty (30) days after the expiration of CLP's cure period; or (b) if such default is an act or omission other than CLP's failure to pay monies to the City or to any other party as required hereunder, any Qualified Lienholder fails to cure such default within thirty (30) days after the expiration of CLP's cure period for the work of curing such default. In the event such default is not susceptible to being cured by any Qualified Lienholder without such Qualified Lienholder obtaining possession of the "Premises" (as defined in the Lease) pursuant to the appointment of a receiver or foreclosure of its Leasehold Mortgage, any such Qualified Lienholder commencing within thirty (30) days after the expiration of CLP's cure period and thereafter diligently pursuing to completion proceedings to obtain possession of the Premises and/or to

foreclose the Leasehold Mortgage shall be deemed to satisfy the foregoing requirement that such Qualified Lienholder commence and carry to completion the curing of such default; provided that such Qualified Lienholder (i) commences, within thirty (30) days after obtaining such possession or such title, the curing of such default(s); (ii) proceeds diligently and in good faith to complete the cure of such default(s); and (iii) continues to pay all monetary obligations hereunder and under the Lease;

(b) If and only if the Conversion is fully completed as evidenced by issuance of the Certificate of Completion, the City agrees that notwithstanding CLP's continuing failure to perform its other obligations under this Contract and/or the Lease, the Assignable Portion of the Contract will be payable to the Qualified Lienholder and its designated assigns, upon written request and authorization of CLP to do so, or upon presentation to the City of satisfactory evidence of foreclosure by the Qualified Lienholder of its Encumbrance of this Contract; provided, however, that the City reserves the right to terminate all other payments to CLP under the Contract and to terminate the Lease and CLP's right to possession of the Premises under the Lease in the event that either CLP's default under the Lease and/or CLP's default under the Contract is not cured by CLP or by the Qualified Lienholder prior to expiration of any applicable grace periods granted to CLP and/or Qualified Lienholder under the Lease or Contract, as applicable, following City's delivery of notice of such default. In addition, if the Conversion is completed and CLP defaults, the City can elect not to accept the cure by a Qualified Lienholder or its successors or assigns in interest of CLP's default and/or may elect to cancel the Contract and the Lease, notwithstanding the prior cure of a default by a Qualified Lienholder or its successor or assign in interest, so long as the City reaffirms its continuing obligation to pay the Assignable Portion (exclusive of the Rate Savings Fee) to such Qualified Lienholder for the balance of the original term of the Contract.

(c) If the City terminates the Contract following completion of the Conversion, the City shall have the ongoing right to terminate its obligations to pay the Assignable Portion of the Basic Fee to a Qualified Lienholder by tendering a sum equal to the total remaining payments of the Assignable Portion of the Basic Fee for the balance of the original Term, discounted by the rate then published by the Wall Street Journal or comparable successor publication as the "Bank prime rate" plus two percent (2%).

6.10 Right to Cure. Any Qualified Lienholder shall have the right, but not the obligation, to cure any default under this Contract in CLP's performance of the Conversion, and the City shall accept such performance by or at the insistence of any such Qualified Lienholder as if the same had been made by CLP.

6.11 Obligations of Qualified Lienholder in Possession. No Qualified Lienholder shall have any personal liability for performance of CLP's obligations under this Contract unless and

until such Qualified Lienholder acquires title to CLP's leasehold estate or assumes possession of the Premises whereupon the Qualified Lienholder shall be obligated to perform all of CLP's obligations hereunder unless and until such right of possession is surrendered to the City and the Lease is terminated.

6.12 Designees and Nominees. All references in this Contract to a Qualified Lienholder shall be construed to also refer to any such Qualified Lienholder's designee or nominee.

7. DEFAULT

7.1 Events of Default. The occurrence of any of the following events shall constitute a default by CLP:

(a) Failure to pay any sum within the times herein provided where such failure continues for a period of ten (10) days after the City's delivery of notice of default by CLP; or

(b) Failure of the tenant under the Lease to perform its obligations under the Lease beyond the expiration of any notice or cure periods provided to the tenant thereunder; or

(c) Failure to perform any other provision of this Contract to be performed by CLP if the failure to perform is not cured within thirty (30) days after CLP receives written notice thereof from the City. In the event that such default cannot reasonably be cured within thirty (30) days, CLP shall not be in default of this Contract if CLP commences to cure the default within such thirty (30) day period and diligently and in good faith continues to cure the default until completion, provided the same is capable of being cured by CLP; or

(d) Any attempted transfer contrary to the provisions of Article 6 above; or

(e) Failure to procure and maintain insurance in accordance with the terms of Section 9.1 and pay all premiums, fees and charges for the purpose of procuring and maintaining such insurance, where such failure continues for a period of twenty (20) days after CLP receives notice thereof from the City; or

(f) The subjection of any right or interest of CLP in this Contract to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days; provided that the foreclosure of any Encumbrance shall not be construed as a default within the meaning of this Section 7.1(f); or

(g) CLP shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect; or

(h) CLP shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Contract; or

(i) CLP shall file an answer admitting insolvency or inability to pay its debts; or within sixty (60) days after the filing against CLP of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed; or a trustee or receiver shall be appointed for CLP or for all or the major part of CLP's property or the Contract, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of CLP's property or the Contract in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of CLP, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days.

7.2 City Remedies; Right to Cure. If CLP shall have failed to cure a default by CLP after expiration of the applicable time for cure of a particular default, the City may, at its election, but without obligation therefor, subject to Article 6 hereof, pursue all remedies provided at law or in equity for breach of the Contract, including, without limitation, the termination of this Contract.

7.3 Self-Help. As material consideration for the City's willingness to enter this Contract, CLP acknowledges and agrees that the City has reserved the right under the Lease to enter the Premises at any time to inspect the Premises and to cure an alleged default by CLP under this Contract, regardless of whether CLP disagrees with the City's allegations that CLP is in default. The City may, but shall not be required to, cure a default by CLP at CLP's cost, and the cost of such cure, together with interest thereon, at the lesser of (i) fifteen percent (15%) and (ii) the maximum rate permitted by law, shall be immediately due from CLP to the City hereunder.

8.0 DEFAULT BY THE CITY

8.1 Events of Default. The City shall be in default of this Contract if it fails to perform any provision of this Contract that it is obligated to perform and if the failure to perform is not cured within thirty (30) days after notice of the default has been given by CLP to the City. If a default described above for which a cure period is provided cannot reasonably be cured within thirty (30) days, the City shall not be in default of this Contract if the City commences to cure the default within such thirty-day period and diligently and in good faith continues to cure the default until completion, provided the same is capable of being cured by the City.

8.2 Right to Cure; CLP's Remedies. If the City shall have failed to cure a default by the City after expiration of the applicable time, if any, for cure of a particular default, CLP may, at its election, but without obligation therefor either (a) seek specific performance of any obligation of the City, after which CLP shall retain, and may exercise and enforce, any and all rights which CLP may have against the City as a result of such default or (b) recover damages for such breach by the City.

8.3 Notices. Notices given under this Article 8 shall specify the alleged default and the applicable Contract provisions, and shall demand that the City perform the provisions of this Contract within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Contract unless expressly set forth in such notice.

9.0 INSURANCE, INDEMNIFICATION AND BONDS

9.1 Insurance. CLP shall procure and maintain at CLP's expense for the duration of this Contract from an insurance company that is admitted to write insurance in California and that has a rating of or equivalent to A:VIII by A.M. Best & Company the following insurance:

(a) Comprehensive general liability insurance or self-insurance naming the City, its officials, employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of or in any manner connected with CLP's operations or performance under this Contract in an amount not less than Ten Million Dollars (\$10,000,000.00).

(b) Workers' Compensation insurance as required by the Labor Code of the State of California.

(c) Automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.

Any self-insurance program or self-insured retention must be separately approved in writing by City and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after thirty (30) days' prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

CLP shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior

to the start of performance hereunder. The certificate and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims made" policies of insurance are not acceptable unless the City Risk Manager determines that "occurrence" policies are not available in the market for the risk being insured. If a "claims made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days. Such insurance as required herein shall not be deemed to limit CLP's liability relating to performance under this Contract. City reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver of the insurance requirements herein shall only be made with the approval of the City Risk Manager. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this Contract.

In the event CLP subcontracts any portion of the work, which may only be done with the City's approval, the contract between CLP and such subcontractor shall require the subcontractor to maintain the same policies of insurance that CLP is required to maintain pursuant to this Section 9.1.

9.2 Indemnification. CLP shall defend, indemnify, and hold harmless the City, its officials, agents and employees against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, whether or not reduced to judgment ("claim" or "claims") that may be asserted or claimed by any person, firm or entity arising from or attributable to or caused directly or indirectly by CLP, CLP's employees or agents in the performance of work under this Contract, or any alleged negligent or intentional act, omission or misrepresentation by CLP, CLP's employees or agents, which act, omission or misrepresentation is connected in any way with performance of work under this Contract, and in connection therewith:

(a) CLP shall give City notice of any claim within ten (10) calendar days after CLP has actual notice of the claim;

(b) CLP shall promptly pay any settlement or judgment rendered against the City, its officials, agents or employees for any such claims or liabilities arising out of or in connection with the performance of or failure to perform such work, operations or activities of CLP hereunder;

(c) In the event the City, its officials, agents or employees is made a party to any action or proceeding filed or prosecuted against CLP for such damages or other claims, CLP shall pay to the City, its officials, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

10.0 RECORDS AND REPORTS

10.1 Reports. CLP shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Contract as the Contract Officer shall reasonably require.

10.2 Records. CLP shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Contract and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. A copy of all records shall be physically maintained in an office in Los Angeles County, California or shall be provided, without expense, to the City with twenty-four (24) hours' notice, by "E-Mail" or other "on-line" service readily accessible to the City. All records concerning the Conversion, any additional services performed in accordance with Section 1.8 above, and any plans, specifications and/or drawings pertaining to the Lighting Systems shall be maintained by CLP throughout the term of this Contract and shall be delivered to the City upon expiration or sooner termination of this Contract. All other records concerning routine maintenance shall be maintained for a period of not less than three (3) years following completion of the services hereunder. The City shall have access to all such records, upon request.

10.3 Ownership of Data. All materials, information and data prepared, developed, or assembled by CLP or furnished to CLP in connection with this Contract, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, specifications, notes, plans, information, material, and memoranda ("Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to CLP. Copies of Data may be retained by CLP but CLP warrants that Data shall not be made available to any person or entity for use without the prior approval of City. Said warranty shall survive termination of this Contract for five (5) years. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event CLP fails to secure such assignment, CLP shall indemnify City for all damages resulting therefrom.

10.4 Copyright and Patent Rights.

(a) CLP shall place the following copyright protection on all Data: "© City of Long Beach, California 199__."

(b) City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from CLP's performance of this Contract. By executing this Contract, CLP assigns any ownership interest CLP may have in the Data to the City.

(c) CLP warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. CLP agrees to and shall protect, defend, indemnify and hold City, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorneys' fees) whether or not reduced to judgment, arising from any breach or alleged breach of this warranty.

10.5 Release of Documents. CLP shall not release Data publicly without the prior written approval of the Contract Officer.

11.0 ENFORCEMENT OF CONTRACT

11.1 California Law. This Contract shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the South District of the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and CLP covenants to and shall submit to the personal jurisdiction of such court in the event of such action.

11.2 Disputes. In the event of any dispute arising under this Contract, the injured party shall notify the injuring party in writing of its contentions. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to resolve such dispute within ten (10) days after service of such notice and completes the resolution of such dispute within forty-five (45) days after notice, or such longer period as may be permitted by the injured party provided that, if the dispute involves an immediate danger to the health, safety and general welfare, immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Contract for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not resolved.

11.3 Retention of Funds. CLP hereby authorizes City to deduct from any amount payable to CLP, except as otherwise provided under Section 6.9(b) above: (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of CLP's acts or omissions in performing or

failing to perform CLP's obligation under this Contract. In the event that any claim is made by a third party, the amount or validity of which is disputed by CLP, or any indebtedness shall exist which shall appear to be the basis for a claim, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of CLP to insure, indemnify, and protect City as elsewhere provided herein.

11.4 Waiver. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Contract, or of any right to damages or indemnity stated in this Contract. The waiver of any breach of this Contract shall not constitute a waiver of any other or subsequent breach of this Contract.

11.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

11.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Contract.

11.7 Termination for Default of CLP. If termination is due to the failure of CLP to fulfill its obligations under this Contract, City may, after compliance with the provisions of Articles 6, 7 and 11, take over the work and prosecute the same to completion by contract or otherwise, and CLP shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to CLP for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

11.8 Attorneys' Fees. If either party to this Contract is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Contract, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees for both its in-house counsel devoting time to the matter and any outside counsel retained to handle the dispute. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for

investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

12.0 NON-LIABILITY AND NON-DISCRIMINATION

12.1 Non-Liability of City Officials and Employees. No official or employees of the City shall be personally liable to CLP, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to CLP or to its successor, or for breach of any obligation of the terms of this Contract.

12.2 Employment Offers for Existing City Employees. CLP shall offer reasonable employment opportunities at prevailing wages to all City employees which City has identified as being impacted by execution of this Contract.

12.3 Conflict of Interest. CLP warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Contract.

12.4 Covenant Against Discrimination. In connection with performance of this Contract and subject to applicable rules and regulations, CLP shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, AIDS, AIDS related condition, handicap, disability, or Vietnam Era veteran status. CLP shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process, and CLP agrees to use its best efforts to carry out this policy in the award of all approved subcontracts to the fullest extent consistent with the efficient performance of this Contract. CLP may rely on written representations by subcontractors regarding their status. City's policy is attached as Exhibit "F" hereto. CLP shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all sub-consultants engaged by CLP for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. §637).

13.0 MISCELLANEOUS PROVISIONS

13.1 Notice. Any notice required or permitted hereunder shall be in writing and deemed to have been given or delivered, as the case may be, when personally delivered, or seven (7) days after deposit in the United States Post Office, certified or registered mail, return receipt requested, postage pre-paid, (or on the date shown on the return receipt, if earlier), or one (1) business day after deposit with a national overnight express carrier, such as Federal Express, charges pre-paid, addressed to CLP at the address provided for CLP on the execution page of this Contract, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802, Attention: City Manager, with a copy to the City Engineer at the same address, and to others at the address provided by them in accordance with this Contract. Notice of change of address shall be given in the same manner as stated herein for other notices.

13.2 Interpretation. The terms of this Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Contract or any other rule of construction which might otherwise apply.

13.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Contract and this Contract supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Contract. This Contract may be amended at any time by the mutual consent of the parties by an instrument in writing.

13.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Contract shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Contract which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Contract meaningless.

13.5 Corporate Authority. The persons executing this Contract on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Contract on behalf of said party, (iii) by so executing this Contract, such party is formally bound to the provisions of this Contract, and (iv) the entering into this Contract does not violate any provision of any other Contract to which said party is bound.

13.6 Third Party Beneficiary. This Contract is not intended or designed to or entered for the purpose of creating any

benefit or right for any person or entity of any kind that is not a party to this Contract, except for a Qualified Lienholder.

13.7 Construction. All provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each section hereof. The necessary grammatical changes required to make the provisions of this Contract apply to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. This Contract has been the subject of extensive negotiations between the parties, and the interpretation hereof shall not be based upon any party being the draftsman hereof.

IN WITNESS WHEREOF, the parties have executed and entered into this Contract as of the date first written above.

CITY OF LONG BEACH,
a municipal corporation

By: [Signature]
ASSISTANT City Manager

EXECUTED PURSUANT
TO SECTION 301 OF "City"
THE CITY CHARTER.

CITY LIGHT & POWER, INC.,
a Colorado corporation

By: [Signature]
Name:
Title: PRESIDENT

By: [Signature]
Name:
Title:

Address: City Light & Power, Inc.
333 W. Broadway
Suite 202
Long Beach, CA 90802
Attn: Jim Mosier,
Vice President

"CLP"

APPROVED AS TO FORM

11/28, 1995
JOHN R. CALHOUN, City Attorney

By [Signature]
PRINCIPAL DEPUTY

EXHIBIT "A"

CONDITIONS PRECEDENT

Satisfaction of the following shall constitute conditions precedent to the effectiveness of this Contract:

1. Assessment.

CLP's completion of the assessment under the Assessment Contract to the City's reasonable satisfaction as evidenced by the Contract Officer's approval of CLP's final invoice for payment as more particularly provided in the Assessment Contract;

2. Confirmation of Terms.

Delivery by both the City and CLP of written confirmation (the "Confirmation") that all terms of this Contract, including the Schedule of Payments provided hereunder, are either (i) acceptable as written; or (ii) modified to the extent specifically set forth in such Confirmation. This condition shall automatically fail if the City elects to cancel the assessment pursuant to Section 3.3 of the Assessment Contract.

3. Identification of Conversion.

City's approval, in its reasonable discretion, of CLP's proposed development plans for the Conversion. Unless CLP advises the City of increases in the Schedule of Payments resulting from unanticipated information received no later than sixty (60) days after commencement of the work under the Assessment Contract, CLP shall present to City for its approval, no later than thirty (30) days after completion of the assessment the following (hereinafter collectively referred to as the "Development Plans"):

3.1 A narrative summary of the work to be done as a part of the Conversion;

3.2 Preliminary plans and specifications for the Conversion;

3.3 A description of all design and engineering work required to be completed to allow completion of final working drawings for the Conversion and the timing for preparing such design and engineering;

3.4 A list of all licenses, permits, approvals, consents, and entitlements required to be procured by CLP to perform the Conversion with identification of those which are discretionary with the issuing agency(ies) and the anticipated timing in procuring all such licenses, permits, approvals, consents and entitlements.

EXHIBIT "A"
TO LIGHTING CONTRACT

3.5 A list of the names and addresses of all "major contractors and material suppliers" proposed to perform the work and supply the materials for the work, together with financial information, bonding capacity limits and prior experience of each. "Major contractors and material suppliers" shall refer to those contractors and materialmen who may receive payments in connection with the Conversion in excess of \$10,000; and

3.6 A schedule of performance identifying the order in which the work will be completed (with such breakdown of the work as may be requested by the City), the time by which completion of each identified segment of the work is anticipated, with completion of the entire Conversion to be accomplished within a contract period not to exceed five (5) years.

4. Procurement by CLP of All Necessary Financing.

CLP's procurement and City's approval of a written financing commitment issued by a Qualified Lienholder and subject only to satisfaction of those conditions which CLP can demonstrate will be satisfied prior to expiration of the financing commitment. Such written financing commitment shall be in an amount sufficient to fund (a) the cost of the assessment (\$528,000); (b) the cost of designing, permitting, constructing and placing the Lighting Systems, as converted, into full operation; (c) all financing costs associated with such financing; and (d) a development fee not to exceed Five Hundred Thirty Thousand Dollars (\$530,000.00).

5. Reimbursement to City of Assessment Costs.

CLP's payment to the City of a sum equal to all amounts paid by the City to CLP under the Assessment Contract.

6. Validation Action.

The City has the right to commence an action to validate the Output Contract and the Lease within thirty (30) days following authorization by the City Council to enter into the Output Contract and the Lease. If the City receives an adverse determination in the validation action or withdraws its petition by reason of indications of an adverse ruling, then the City may, in its sole discretion, elect to terminate the Contract and the Lease by delivery of written notice to CLP.

7. Agreement on Disposition of Existing Inventory.

Upon commencement of this Contract the City will disband that section of the Public Service Bureau of the Public Works Department now responsible for maintaining, operating, repairing, installing and replacing the Existing System. The City will also dispose of all inventory and equipment currently used in the

EXHIBIT "A"
TO LIGHTING CONTRACT

maintenance, operation, repair and replacement of the Existing System, except for that equipment that can be adapted to other services provided by the City. Prior to completion of the assessment, CLP and the City will agree on what existing inventory and equipment CLP will purchase from the City and on the price to be paid by CLP for such inventory and equipment, which price shall be based on fair market value.

EXHIBIT "B"

SYSTEMS RELIABILITY AND OPERATION AND
MAINTENANCE STANDARDS

OPERATION AND MAINTENANCE

The operation and maintenance program shall maintain a 99% illumination level at all times. This program will be accomplished by using an outage call-in program. When an outage is called into CLP's local office, it shall then be dispatched to be repaired within a 24 hour period. CLP shall also perform group relamping in areas that need this feature. The following sections shall define CLP's detailed process for performing scheduled and unscheduled maintenance:

A. COMPLAINT RESPONSE

1. CLP's local office will receive all complaints in reference to street lighting problems.
 - 1.1 The local office shall be located in the City's Metropolitan area. This office shall be the designated point of contact for all the City's street lighting outages.
 - 1.2 The local office shall receive all system outage and damage calls. All system work orders shall be dispatched to the designated contractor.
 - 1.3 The local office shall be staffed 24 hours a day.
 - 1.4 CLP shall identify a problem by utilizing the City and CLP employees and citizens of the Metropolitan area to report outages and damages to the local office.
2. Complaint information shall be recorded in a computerized data base at the time it is received and dispatched daily during normal work days to repair personnel. Emergency and knockdowns shall be responded to within two (2) hours to ensure safe conditions.
3. Repair time: CLP shall target completion of a repair, which is normally a burned out lamp, within 24 hours after receipt. Holidays and weekend days do not qualify as working days. If a cable repair is required, additional time shall be permitted. In this event, ten (10) working days shall be permitted for CLP to complete a repair. If a repair cannot be completed within this time frame, CLP shall notify the City.

B. STANDARD MAINTENANCE

1. Spot Lamp Replacement: CLP shall furnish and replace burned out or broken lamps. Such lamps shall be replaced within 24 hours.
 - (a) Lamps shall be replaced with lamps of proper size and type. New lamps shall be used for all replacements.
 - (b) The interior of the socket shall be checked to determine that the lamp will screw in and seat properly and that no arcing will take place.
2. Cleaning Luminaires: CLP shall clean globes, refractors and reflectors at each luminaire service.
3. Open type luminaires shall not be washed but shall be wiped clean with a chamois-type cloth. Aluminum reflectors which have been badly pitted or corroded shall be replaced.
4. Glassware shall be inspected. Any broken or severely cracked glassware shall be replaced. Replacement "glassware" may be polycarbonate plastic. Gaskets shall be inspected and maintained in good condition. Plastic or glassware or optical assemblies removed during servicing will be properly replaced. Care shall be exercised to insure that all shades or glare shields are oriented as found or corrected if an error is apparent.
5. PC replacement: CLP shall furnish and replace photo-sensitive switches as required.
6. Ballast replacement: CLP shall furnish and replace defective ballasts for vapor lamps.
7. Post painting: CLP shall repaint, if required, underground-wired lamp posts. CLP shall perform this work for the City on a rotating schedule.
8. Warehousing and inventory management. CLP shall maintain on hand replacement parts for components of the Lighting Systems.
9. Energy management. CLP shall furnish (a) monthly SCE billing analysis to assure elimination of any overcharges; (b) SCE/PUC rate negotiations (i.e. off-peak rates) to achieve the lowest possible rates; (c) energy consumption management (metering and sub-metering) to minimize energy usage by the Lighting System; and (d) wheeling (City-wide) analysis, with the goal of

reducing the rates and overall costs payable by the City for the Lighting Systems.

C. **NON-STANDARD MAINTENANCE** - CLP shall be responsible, at its sole expense, for repair and restoration of all knockdowns. CLP may directly pursue recovery of damages from any party responsible for injury to the street lights and other lights. In addition, CLP shall perform the following:

1. CLP shall dispatch 24 hours a day, seven (7) days a week, the necessary number of crews and equipment to "make safe" emergency situation.
2. Repairing damaged posts ("Knockdowns"): The initial response, within two (2) hours, shall include removing the post from the roadway or sidewalk, de-energizing the circuit and protecting other energized wires with electrical insulation materials and designating the site with cones or portable barricades. If the foundation is not damaged, the post and luminaire shall be repaired within five (5) working days. If foundation work is required, the post and luminaire repairs shall be made five (5) working days following foundation repair(s). CLP shall apply for permits within two (2) working days of Knockdown(s). Damaged foundations shall be repaired within ten (10) working days.

All permanent surface restoration (paving, sodding, seeding, etc.) shall be performed by CLP.

3. CLP shall furnish and install posts and repair damaged foundations as a result of Knockdowns.

D. **REPLACEMENTS** - CLP shall replace from time to time, at CLP's expense, any and all components of the Lighting Systems which are no longer functional or susceptible of being repaired, so that the lighting provided to the City under this Contract is maintained at not less than the standard of illumination existing upon CLP's completion of the Conversion.

E. **NOTICE TO NEIGHBORHOODS** - CLP shall give at least one (1) week advance notice prior to the start of construction to all residents and businesses facing or siding on the construction area. Said notice shall be in writing on the Contractor's letterhead and shall explain in concise terms the extent and nature of the project, the anticipated schedule and office and emergency telephone numbers where CLP's representatives can be reached.

F. SPECIFICATIONS FOR REPAIRS, REPLACEMENTS AND CONVERSION - All work performed by CLP under this Contract shall be done in accordance with the applicable requirements provided in the latest edition of the "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION" with the City of Long Beach, California amendments, adopted from time to time by the City Council of the City of Long Beach. The Contract Officer shall provide copies of the referenced materials to CLP on request if not otherwise available to CLP.

EXHIBIT "C"

DESCRIPTION OF CONVERSION

<u>COST</u>	<u>QUANTITY</u>	<u>DESCRIPTION</u>	
\$2,700,000	10,221	Multiple Distribution	<ol style="list-style-type: none"> 1. Replace Luminaires (100 %) 2. Arm/Mast Extension - as needed 3. Replace Damaged Poles - as needed
\$6,300,000	4,118	Series Distribution (no raceway)	<ol style="list-style-type: none"> 1. Replace Luminaires (100%) 2. Install New Raceways (100%) 3. Install New Cable (100%) 4. Install Distribution Cabinets/Meters - as needed 5. Arm/Mast Extensions - as needed 6. Replace Damaged Poles - as needed
\$5,300,000	8,297	Series Distribution (existing raceway)	<ol style="list-style-type: none"> 1. Replace Luminaires (100%) 2. Install New Raceways - as needed 3. Install New Cable (100%) 4. Install Distribution Cabinets/Meters - as needed 5. Arm/Mast Extensions - as needed 6. Replace Damaged Poles - as needed
\$3,700,000	5,780	Series Overhead	<ol style="list-style-type: none"> 1. Replace Luminaires (100%) 2. Install New Cable (100%) 3. Install Distribution Cabinets/Meters - as needed 4. Arm/Mast Extensions - as needed 5. Replace Damaged Poles - as needed
Total Conversion Cost			\$18,000,000
Total Number of Luminaires			30,300 (1,914 are LSI)

Above figures are for "turnkey" conversion and include, without limitation, material analysis and procurement, energy conservation equipment analysis, design, specifications and work methods manuals, design management, engineering and construction management.

EXHIBIT "D"

BASIC FEE PAYMENT SCHEDULE

Year 1:	\$ 1,582,000.00
Year 2:	1,986,000.00
Year 3:	2,380,000.00
Year 4:	2,810,000.00
Year 5:	3,513,000.00
Years 6-25 (*)	

* Annual CPI adjustment of Adjustable Portion of Basic Fee during Years 6-25 as follows:

Commencing October 1 of the year following expiration of the fifth full calendar year of this Contract and on each October 1 thereafter (hereinafter "Adjustment Dates"), the "Adjustable Portion" of the Basic Fee shall be increased or decreased in the same percentage as the monthly index figure of the "CPI" for the "Current Comparison Month" has increased or decreased from the monthly index figure of the CPI for the "Prior Comparison Month". For purposes of this paragraph, the following definitions shall apply: "Adjustable Portion" shall mean the Basic Fee less the Assignable Portion in effect immediately prior to the current Adjustment Date; "CPI" shall mean the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics for All Urban Consumers for the Los Angeles-Anaheim-Riverside Area, All Items; "Current Comparison Month" shall mean the month of June of the same calendar year as the current Adjustment Date; and "Prior Comparison Month" shall mean the month of June for the calendar year immediately preceding the current Adjustment Date.

ASSIGNABLE PORTION OF BASIC FEE

Year 1:	\$ 332,000
Year 2:	686,000
Year 3:	1,045,000
Year 4:	1,410,000
Year 5:	1,780,000
Years 6-25:	1,951,000

EXHIBIT "E"

STATEMENT OF TERM

Date: _____, 199_

RE: Lighting Contract dated _____, 199_ between the City of Long Beach and City Light & Power, Inc.

The parties agree as follows:

1. The "Effective Date" of the Contract is _____, 199_.

2. The term of the Contract commenced on _____ 1, 199_ and will expire on _____, 202_.

CITY OF LONG BEACH,
a municipal corporation

By: _____
City Manager

"City"

CITY LIGHT & POWER, INC.,
a Colorado corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

"CLP"

CITY OF LONG BEACH, DISADVANTAGED-, MINORITY- AND
WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM
FOR PUBLIC CAPITAL IMPROVEMENT PROJECTS

A. GENERAL

It is the policy of the City of Long Beach to encourage the participation of Disadvantaged-, Minority- and Women-Owned Business Enterprises (DBEs/MBEs and WBEs) in the City's procurement process. Bidders are urged to encourage and invite DBE, MBE and WBE subcontractors and suppliers to bid on City projects and, whenever possible, should seek to achieve a goal of at least 14 percent DBE/MBE participation and 10 percent WBE participation.

B. DEFINITIONS

The following definitions shall apply in connection with this policy:

1. As defined by Section 8 (a) of the Small Business Act 15 U.S.C. paragraph 637 (a), "Disadvantaged Business Enterprise" means a small business concern that is (1) at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and (2) the management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals who own it. Those groups which are considered socially disadvantaged are citizens of the United States who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans.
2. "Minority" means the following groups: Blacks, Hispanics, American Indians, Asian/Pacific Islanders, and Asian/Indians.
3. "Minority Business Enterprise" means a business which is at least 51 percent owned, managed, and operated by one or more minorities, or in the case of a publicly-owned business, at least 51 percent of the stock must be owned, and the business managed and operated by minorities.
4. "Woman-Owned Business Enterprise" means a business which is at least 51 percent owned, managed and operated by one or more women, or in the case of a publicly-owned business, at least 51 percent of the stock must be owned and the business managed and operated by women.

C. REPORTING

All bidders will be asked to supply the identity of DBE/MBE and WBE subcontractors and suppliers and the dollar volume of their contracts for the City's statistical purposes.

D. ASSISTING SERVICE ORGANIZATIONS

The following organization can assist the bidder in securing DBE/MBEs/WBEs as subcontractors and material suppliers:

- (1) **CALTRANS**
Contact: Marilyn Mack (213) 897-7072 (Phone)
(213) 897-1581 (Fax)

- or -

The Publications Distribution Unit (916) 445-3520

- (2) **CALIFORNIA, PUBLIC UTILITIES COMMISSION**
Contact: Evy Walters (415) 703-1072 or
Brewster Fong (415) 703-2721

- (3) **THE COUNTY OF LOS ANGELES**
Contact: May Kingi (213) 974-1392

- (4) **THE METROPOLITAN TRANSPORTATION AUTHORITY**
CERTIFICATION HOTLINE (213) 244-6333
Contact: Estella Brown (213) 244-6321

The Disadvantaged-, Minority- and Women-owned Business Enterprise Program was adopted by the Long Beach City Council on February 2, 1988. Revisions to the DBE/MBE/WBE goals were adopted on November 22, 1994.

RS:mlc
14-46

Revised: 09/25/95