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FIRST AMENDMENT TO LIGHTING CONTRACT NO. 24289

**24289**

THIS FIRST AMENDMENT TO LIGHTING CONTRACT NO. 24289 is made and entered, in duplicate, as of April 25, 1996 for reference purposes only, pursuant to a minute order of the City Council of the City of Long Beach at its meeting held on November 21, 1995, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and CITY LIGHT & POWER, INC., a Colorado corporation ("CLP").

WHEREAS, the parties entered Lighting Contract No. 24289 (the "Contract") whereby CLP agreed to provide certain services in connection with City's Lighting Systems; and

WHEREAS, it is necessary to clarify certain provisions of the Contract;

NOW, THEREFORE, in consideration of the mutual terms and conditions in the Contract and herein, the parties agree as follows:

1. Section 3.5 of the Contract is hereby amended by the addition of the following sentence at the end of the Section:

"The time for performance by CLP of CLP's duty under Section 1.1(a), Section 1.1(b) and Section 1.8(a) hereof as it relates to the Lighting Systems shall be deemed extended because of any delay due to floods or earthquakes for the amount of time required by the City, as owner of the Lighting Systems and fee interest of the Premises under the Lease, to apply for and receive financial assistance available from any other governmental agency or entity. Notwithstanding anything to the contrary herein, if the City is successful in receiving such

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1 financial assistance, then the City shall use that financial  
2 assistance to repair the Lighting Systems."

3 2. Section 4.3 of the Contract is hereby amended by  
4 the addition of the following sentence at the end of the Section:

5 "Notwithstanding anything to the contrary in this  
6 Contract, if CLP defaults hereunder or under the Lease prior to  
7 the completion of the Conversion, the Qualified Lienholder shall  
8 have the right to perform all other operation and maintenance  
9 services specified herein with respect to the Lighting Systems  
10 provided, however, that the Assignable Portion of the Basic Fee  
11 shall be reduced by an amount proportional to that portion of the  
12 Existing Street Lights not yet converted at the time of such  
13 default."

14 3. The reference to "thirty (30) days" in clause (b)  
15 of the first sentence of Section 6.9(a) is hereby amended to read  
16 "one hundred twenty (120) days."

17 4. The last sentence of Section 6.9(b) is hereby  
18 deleted.

19 5. Section 6.10 of the Contract is hereby amended by  
20 deleting the phrase "of the Conversion" which appears on the  
21 third line of such Section.

22 6. The Contract is hereby amended by the addition of a  
23 new Section 6.13 to read as follows:

24 "6.13. New Contract. If (a) the City terminates the  
25 Contract and such termination is not avoided by the Qualified  
26 Lienholder pursuant to Section 6.9(a) herein, or (b) the Contract  
27 is rejected by CLP in a bankruptcy proceeding, then the City  
28 shall provide to the Qualified Lienholder notice that the

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1 Contract has been terminated. If, within thirty (30) days  
2 following receipt of the notice of termination of the Contract,  
3 the Qualified Lienholder gives notice to the City requesting a  
4 new lighting contract, then the City shall, not more than thirty  
5 (30) days after the date of receipt of such request, enter a new  
6 lighting contract with the Qualified Lienholder provided,  
7 however, that the Qualified Lienholder shall, contemporaneously  
8 with execution of the new lighting contract (a) pay to the City  
9 reasonable attorneys' fees, charges and disbursements incurred by  
10 the City in connection with the new lighting contract (provided,  
11 however, that the foregoing statement shall not be deemed to  
12 modify or amend any provision of the loan documents between CLP  
13 and the Qualified Lienholder pertaining to the payment of such  
14 attorneys' fees, charges and disbursements), and (b) agree in  
15 writing that, promptly following delivery of the new lighting  
16 contract, the Qualified Lienholder shall perform or cause to be  
17 performed all of the other provisions contained in the Contract  
18 on CLP's part to be performed to the extent that CLP failed to  
19 perform them to the date of delivery of the new lighting  
20 contract.

21 "The new lighting contract shall be effective as of the  
22 date of the termination of the Contract, shall have a term equal  
23 to the remainder of the stated term of the Contract, shall  
24 provide for the same fees as required in the Contract, shall  
25 contain the same terms and conditions as are contained in the  
26 Contract, and shall have the same priority of lien as the  
27 Contract."

28 7. Section 11.3 of the Contract is hereby amended by

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1 deleting the phrase "except as otherwise provided under Section  
2 6.9(b) above" and inserting in its place the phrase "hereunder  
3 other than the Assignable Portion of the Basic Fee."

4 8. Section 13.3 of the Contract is hereby amended by  
5 adding the phrase "(other than the Lease)" immediately after the  
6 word "parties" in the fourth line of such Section.

7 9. Except as expressly amended herein, all of the  
8 terms and conditions in Lighting Contract No. 24289 are ratified  
9 and confirmed and shall remain in full force and effect.

10 IN WITNESS WHEREOF, the parties have caused these  
11 presents to be duly executed with all of the formalities required  
12 by law as of the date first stated above.

CITY OF LONG BEACH, a municipal  
corporation

15 By [Signature]  
16 ASSISTANT City Manager  
17 EXECUTED PURSUANT  
18 "City" TO SECTION 301 OF  
19 THE CITY CHARTER.

CITY LIGHT & POWER, INC., a  
Colorado corporation

19 By [Signature]  
20 President

21 By [Signature]  
22 Vice President

"CLP"

23 This First Amendment to Lighting Contract No. 24289 is  
24 approved as to form this 29th day of April, 1996.

JOHN R. CALHOUN, City Attorney

26 By [Signature]  
27 Deputy

28 DFG:rmb  
4-25-96  
24289.AMD

State of California )  
County of Los Angeles )

On April 29, 1996 before me, Mary F. Macklin, Notary Public, personally appeared JAMES R. MOISER and WILLIAM F. SIMMONS

(This area for official notarial seal)



proved to me on the basis of satisfactory evidence to be the persons whose name are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Mary F. Macklin  
Mary F. Macklin, Notary Public

Title or Type of Document: FIRST AMENDMENT TO LEASE NO. 24290.

Number of Pages: 6

Date of Document: 4/29/96

Signers other than those named above: NO OTHER SIGNERS