



Susan B. Cunningham
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February 13, 1997

Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: Case No. EM-97-305

Dear Mr. Wright:

Enclosed for filing with the Commission are the original and 14 copies of Appendix 2 to Kansas City Power & Light Company's Application in the above-referenced matter. In its Application, KCPL indicated that Appendix 2 (a certified copy of resolution by KCPL's Board of Directors) would be submitted as a late-filed exhibit.

Please bring this filing to the attention of the Commission.

Thank you for your assistance.

Sincerely,

Susan B. Cunningham

Susan B. Cunningham

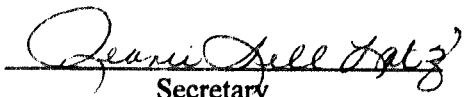
cc: Office of the Public Counsel

FILED
FEB 14 1997
MISSOURI
PUBLIC SERVICE COMMISSION

KANSAS CITY POWER & LIGHT COMPANY
CERTIFICATE OF SECRETARY

I, Jeanie Sell Latz, Secretary of Kansas City Power & Light Company (the "Company"), do hereby certify that attached hereto is a true and correct copy of excerpts from the minutes of the meeting of the Board of Directors of said Company duly convened and held on February 4, 1997, at which meeting a quorum for the transaction of business was present and acting throughout; that set forth in said excerpts are true and correct copies of certain resolutions duly adopted at said meeting, which resolutions have not been amended nor rescinded and are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company as of this 9th day of February, 1997


Secretary
Kansas City Power & Light Company

FILED
FEB 14 1997
MISSOURI
PUBLIC SERVICE COMMISSION

Item 10.

RESOLVED, the Board of Directors hereby authorizes the sale by the Company of the streetlight assets located within the City of Kansas City, Missouri, to the City of Kansas City, Missouri, for approximately \$21,500,000.00.

FURTHER RESOLVED, that the officers of this Company be, and they hereby are, authorized to do, or cause to be done, all acts and things necessary or appropriate on the part of the Company to carry out the intent of the Agreement and to consummate the sale of said property, including the execution and delivery by the president or any vice president and the secretary or any assistant secretary of this Company of the deed conveying the above-described property.

FURTHER RESOLVED, that UMB Bank, n.a., Trustee under the General Mortgage Indenture and Deed of Trust dated as of December 1, 1986, as supplemented, be requested to release the above-described property from the lien of the Indenture.

FURTHER RESOLVED, that said Trustee be further requested to execute an appropriate instrument or instruments of release with respect to the aforesaid property and to deliver the same to or upon the order of the president or any vice president of the Company.

ORDINANCE NO. 961654


Approving an agreement between the City and the Kansas City Power & Light Company for the design of an upgraded and expanded street lighting system for an amount not to exceed \$3,500,000, of which \$1,500,000 shall represent pre-election design work, to be included within the construction price of the upgraded and expanded street lighting system if authorized by the voters of the City, otherwise up to \$1,500,000 to be paid from Account 97-100-089-2200 B, Street Lighting Account; purchase of an existing street lighting system for \$21,500,000; design and construction of an upgraded and expanded street lighting system for \$71,250,000; maintenance of the street lighting system for a term of four years at a rate of \$33 per pole per year; purchase of electric power for a street lighting system at 4.7 cents per kilowatt hour for a term of four years; and authorizing the expenditure of up to \$1,500,000 from funds previously appropriated to Account 97-100-089-2200 B, Street Lighting Account.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

SECTION 1. *Approval of agreement.* That an agreement between the City and the Kansas City Power & Light Company, substantially in the form of Exhibit 1 attached to this ordinance, for the design of an upgraded and expanded street lighting system for an amount not to exceed \$3,500,000 to be included within the construction price of the upgraded and expanded street lighting system if authorized by the voters of the City; purchase of an existing street lighting system for \$21,500,000; design and construction of an upgraded and expanded street lighting system for \$71,250,000; maintenance of the street lighting system for a term of four years at a rate of \$33 per pole per year; and purchase of electric power for a street light system at 4.7 cents per kilowatt hour for a term of four years, is approved, and the officials designated in the agreement are authorized to execute the agreement in the name of the City.

SECTION 2. *Design payment - authorization to expend appropriated funds.* That in the event the voters choose to not approve financing necessary to complete the commitments presented in the street lighting agreement which are contingent on such approval, the City will obtain the partial design of an upgraded and expanded street lighting system from Kansas City Power & Light for an amount up to \$1,500,000 which will be incurred prior to the required election to present to the voters a financing option for the agreement. The expenditure of the sum of up to \$1,500,000 is authorized from funds previously appropriated to Account 97-100-089-2200 B, Street Lighting Account.

Approved as to form and legality:


Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

~~AMOUNTS TO BE PAID~~

~~EMERSON GEEVER JR. MAY~~

Catherine J. Parker

CITY CLERK

By

Paul M. L.

CITY CLERK

JAN 23 1997

**A STREETLIGHT AGREEMENT BETWEEN
THE CITY OF KANSAS CITY, MISSOURI AND
KANSAS CITY POWER & LIGHT COMPANY**

Article 1: Definitions

For the purpose of this Streetlight Agreement (hereinafter "Agreement"), the following words and phrases shall have the meaning given in this Article 1. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" or "will" are mandatory and "may" is permissive. Words not defined in this Article 1 shall be given their common and ordinary meaning.

1.1 *"ANSI/IES RP-8"* means the 1983 version of the American National Standard Practice for Roadway Lighting issued by the Illuminating Engineering Society of North America and approved by the American National Standards Institute.

1.2 *"City"* means the City of Kansas City, Missouri, a municipal corporation of the State of Missouri, and all of the territory within its boundaries as of the effective date of this Agreement, except that for purposes of Section 7.18 herein only, "City" as defined in this Section 1.2 shall include all territory within the City's future boundaries.

1.3 *"Company"* means the Kansas City Power & Light Company, a Missouri corporation, but does not mean a parent company, or any of its affiliates and subsidiaries, or any other entity in which it has an ownership interest.

1.4 *"Council"* or *"City Council"* means the elected governing body of the City of Kansas City, Missouri.

1.5 *"Joint Operating Committee"* or *"JOC"* means the Committee appointed by the City and the Company pursuant to Article 26.

1.6 *"Missouri Commission"* means the Public Service Commission of the State of Missouri.

1.7 *"Uncontrollable Forces"* means severe weather, storms, acts of God, fire, civil or military authority, strikes or other labor disturbances, orders of courts or regulatory agencies, and other causes reasonably beyond the control of the party claiming to have been precluded from or delayed in performance under the Agreement.

Article 2: Execution

2.1 The Company shall signify its acceptance of this Agreement by its execution hereof. The City shall concurrently execute this Agreement and the officials of the City are hereby authorized

and directed to sign this Agreement. The City Clerk is hereby authorized and directed to attest to the same under seal of the City.

2.2 This Agreement shall become effective on the later of (A) the effective date of the ordinance approving this Agreement and (B) the date of approval of this Agreement by the Company's Board of Directors, except that Articles 4, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, and 28 of this Agreement shall not become fully operative until such time as the citizens of the City approve a financing mechanism necessary to finance the acquisition of the Company's existing streetlights within the City and the construction of an upgraded streetlighting system within the City.

Article 3: Regulatory Approvals

The Company shall seek and pay for all regulatory approvals necessary for the full implementation of this Agreement. The City shall support such action by the Company. Neither the City nor the Company shall initiate any action before the Missouri Commission or any other regulatory or judicial body which is inconsistent with any provision of this Agreement.

Article 4: Purchase of Company's Existing Streetlights

The Company agrees to sell to the City, and the City agrees to purchase from the Company, the Company's existing streetlighting system within the City for \$21,500,000. The ownership of such system shall be transferred to the City upon the occurrence of both of the following events: (A) the Missouri Commission's approval of the sale of such system to the City; and (B) the approval by the citizens of the City of an appropriate financing mechanism to finance the City's purchase of such system. The Company shall pay any capital gains tax associated with the sale of such streetlighting system.

Article 5: Design of Streetlighting System

5.1 The Company shall design the streetlighting system, including each individual streetlight, to be constructed or upgraded under this Agreement in accordance with the provisions of this Article 5. Nothing in this Article 5 shall be construed to relate to streetlights currently owned by the City.

5.2 The Company shall utilize a Uniform Lighting Matrix which meets the criteria described in Exhibit 6 to the Company's January 24, 1996 Supplement to the June 1995 Streetlighting Proposal (attached hereto), and all other standards in this Agreement, which include but are not limited to the following pole spacing requirements:

(A) In order to meet the ANSI/IES RP-8 standards designated in this Article 5, narrow roads shall be designed to have uniform spacing using one side only, while the wider roads shall use opposite spacing;

(B) There shall be no staggered spacing or randomly located staggered streetlights other than at intersections in accordance with ANSI/IES RP-8; provided, however, that the intersecting streets shall have streetlights on one side only of their respective streets, except where it is necessary to have lights in more than three corners to meet ANSI/IES RP-8 standards; and

(C) Lighting units must be adjusted and respaced to consider driveways and other interfering obstacles, and respacing must be used to smooth out any differences within the tolerance limits set forth in Section 5.3 herein.

The Company and the City agree that the Reference Drawing Number JA-445 (attached hereto as to 28th Street from Indiana east to one half block east of Mersington) is an acceptable application as to that particular street of the criteria set forth in this Agreement.

5.3 The City and the Company agree that the uniformity of pole spacing is important not only for consistent pavement luminance, but also for the visual appearance of the streetlighting system in both daytime and nighttime conditions. The City and the Company further agree that pole placement on or near the property line between properties is desirable to avoid conflicts. Deviations in the uniformity of spacing may be permitted to avoid conflict with existing structures (driveways and other interfering obstacles) so long as the resultant installation complies with all of the following limitations:

(A) No spacing shall differ from an adjacent spacing by more than 7 percent;

(B) No individual spacing in a given block shall differ from the average for that block by more than 8 percent;

(C) The average spacing in any block shall not differ from the average spacing in an adjacent block by more than 5 percent.

A mutually acceptable application of the design criteria (as applied to 28th Street from Indiana east to one half block east of Mersington) is provided in the Reference Drawing Number JA-445 (attached hereto). The JOC may consider unique situations if the City and the Company cannot agree on spacing deviating from that required by the Agreement.

5.4 Pole spacings on residential streets shall not exceed 175 feet. All applicable tolerances set forth in Section 5.3 herein shall be applicable to spacing adjustments up to but not exceeding 175 feet.

5.5 For each road geometry (pole setback, pavement width, sidewalk location, and sidewalk width) in each road and area classification developed by the Company and approved by the City as adjusted from time to time by mutual agreement of the City and the Company as necessary and

appropriate during the design process, pole spacing acceptable to the City and the Company shall be determined which satisfies applicable ANSI/IES RP-8 values.

5.6 The streetlighting design shall satisfy the illuminance, luminance, veiling luminance, and pedestrian lighting horizontal illuminance standards set forth in ANSI/IES RP-8.

5.7 The streetlighting system shall be designed based upon use of the following luminaire photometrics: LTL03022 IES; LTL03025 IES; and OVM3S4D IES. These photometrics do not anticipate vandal resistant luminaires.

5.8 All newly constructed or upgraded streetlights shall meet or exceed applicable provisions of ANSI/IES RP-8 using the luminance method, including level and uniformity ratios and compliance with all applicable tables, provisions and specific areas such as traffic conflict areas (intersections, railroad crossings, curves, and other similar areas). Luminance values in those areas shall be increased over table values in accordance with ANSI/IES RP-8. Spacings shall be reduced on curves and other traffic conflict areas in accordance with applicable provisions of ANSI/IES RP-8.

5.9 Streetlighting designed and constructed since 1983 shall be jointly reviewed by the City and the Company pursuant to ANSI/IES RP-8 illuminance standards. Those areas with installations which meet the ANSI/IES RP-8 illuminance standard may not be changed except for bracket upgrade changes. Cul-de-sac lighting shall be jointly reviewed on a case by case basis for compliance with ANSI/IES RP-8 illuminance standards.

5.10 Where sidewalks are present, the average maintained horizontal illuminance on the sidewalks shall meet or exceed the standard set forth in Table 4 of ANSI/IES RP-8.

5.11 Sidewalk lighting shall be based on actual location and size of sidewalk, and shall meet or exceed the following ANSI/IES RP-8 Table 4 pedestrian sidewalk lighting levels of: (A) 2-LUX for residential street; (B) 6-LUX for intermediate street; and (C) 10-LUX for commercial street. Sidewalk lighting, where a portion of the sidewalk is close to the curb, shall not affect spacing for the entire block.

5.12 Lighting criteria for all unimproved streets (defined as those which have no gutters or curbs) shall be equal to those used for fully developed streets, excluding rural roads referenced in Section 6.24 herein; provided, however, that the Company shall not be required to move existing streetlights on such unimproved streets if more than 50% of the streetlights to be installed on such unimproved streets consist of poles dedicated both to primary distribution and streetlight services and are next to the pavement. Provided, however, in such situation, the Company shall first use its best efforts to place streetlights at the ideal location on unimproved streets, and, if it is unable to do so, may, after consultation with the Joint Operating Committee, construct new streetlights at the same distance from the pavement as existing distribution poles on such unimproved streets. Nothing in this Section 5.12 limits the applicability of spacing standards set forth in this Agreement.

5.13 Pole location, luminaire mounting height, bracket length, and angle of bracket/mast arm shall be chosen to align luminaire positions at the same height and transverse position (overhang/setback) on each individual street.

5.14 Maintenance factors ("MF") for major commercial, major intermediate, collector commercial, collector intermediate, and local commercial streets shall be 0.54. All other streets (except where industrial areas are in the vicinity of any street where a maintenance factor of 0.54 shall apply) shall use an MF of 0.68.

5.15 New installations shall be matched with existing equipment (pole types and conductor location).

5.16 New poles where none currently exist shall be weathering type steel poles or painted steel poles fed underground.

5.17 Existing primary distribution poles, or secondary distribution poles containing three-phase service or utility services other than electric (such as telephone or cable television) shall not be moved or sold to the City; however, nothing in this Section 5.17 shall be construed to preclude the Company from transferring ownership of brackets, luminaires and feeds in such poles to the City in accordance with Article 4 and Section 6.22 herein. Where required to meet the standards set forth herein, new dedicated streetlight poles shall be added.

5.18 All streetlighting design calculations shall be made in accordance with the following provisions:

(A) Calculations shall be based on maximum spacing as calculated on the basis of uniform spacing rather than individual field conditions. Field spacing conditions shall also be provided in the submittals.

(B) Calculations shall include values under one luminaire in a cycle only.

(C) Calculations may be made on edge of pavement as long as they result in a lesser or equal spacing to the quarter lane point method set forth in ANSI/IES RP-8.

(D) Calculations shall be made at the maximum spacing for any type of classification and on any particular roadway. Calculations of minimum spacing shall be made also to indicate range of light level and extent of adaptation.

5.19 The Company shall provide luminance calculations for intersections, railroad crossings and other conflict areas, and spacing calculations for curves.

5.20 The Company shall commence the design of the upgraded streetlighting system no later than the effective date of this Agreement and shall continue the design process until the earlier of the

following two events: (1) The City notifies the Company in writing to halt the design process; or (2) the Company completes the design process. Within five days of the effective date of the ordinance approving this Agreement and establishing an election to present a funding mechanism to the voters, the City shall pay to the Company \$1,000,000 representing an initial payment of design costs. Each month thereafter the City shall pay to the Company \$125,000 representing additional partial payments. These payments shall continue until complete funding is available or the City notifies the Company in writing to halt the design process, at which time the Company shall provide to the City all plans, drawings, and design calculations prepared until such time. If a funding mechanism is not approved by the voters and the City does not halt the design process, the Company shall proceed with the design in an orderly fashion and shall complete the design process simultaneously with the final payment of \$125,000 by the City. These payments shall be included in the total base payment of \$71,250,000 representing payment for 73,760 street lights. The total payment for a complete design shall not exceed \$3,500,000.

5.21 The Company shall design the streetlighting system, to the extent feasible, so that an approximately proportionate amount of construction occurs during each 12-month period of the 48-month construction period in each Council district.

5.22 The design and construction of the streetlighting system shall satisfy National Electric Safety Code standards applicable to utilities.

5.23 The Company shall provide to the City approximately the following number of designs in the first four months after the effective date of this Agreement pursuant to Section 2.2 herein: twelve district maps by the conclusion of the first month; twenty-one additional district maps by the conclusion of the second month; twenty-one additional district maps by the conclusion of the third month; and twenty-one additional district maps by the conclusion of the fourth month. The City shall review approximately the following number of designs in the first five months after the effective date of this Agreement pursuant to section 2.2 herein: 12 district maps by the conclusion of the second month, 21 additional district maps by the conclusion of the third month, 21 additional district maps by the conclusion of the fourth month, and 21 additional district maps by the conclusion of the fifth month. Thereafter, the Company shall submit to the City on a monthly basis for the next thirty-eight months of construction an approximately equal number of district maps each month. The City shall complete its review of such designs within one month of such submission.

The City shall indicate its approval or disapproval of designs within the time frame designated in this Section 5.23. If the City disapproves any design, the City shall indicate its reasons for such disapproval and shall cite the criterion set forth in this Agreement which would support such disapproval. The Company shall submit revised and corrected designs to the City, and the City shall review such revised designs in the same manner as the City reviews new designs in accordance with the procedures set forth in this Section 5.23.

Article 6: Construction

6.1 The Company shall construct, and the City shall purchase, an upgraded streetlighting system within the City at a cost of \$71,250,000 for 73,760 streetlights, consistent with the requirements set forth in this Article 6. Such cost shall include the installation of (A) luminaires preassembled with photocells (but not with lamps), and (B) separate lamps, but shall exclude the following activities for which the City shall be responsible: (A) purchase of luminaires, photocells and lamps; (B) factory testing of new and existing luminaires; and (C) disposal of brackets, luminaires, lamps, photocells and ballasts. The upgraded streetlighting system shall cover all territory within the City pursuant to the classifications derived by mutual agreement between the City and the Company in June 1995. The upgraded streetlighting system shall exclude those rural roads accurately classified (as corrected, if appropriate, by the City) pursuant to Section 6.24 herein. Nothing in this Article 6 shall be construed to relate to streetlights currently owned by the City.

6.2 (A) If the actual number of streetlights provided under this Agreement exceeds 73,760, the City shall pay a lump sum to the Company for those streetlights in excess of 73,760 based on a unit cost of \$965.97.

(B) If the actual number of streetlights provided under this Agreement is less than 73,760, the Company shall reduce the cost to the City based upon a unit cost of \$676.18.

6.3 The City shall pay a separate unit charge to the Company for rock excavation performed as part of the construction of the streetlighting system. Such unit charge shall be determined on the basis of a competitive bid solicited by the Company. The City shall pay the actual bid cost with no additional charges. The City shall have the right to review and approve the terms and conditions of the bid specification as well as the bid price selected by the Company.

6.4 The City shall pay a separate unit charge to the Company for tree trimming performed as part of the construction of the streetlighting system. Such unit charge shall be determined on the basis of a competitive bid solicited by the Company. The City shall pay the actual bid cost with no additional charges. The City shall have the right to review and approve the terms and conditions of the bid specification as well as the bid price selected by the Company.

6.5 The City shall have the right to (A) audit the Company's financial records relating solely to rock excavation and tree trimming costs referenced in Sections 6.3 and 6.4 herein; and (B) audit and verify the actual amount of rock excavation and tree trimming performed under Sections 6.3 and 6.4 herein.

6.6 (A) The construction of the streetlighting system shall be completed within 48 months of commencement of construction, including the installation of new poles and fixtures to meet applicable standards set forth in ANSI/IES RP-8. The Company shall pay \$10,000 per month to the City (which shall be pro-rated on a daily basis), up to a maximum of \$60,000, if this timing commitment is not met. If the Company finishes the construction of the full

upgraded streetlighting system before the expiration of the 48 month period, the City shall pay to the Company \$10,000 per month (which shall be pro-rated on a daily basis), up to a maximum of \$40,000. The 48 month period defined in this Section 6.6(A) shall be extended by any amount of time which the Company's schedule is delayed because the City unreasonably delays any approval process, material delivery, or disposal process identified in this Article 6. If the Company believes that the City has unreasonably delayed any approval, delivery or disposal which has delayed the Company's schedule, the Company shall notify the City of the Company's belief, explaining what constitutes the delay. When the Company believes the delay has ended, the Company shall notify the City of the duration of the delay. To the extent that the City disagrees with the Company's assertions, the dispute shall first be referred to the Joint Operating Committee and then, if unresolved, to mediation pursuant to Article 19 herein.

(B) (1) Neither party shall be responsible for performance under this Article 6, other than the payment of moneys due, where such performance has been prevented by Uncontrollable Forces and for more than 24 continuous hours.

(2) The 48-month period set forth in Section 6.6(A) herein shall be extended by the amount of time in excess of 24 continuous hours by which the Company's schedule is delayed because of Uncontrollable Forces. In the event Uncontrollable Forces delay the Company's schedule, the Company shall immediately notify the City of such event, explaining the event and why it has delayed the Company's schedule. When the event of Uncontrollable Forces has ended, the Company shall notify the City of the duration of the delay caused by the event of Uncontrollable Forces. To the extent that the City disagrees with the Company's assertions, the dispute shall first be referred to the Joint Operating Committee and then, if unresolved, to mediation pursuant to Article 19 herein.

6.7 The upgraded streetlighting system shall consist solely of high pressure sodium vapor lamps and shall not include any other types of lamps.

6.8 The complete streetlighting unit consisting of pole, mast arm and luminaire shall be leveled (with a tolerance of 2.5 degrees from vertical as applied to the pole only as provided in Section 6.13 herein), and the luminaire horizontal axis shall be installed parallel to the road surface.

6.9 The Company shall install new brackets on each of the streetlights, including those streetlights retained from the existing system. The Company shall install luminaires as provided by the City. Prior to installing any luminaire, the Company shall (A) perform a visual inspection of the luminaire in the warehouse to determine whether the luminaire is damaged, (B) test the luminaire to determine whether the lamp is firing and the photocell is functioning, and (C) perform a continuity test for the luminaire wiring. The Company shall keep written documentation and shall notify the City in a timely manner of any damaged or malfunctioning luminaires, lamps, and photocells. The Company shall, upon identification of any damaged or malfunctioning luminaires, lamps, and photo-

cells make such damaged or malfunctioning units available for the City at a specific site located in Kansas City, Missouri, from which KCPL shall perform construction and maintenance activities pursuant to this Agreement. KCPL shall identify such site to the City at the time KCPL determines the location of such site. No deviation from this site location shall be made subsequent to such identification without unanimous approval of the Joint Operating Committee established in Article 26 of this Agreement.

6.10 Where economically practical and technically feasible, the Company shall use boring and jacking and micro tunneling to minimize the removal and repair of sidewalks, driveways, and roadways.

6.11 The Company shall be responsible for removal, disposal and site restoration of excess lighting support structures (not including the disposal of brackets, luminaires, lamps, photocells and ballasts). Stubs shall be cut one foot below grade and either backfilled and returned to a condition consistent with the surrounding area, or concreted over as compatible with surrounding materials. The Company shall remove existing brackets and luminaires so that they remain in reusable condition and make such brackets and luminaires available to the City at the KCPL site identified pursuant to Section 6.9 of this Agreement and subject to the restrictions set forth in that Section.

6.12 The Company shall be responsible for work-related accidents and damages caused by the Company, its employees, agents or subcontractors during the construction period.

6.13 During the construction period, the Company shall, if appropriate in each case, repair, straighten, level, repaint, restore (or replace where appropriate) all rusted, rotted, bent and/or defective Company-owned poles and repair or replace hand-hole covers in the existing streetlight system. The Company shall repaint any pole which is damaged or shows rust, and shall straighten any pole which leans by more than 2.5 degrees. The Company shall construct the system so that the poles are generally parallel to one another, e.g. a given pole should not lean 2.5 degrees to the left of vertical while the next pole leans 2.5 degrees to the right of vertical. At the time of the expiration of the warranty period set forth in Section 6.18 of this Agreement, (1) no pole which is dedicated to streetlights shall lean by more than 2.5 degrees from vertical and (2) all such poles shall be generally parallel to one another. The Company shall have no duty under this Agreement to straighten any poles which are not exclusively used for streetlights.

6.14 Representatives of the City and the Company shall meet on a bi-weekly basis during the construction period to address issues relevant to the construction process, including unique construction situations. If the City and the Company are unable, after a good faith effort, to reach agreement on a construction issue, such issue shall be referred to and addressed by the Joint Operating Committee pursuant to Article 26 herein.

6.15 The Company shall provide quarterly status reports to the City (or the Joint Operating Committee referenced in Article 26 herein) showing the number of streetlights installed/upgraded,

locations in the City where construction is completed, locations scheduled for construction during the next quarter, and compliance with the design parameters set forth in Section 5.21 herein.

6.16 The City may periodically inspect the construction work and shall promptly notify the Company of any problems or defects discovered for correction subsequent to the inspection.

6.17 The Company shall keep permanent records of construction activities (consisting of both design and as-built information) including electrical drawings, maps, and progress data and shall provide duplicate sets of such records to the City, in both electronic and paper form, on a monthly basis to keep records current.

6.18 For a period of two years from the time the City approves and accepts the upgraded streetlights, as described in Section 6.19, the Company shall provide a warranty on the upgraded streetlighting system for (A) equipment provided by the Company, (B) workmanship and (C) compliance with the technical requirements of this Agreement (other than luminance and illuminance standards set forth in ANSI/IES RP-8).

6.19 (A) The Company shall provide to the City at least monthly as construction is completed during the 48-month construction period district maps indicating which streetlights have been installed and upgraded, and payment requests for such streetlights at a unit price of \$945.63. Within 15 days after the receipt of such district maps, the City shall inspect the identified streetlights and either approve and accept the streetlights as built or notify the Company of any deficiencies. In approving and accepting such streetlights, the City may perform at its expense a physical inspection and electrical tests of such streetlights, which shall be prescheduled for a time mutually agreeable to the City and the Company. Such physical inspection and electrical tests are intended to insure the proper installation of the streetlight system and to identify any malfunctioning components of the installation. The inspection and testing of the streetlight system may include, but are not limited to the evaluation of the following: (1) luminaire, mast arm and pole orientation; (2) backfill compression; (3) pole assembly workmanship; (4) taping of splices; (5) depth of cables; (6) voltage and voltage drop; (7) current; and (8) insulation resistance. As requested by the City, the Company shall participate and cooperate with the City in such physical inspection and electrical tests.

(B) (1) If the City approves the streetlights pursuant to Section 6.19(A) herein, it shall (1) indicate such approval by reference to the district maps provided by the Company pursuant to Section 6.19(A) herein and (2) make the requested payments to the Company for those streetlights approved within 30 days of such approval.

(2) If the City notifies the Company of any deficiencies, the Company shall correct such deficiencies within 30 days of notification or as otherwise agreed by the City and the Company.

(a) If the Company fails, refuses or neglects to correct such deficiencies, the provisions set forth in Section 22.1 herein (except for the first sentence in Section 22.1) shall apply.

(b) If the Company corrects such deficiencies, the City shall, within 15 days after being notified of such corrections, (i) approve the corrected streetlights as built, in which case Section 6.19(B)(1) herein shall apply; or (ii) notify the Company of any remaining deficiencies, in which case Section 6.20(B)(2) herein shall apply.

(C) If any of the deadlines described in this Section 6.19 fall on a holiday or a weekend, the City or the Company shall have until the next business day to take appropriate action. Notwithstanding any provision herein to the contrary, the Joint Operating Committee may, by unanimous vote after application by either the City or the Company, postpone any deadline set forth in this Section 6.19.

6.20 The City shall, at each of the third, fourth, fifth and sixth years after the commencement of construction of the streetlighting system, select approximately 1500 streetlights based on the Company's district maps for a system condition assessment. Streetlights selected for such assessment shall be those previously accepted and approved by the City pursuant to Section 6.19 herein approximately two years prior to such selection, and for which the two-year warranty period set forth in Section 6.18 herein has started and not expired. The City and the Company shall jointly assess such streetlights and prepare joint reports identifying the number of deficient units, if any, including leaners, poles requiring paint, rotting poles, day burners, temporary wiring and outages.

(A) If 2 percent or more of total units in the 1500 streetlight sample are deficient, the Company shall, within 6 months of notification of such deficiency, correct all deficient streetlights constructed under this Agreement which are identified by the City and under warranty at the time of notification.

(B) If less than 2 percent of the total units in the 1500 streetlight sample are deficient, such deficiencies shall be remedied in the course of normal maintenance activities. In addition, the Company shall straighten and paint any deficient poles in accordance with the criteria set forth in Section 6.13 herein.

6.21 The Company shall transfer ownership of those portions of the streetlighting system approved by the City pursuant to Section 6.19 herein upon payment by the City pursuant to Section 6.19 herein. The risk of loss for individual streetlights shall pass to the City upon transfer of ownership of the individual streetlight. Nothing in this Section 6.21 shall be construed to negate the warranty obligations or maintenance obligations of the Company under this Agreement.

6.22 The physical point of ownership of an individual streetlight shall be the point of connection to the secondary distribution system so that the City will own that portion of the system used

exclusively to serve the streetlights. Such point of ownership is illustrated by the diagram attached hereto.

6.23 To the extent necessary or appropriate, the City shall provide to the Company, and the Company shall provide to the City, an address for receipt of inventory, used parts, and data.

6.24 The Company has identified and located approximately seventy (70) miles of rural roads which do not have streetlights or distribution lines. This list shall be subject to City field analysis and verification of the classification of "rural roads" and revision of such classification where the roads have been inaccurately classified as of the date of road classification. The City shall perform such verification and reclassification within one year after commencement of construction of the upgraded streetlighting system. Within one year after such commencement of construction, the City shall identify those rural roads, if any, in which it wants new streetlights installed. The Company shall estimate the lighting and distribution costs for such roads and submit a proposal to the City. If the City and the Company agree on the amount of lighting and distribution costs, the construction of such rural streetlights shall be scheduled into the construction of the overall streetlighting system.

Article 7: Maintenance

7.1 The Company shall perform the maintenance activities set forth in this Article 7 at a unit cost of \$33.00 per year until four years from the date of commencement of construction of the upgraded streetlighting system or until extended by mutual agreement as set forth in Section 7.2 herein. This cost shall include:

- (A) lamp replacement;
- (B) lens cleaning and interior wiping of the luminaire;
- (C) glassware replacement;
- (D) damaged head replacement;
- (E) photocell replacement;
- (F) pole and bracket replacement;
- (G) knockdown replacement;
- (H) computerized maintenance management services;
- (I) thorough tracking and reporting (which shall include a complete record of every maintenance activity at every location, including the time and date of work performed and any problems identified);
- (J) warranties of equipment purchased by the Company and of workmanship;
- (K) service guarantees as defined in Section 7.9 herein;
- (L) night patrols;
- (M) underground feed repair;
- (N) overhead feed repair;
- (O) luminaire outage repair regardless of cause (except as a result of defect in material);
and
- (P) hand-hole cover replacement.

This cost shall not include:

- (A) cost of luminaires, lamps and photocells;
- (B) disposal of luminaires, lamps, photocells, brackets and ballasts;
- (C) pole painting;
- (D) pole straightening; and
- (E) group relamping.

Without limiting the generality of the foregoing, the maintenance activities set forth in this Section 7.1 shall apply to streetlights that are vandalized. However, the City shall pay to the Company its actual costs for repairing or replacing those streetlights which are vandalized, including the cost of Company supplied parts, under any one of the following circumstances: (A) if an individual light is damaged by vandalism more than once in a six month period; (B) if three or more fixtures located in two contiguous City blocks are damaged by vandalism at any single time; (C) in situations not definable by City blocks, if three or more fixtures located within a 1/4 linear mile area are damaged by vandalism at any single time; or (D) where the City and the Company mutually identify and agree upon specific areas in which streetlights have been damaged by vandalism. In addition, any other times where the amount of maintenance on a particular light is abnormal due to vandalism, the Company shall take the issue to the Joint Operating Committee for a determination of how to proceed and who will be responsible for the costs of such actions.

7.2 After four years from the date of commencement of construction of the upgraded streetlighting system, the City shall have the right to solicit competitive bids for maintenance of the streetlighting system; provided, however, that prior to soliciting such bids, the City and the Company may by mutual agreement extend this Agreement (under the same terms and conditions set forth in this Agreement) until such time as the City assumes ownership of the full upgraded streetlighting system.

7.3 Qualified electrical professionals representing the City shall have access to those poles and streetlights and transformers owned by the Company prior to City ownership of such poles and street lights and those poles owned by the Company on which City-owned streetlights are attached at all times necessary to perform all functions allowed pursuant to this Agreement, including, but not limited to (a) inspections and (b) maintenance of streetlights after the Company maintenance responsibility identified in Section 7.1 has expired. The Company grants to the City the right to attach streetlights only to the Company's poles at no cost for a period of fifty years from the effective date of this Agreement. The City grants to the Company the right to attach only transmitting devices that are currently referred to as "Cell Net" devices or devices that perform similar functions to Cell Net devices to City owned poles or streetlights for a period of fifty years from the effective date of this Agreement. Cell Net and equivalent devices shall not be substantially greater in size or weight than current Cell Net devices. With the exception of Cell Net (or equivalent) devices, the Company shall not permit any otherwise lawful attachment on any of the poles or streetlights it will install for the City under this Agreement.

7.4 The Company shall conduct monthly night patrols whereby every streetlight shall be checked once each month.

7.5 The Company shall replace lamps out, luminaire failure, or faulty photocells including those causing day burners within 36 hours of the Company receiving notification or patrol discovery. The City shall compensate the Company for labor costs associated with the replacement of factory defective luminaires, lamps and photocells within one year after their installation if (A) such defective luminaires, lamps and photocells have not been identified by the Company as damaged, non-functioning or malfunctioning pursuant to Section 6.9 herein, and (B) the luminaires are located in streetlights previously accepted and approved by the City pursuant to Section 6.19 herein. Following the first year after installation, any defects shall be covered through maintenance. The Company shall be responsible for labor costs associated with the replacement of all luminaires which are not factory defective, including, but not limited to those luminaires which are damaged, non-functioning, or malfunctioning because of the Company's improper storage, improper handling, improper maintenance, improper installation, and any damage to the luminaires after delivery to the Company.

7.6 (A) The Company shall secure pole knockdown sites for protection of motorists and pedestrians within one hour of receiving notification or patrol discovery.

(B) After receiving notification or patrol discovery of a pole knockdown, the Company shall restore such pole within 14 working days when new concrete foundations are required, and 7 working days for all other types of foundations. Replacement equipment shall be new and of equal or better quality than that included in the approved specifications. The time period shall be extended to 14 days beyond the delivery date of special equipment when a special factory equipment order is required for restoration of a pole knockdown of a decorative pole which the City may own under this Agreement.

7.7 The Company shall repair streetlights out at intersections or other critical locations such as railroad crossings within four hours of receiving notification or patrol discovery; provided, however, that if such four hour period expires at a time in which streetlights are not normally illuminated, such four hour period shall be extended until such time when streetlights normally are illuminated.

7.8 After receiving notification or patrol discovery of either (A) circuit outages or (B) outages of three or more lights in succession, the Company shall commence repairs on such outages within four hours, provided, however, that if there are not four remaining hours before the lights would normally go off, the Company shall have until such time as the lights would normally be illuminated the following dusk before the lights need be repaired.

7.9 The following service guarantees shall apply:

(A) Lamp outages: \$25.00 per day per lamp for each day beyond the 36 hour response time set forth in Section 7.5 herein that the Company fails to replace faulty lamps, luminaires and photocells.

(B) Pole knockdowns: (1) \$25.00 for each hour beyond the one hour response time set forth in Section 7.6(A) herein, as clarified by Section 7.10 herein, that the Company fails to secure pole knockdown sites..

(C) Streetlights out at intersections and other critical locations: \$25.00 for each hour beyond the response time set forth in Section 7.7 herein, as clarified by Section 7.10 herein, that the Company fails to respond to streetlights out at intersections or other critical locations such as railroad crossings.

(D) Circuit outages and outages of 3 or more lights in succession: \$25.00 for each hour beyond the response time set forth in Section 7.8 herein, as clarified by Section 7.10 herein, that the Company fails to respond to circuit outages and outages of three or more lights in succession.

(E) If the Company fails to comply with more than one of the service guarantees set forth in Sections 7.9(A), 7.9(B), 7.9(C) and 7.9(D) herein at the same time, the Company shall be liable for the higher of the service guarantee amounts set forth in such sections. Such amounts shall be deducted from subsequent maintenance bills submitted by the Company to the City.

(F) The service guarantees identified in this Section 7.9 shall not apply to outages or emergencies occurring as a result of Uncontrollable Forces.

7.10 Any necessary repairs shall continue uninterrupted until temporary or permanent restoration is completed. In the event temporary lighting is installed, the Company agrees to return within 14 days to initiate permanent restoration of the facilities subject to weather conditions. The permanent restoration activities shall continue uninterrupted until the restoration is completed. The time period for permanent restoration shall be extended to 14 days beyond the delivery date of special equipment when a special factory equipment order is required for restoration of decorative lighting fixtures which the City may own under this Agreement.

7.11 The Company shall document maintenance activities and repairs which will evidence whether they are in compliance with the service guarantees and other requirements set forth in this Article 7. Such documentation includes, but is not limited to, the time of notification of problem, time of response, and completed repair time.

7.12 The City shall have the right to inspect maintenance work performed by the Company; provided, however, that such inspections shall be performed in a manner which does not interrupt or delay the Company's maintenance activities.

7.13. The Company shall keep electronic records on each support structure and luminaire, including luminaire components, by location and pole number.

7.14 (A) The Company shall utilize a computerized system known as the Computerized Maintenance Management System ("CMM") to track work orders, response times, and maintenance activities. The City shall have the right to audit the portions of the CMM database which are pertinent to verifying Company response times to streetlight outage reports and equipment maintenance history. The City and the Company shall jointly develop customized reports from the CMM database to summarize issues including, but not limited to light outages, knockdowns, acts of vandalism, pole inspection reports and incidents of failing to meet the service guarantees identified in Section 7.9 herein.

(B) The Company shall provide to the City on a quarterly basis reports on backlog of work orders, database review and warranty control. Such information shall be kept current. At the time the City assumes ownership of the full upgraded streetlighting system, a copy of the database on warranty, backlog, knockdowns, scheduling and maintenance records shall be provided to the City on disc and hard copy. The Company shall provide to the City quarterly status reports on work orders, database review and warranty control. Such information shall be kept current. At the time the City assumes ownership of the full upgraded streetlighting system, a copy of the database on warranty, backlog, knockdowns, scheduling and maintenance records shall be provided to the City on disc and hard copy. To the extent the Company maintains the streetlights subsequent to such assumption of ownership, the Company shall provide to the City an updated data base once each quarter.

7.15 The Company shall keep paper or electronic copies of work order records on file for a minimum of five years from the date the work order was closed.

7.16 The Company shall be responsible for work-related accidents and damages caused by Company, its employees, agents or subcontractors during the maintenance phase of the streetlight project.

7.17 (A) The Company and City shall jointly develop a one-page simplified billing format (with back-up details provided on disk) for maintenance and energy for all streetlights (including those streetlights referenced in Section 7.18 herein).

(B) The Company shall bill the City on a monthly basis for streetlight maintenance service. The City shall pay any uncontested bill within 14 days of receipt of such bill. If the City contests any portion of a maintenance bill, the City shall so notify the Company within 7 days of receipt of such bill. If the Company disagrees with the City's claim, the Company shall so notify the City within 7 days of receipt of the City's claim, and the City and the Company shall thereafter attempt to resolve such claim. If the City and the Company are unable, after a good faith effort, to resolve such claim, the mediation provisions set forth in

Article 19 herein shall apply. The City shall nonetheless pay the uncontested portion of any maintenance bill within 14 days of receipt of such bill.

7.18 Beginning on May 1, 1997, the Company shall maintain, in accordance with this Article 7, all streetlights currently owned by the City and those future City-owned streetlights designated by the City. However, those streetlights still included within the City's maintenance backlogs, except streetlights with only maintenance items within the sole control of the Company, shall not be turned over to the Company for maintenance until removed from the maintenance backlog list. The Company shall not begin assessing maintenance charges for a City-owned streetlight until turned over to the Company by the City for maintenance. The City shall provide to the Company any information pertinent to the maintenance of such streetlights.

7.19 For purposes of maintaining those streetlights currently owned by the City where the sidewalk abuts the curb, the Company may use the streets in the City to conduct underground repairs to install new wiring parallel to the curb.

7.20 The Company shall be subrogated to the City's interest and rights of recovery in all streetlights which the Company repairs or replaces, as part of the maintenance services provided under this Article 7, as a result of any actions by a third party. The City agrees to provide necessary information and assistance to the Company for enforcement of its subrogation rights to the extent that such information or assistance is uniquely available to the Company only from the City.

Article 8: Customer Service

The Company shall establish and maintain a twenty-four hour customer service/dispatcher phone line for lighting inquiries and streetlight outage reports, and create and maintain written or computer records of customer calls for a period of five years from the date the calls are received. The City shall have the right to periodically review such records, and if the Company maintains computer records, the City shall have the right to review such information in both paper and electronic forms.

Article 9: Indemnification

The Company shall indemnify, defend and hold harmless the City from and against all damages, expenses (including, but not limited to reasonable attorneys fees), obligations, costs, liabilities, losses, claims, actions or causes of actions whatsoever sustained by the City arising from design, installation, operation, or maintenance of the existing and expanded streetlight system, including any of its components for (1) the term of the two year warranty associated with the construction of the upgraded streetlighting system, and (2) the term of the maintenance. The Company shall not be obligated to indemnify, defend or hold the City harmless for alleged failures of the City or the Company to act where the City has instructed the Company not to act.

Article 10: Energy for Streetlights

10.1 From the effective date of this Agreement until four years from the date the Company receives payment for its existing streetlights pursuant to Article 4 of this Agreement, the City shall pay the energy prices listed in the following table for all City-owned lights and those lights approved by the City pursuant to section 6.19 of this Agreement within the Company's service territory. However, should the citizens of the City not approve a financing mechanism necessary to finance the acquisition of the Company's existing streetlights within the City and the construction of an upgraded streetlighting system within the City, prices provided in the table will no longer be applicable. The City shall then pay the tariff rate for municipal streetlighting service for lights owned by the Company and the prices in Block 5 of the table for all types of City-owned streetlights.

Price Schedule #	Nominal Rating	Ballast Loss Factor (BLF)*	Annual Burn	Energy Blocks	Energy Price
1	100 Watt HPS	(1 + ballast losses)	4100 Hrs	Not Applicable	\$0.046/kWh
2	150 Watt HPS	(1 + ballast losses)	4100 Hrs	First 100 Watts x BLF Next 50 Watts x BLF	\$0.046/kWh \$0.044/kWh
3	250 Watt HPS	(1 + ballast losses)	4100 Hrs	First 100 Watts x BLF Next 150 Watts x BLF	\$0.046/kWh \$0.042/kWh
4	400 Watt HPS	(1 + ballast losses)	4100 Hrs	First 100 Watts x BLF Next 300 Watts x BLF	\$0.046/kWh \$0.038/kWh
5	All Wattages Non-HPS	(1 + ballast losses)	4100 Hrs	Not Applicable	\$0.046/kWh
<p>* Ballast losses: The manufacturers' published ballast loss percentage for the installed unit shall be applied to all blocks for calculating the actual energy charge for the unit.</p> <p>** Although the rates are calculated on an annual basis, the energy billing shall occur monthly and will be equal to one-twelfth of the annual amount.</p>					

A sample application of the rate schedule is provided below:

250 Watt High Pressure Sodium Lamp with 25% Ballast Losses:

First 100 Watts @ Price Schedule #3:

$(100 \text{ watts} \times 1.25 \text{ losses} \times 4100 \text{ hrs}) \times (1 \text{ kWh} / 1000 \text{ watt-hrs}) \times \$0.046 \text{ per kWh} = \23.58 per year

plus,

Next 150 Watts @ Price Schedule #3:

$(150 \text{ watts} \times 1.25 \text{ losses} \times 4100 \text{ hrs}) \times (1 \text{ kWh} / 1000 \text{ watt-hrs}) \times \$0.042 \text{ per kWh} = \32.29 per year

Total Annual Billing for 250 Watt Lamp = $\$23.58 + \$32.29 = \$56.87$ per year

10.2 In the event lamp wattages are utilized which are not shown in the above schedule, the energy shall be priced using the schedule for the next lowest lamp wattage in the table, but the excess wattage of the installed unit over the table value shall be priced using the tail block pricing of the succeeding price schedule on the table. The following example illustrates the application of the price schedule:

300 Watt High Pressure Sodium Lamp with 25% Ballast Losses:

A 300 Watt unit falls between the 250 Watt and 400 Watt units shown on the table. Consequently, the first 250 Watts shall be priced using the Price Schedule #3, and the remaining 50 Watts shall be priced using the lower energy price shown in Price Schedule #4.

First 100 Watts @ Price Schedule #3:

$(100 \text{ watts} \times 1.25 \text{ losses} \times 4100 \text{ hrs}) \times (1 \text{ kWh} / 1000 \text{ watt-hrs}) \times \$0.046 \text{ per kWh} = \23.58 per year

plus,

Next 150 Watts @ Price Schedule #3:

$(150 \text{ watts} \times 1.25 \text{ losses} \times 4100 \text{ hrs}) \times (1 \text{ kWh} / 1000 \text{ watt-hrs}) \times \$0.042 \text{ per kWh} = \32.29 per year

plus,

Next 50 Watts @ Price Schedule #4:

$(50 \text{ watts} \times 1.25 \text{ losses} \times 4100 \text{ hrs}) \times (1 \text{ kWh} / 1000 \text{ watt-hrs}) \times \$0.038 \text{ per kWh} = \9.74 per year

Total Annual Billing for 300 Watt Lamp = $\$23.58 + \$32.29 + \$9.74 = \65.61 per year

Article 11: Easements

11.1 The Company shall obtain at its own cost, on behalf of the City, all new property easements necessary for the construction of the upgraded streetlighting system. The City's sole cost shall be the cost of recording documents.

11.2 The Company shall transfer to the City, at no cost to the City, all existing property easements associated with the Company's existing streetlighting system upon the transfer of the Company's existing streetlighting to the City.

11.3 The Company shall transfer to the City, at no cost to the City, all existing property easements associated with the new streetlights constructed by the Company pursuant to Article 6 herein at the time the Company transfer ownership of those streetlights to the City pursuant to Section 6.21 herein.

11.4 The Company may retain an interest in joint-use easements transferred to the City under this Article 11. The Company's use of such easements shall be subordinated to the City's use of such easements.

Article 12: Taxes

The City agrees to waive all taxes (excluding earnings profits tax) imposed by the City on the transactions contemplated in this Agreement. This waiver includes but is not limited to sales, use, and gross receipts taxes. In the event such taxes are not waived for any reason, the City agrees to reimburse the Company for any such taxes paid. The City agrees to provide to the Company a project exemption certificate and/or any other documentation necessary to establish the exemption.

Article 13: Permits and Fees

13.1 Excavation permit fees set forth in Section 64-115 of the City's ordinances and street closure fees set forth in Section 70-39 of the City's ordinances shall not be assessed against the Company for purposes of this Agreement.

13.2 The restoration of streets and other public ways by the Company shall be performed in accordance with applicable provisions of the City's ordinances, rules and regulations.

Article 14: Relocation

The relocation of lights, addition of lights, temporary lights, or upgrades of existing lights due to road widening, street construction or municipal improvements, urban renewal or similar activities are outside of the scope of this Agreement.

Article 15: City-Purchased Equipment and Material

15.1 The City shall purchase in a timely manner and in sufficient quantities luminaires, lamps and photocells for use in the construction and maintenance of the upgraded streetlighting system.

15.2 The City shall be responsible for factory testing the equipment and materials referenced in Section 15.1 herein.

15.3 The City shall deliver in a timely manner or arrange for the delivery in a timely manner of the materials and equipment referenced in Section 15.1 herein to the Company's warehouse, and the

Company shall store such materials and equipment in such warehouse and transport such materials and equipment to the appropriate construction and maintenance sites.

15.4 The City shall strive to provide the Company with the following minimum and maximum inventories of luminaires (including photocells) and separate lamps and photocells:

Item	Minimum	Maximum
Luminaires (including photocells)	1,000	2,000
Lamps	1,200	3,000
Photocells	200	1,000

The minimum inventory level set forth above is a goal which both parties intend to meet; however, failure to meet this goal by the City shall not be deemed a violation of this Agreement as long as the Company has sufficient inventory to continue construction and maintenance at the Company's normal rate.

Article 16: Quality Service Initiative

16.1 The Company shall implement a quality service initiative with the overall objective of providing a high quality and reliable streetlighting system in the City. The components of such quality service initiative shall include design, equipment supply (for that equipment purchased by the Company), installation, maintenance, and customer service.

16.2 The Company shall submit to the City for its approval, before any equipment is purchased, the type and specifications for all material to be used in the construction and maintenance of the streetlighting system. Any equipment deemed unsatisfactory by the City based on quality of equipment or on any failure of the equipment to comply with approved specifications shall not be used in the streetlighting system.

16.3 Equipment changes or revisions of any kind shall not be made without approval of the City. Any change in these costs due to equipment changes which are mutually agreed upon by the City and the Company shall result in a mutually agreed upon adjustment in the cost per lighting unit over the life of the project.

16.4 City approval shall be required for all equipment and processing used such as poles, mast arms, steel type for poles, painting, galvanizing, cable, splices, foundations and other equipment. The City shall evaluate the Company's timely submittal of its selection with specifications and the City shall respond in a timely manner so as not to delay the ordering of equipment for purchase.

Article 17: New Technologies

To the extent that new streetlight technologies become available, the Joint Operating Committee will review the potential application and use of these technologies in the streetlight system, and make a recommendation to the City and the Company. The City and the Company may, by mutual agreement, accept and implement such recommendation, and recognize that the use of new or different technologies may result in a change in the underlying costs used to develop the streetlight facility and maintenance charges, and agree that the costs and charges set forth in this Agreement shall be adjusted in an equitable manner to reflect such changes, subject to necessary appropriation of funds by the City. Any changes in materials or equipment will be reviewed by the City prior to installation.

Article 18: Financing Arrangement

The financing arrangements necessary to implement the provisions of this Agreement are not addressed in this Agreement.

Article 19: Mediation of Disputes

Any dispute arising under this Agreement may, after a good faith attempt to resolve the dispute is unsuccessful, be submitted to an outside mediator mutually selected by the City and the Company.

Article 20: Transfer of Agreement Rights and Obligations

The Company shall not transfer or assign in any manner any rights and obligations under this Agreement to another entity unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, that such approval right shall not apply to such transfer or assignment to (A) a merged entity which includes the Company, or (B) an affiliate of the Company. If a transfer or assignment is not approved by the City, this Agreement shall terminate.

Article 21: Non Waiver

21.1 Except as authorized by law, the granting of this Agreement shall not waive, abridge, release, limit, surrender, impair, remove, or subordinate:

(A) Any right, power, duty, or jurisdiction now or hereafter possessed by the City under the Constitution and statutes of the State of Missouri and under the Charter of the City;

(B) Any right, power, duty, or jurisdiction now or hereafter possessed by the State of Missouri, or any officer, agency, department, or commission thereof;

(C) Any provision of any constitution, statute, or order of a competent authority;

(D) Any obligation or duty now or hereafter imposed by law or by order of a competent authority; or

(E) Any right of the City or the Company to obtain judicial review of any judgment or decree of a judicial tribunal or any order of a competent authority.

21.2 Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

Article 22: Failure to Comply

22.1 In the event that the Company fails, neglects or refuses to comply with any provision of this Agreement, including but not limited to any specific time limit or deadline set forth in this Agreement, the City shall so notify the Company and the Company shall remedy such failure, neglect or refusal within thirty (30) days after such notice, or as otherwise agreed by the Company and the City. If the Company disputes the validity of the City's claim, the Company and the City shall, no later than fifteen (15) days following the City's notice, meet and discuss in good faith such claim in an effort to resolve any controversy. If the Company and the City are unable to resolve such controversy after such meeting and after mediation as set forth in Article 19 herein, the Company shall, at the City's request, remedy such failure, neglect or refusal, but such Company action shall not be deemed to constitute a waiver of the Company's claim. If there is a final order issued by a court or agency of competent jurisdiction finding the Company responsible for such failure, neglect or refusal, the Company shall be liable to the City for all costs incurred by the City resulting from the Company's noncompliance including but not limited to the costs of enforcing such activities, including attorneys' fees.

22.2 In the event that the City fails, neglects or refuses to comply with any provision of this Agreement, including but not limited to any specific time limit or deadline set forth in this Agreement, the Company shall so notify the City and the City shall remedy such failure, neglect or refusal within thirty (30) days after such notice, or as otherwise agreed by the Company and the City. If the City disputes the validity of the Company's claim, the Company and the City shall, no later than fifteen (15) days following the Company's notice, meet and discuss in good faith such claim in an effort to resolve any controversy. If the Company and the City are unable to resolve such controversy after such meeting and after mediation as set forth in Article 19 herein and if there is a final order issued by a court or agency of competent jurisdiction finding the City responsible for such failure, neglect or refusal, the City shall be liable to the Company for all costs incurred by the Company resulting from the City's noncompliance including but not limited to the costs of enforcing such activities, including attorneys' fees.

Article 23: Notices

Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement shall be delivered to the City Manager or his/her designee, the City Attorney, and the Director of Public Works. The Company shall maintain within the City throughout the term of this Agreement an address for service of notices by mail, and a local office and telephone number for the conduct of matters relating to the Agreement during normal business hours. Within 15 days after the effective date of this Agreement, and from time to time as necessary, the City Manager or his/her designee shall provide the names and addresses of appropriate City officials identified in this or other sections of this Agreement.

Article 24: Breach of Contract

In the event the Company fails to fulfill any obligation under this Agreement, the City shall have a breach of contract claim against the Company, in addition to any other remedy provided by law or provided elsewhere in this Agreement.

Article 25: Affirmative Action

The Company shall comply with the City's MBE/WBE program.

Article 26: Joint Operating Committee

The City and the Company shall each appoint four voting representatives and may appoint non-voting representatives as appropriate to a Joint Operating Committee ("JOC") which shall provide a forum for communication between the parties. The JOC shall have a chairperson who will be appointed by the City and shall serve as a non-voting member of the Committee. Such chairperson shall be responsible for development of the agenda, establishment of meeting times, and coordination of meetings. The JOC shall meet on a monthly basis to address issues such as design activities, maintenance activities, contingencies, maintenance reports, public relations, future construction, and unique design, construction and maintenance situations.

Article 27: Warranty Disclaimer

THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CONSTITUTE THE ONLY WARRANTY OF THE COMPANY WITH RESPECT TO THE SERVICES TO BE PERFORMED AND THE EQUIPMENT, FIXTURES, MATERIALS OR PARTS FURNISHED UNDER THIS AGREEMENT.

Article 28: Hazardous Materials

28.1 The Company shall be responsible for hazardous material releases caused by the negligence of the Company or its agents in the course of exercising its rights and complying with its duties under this Agreement. Nothing in this Section 28.1 is meant to (A) negate the City's responsibility to provide information regarding its hazardous material disposal methods under Section 28.2 herein; or (B) cause the City to assume any responsibility relating to hazardous materials other than for the disposal by the City of materials identified in Section 6.1(C) herein.

28.2 The Company shall have the right to review the method of disposal of hazardous materials to be utilized by the City.

KANSAS CITY POWER AND LIGHT
COMPANY

CITY OF KANSAS CITY, MISSOURI

STEVEN W. CATTRON
Vice-President/Sales and Marketing

GEORGE E. WOLF
Assistant City Manager

ATTEST:

ATTEST:

JEANIE SELL LATZ
Secretary

CATHERINE T. ROCHA
City Clerk

APPROVED AS TO FORM AND LEGALITY

WILLIAM D. GEARY
Assistant City Attorney