Resolution No. 90-0554

STOCKTON CITY COUNCIL

A RESOLUTION OF THE CITY OF STOCKTON, CALIFORNIA
APPROVING AND AUTHORIZING THE EXECUTION OF THE MUNICIPAL LEASE
AND OPTION AGREEMENT, THE AGENCY AGREEMENT, THE PURCHASE
CONTRACT, THE OFFICIAL STATEMENT AND RELATED DOCUMENTS
RELATING TO THE ACQUISITION OF CERTAIN STREET LIGHTING
AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS
WITH RESPECT THERETO

WHEREAS, the City of Stockton, California (the "City")
intends to enter into a Municipal Lease and Option Agreement
(the "Lease Agreement") and an Agency Agreement, both with
Batehill Leasing Corporation ("Batehill"), said agreements to
be dated as of July 1, 1990 and pursuant to which Batehill will
acquire certain street lighting located in the city of Stockton
(the "Equipment") and will lease the Equipment to the City;

WHEREAS, Batehill proposes to enter into an Assignment
Agreement to be dated as of July 1, 1990 pursuant to which
Batehill will assign certain of its rights and interests in
said Lease Agreement to Imperial Trust Company as paying agent
(the "Paying Agent") under a Declaration of Paying Agency dated
as of July 1, 1990 to executed by the Paying Agent and
acknowledged by the City;

WHEREAS, in furtherance of said Lease Agreement and said
Assignment Agreement, the Paying Agent will execute, pursuant
to the Declaration of Paying Agency, Certificates of
Participation (Street Lighting Acquisition Project);
representing proportionate interests in certain basic lease
payments to be made by the City pursuant to the Lease Agreement
(the "Certificates");

WHEREAS, the Certificates will be initially issued in an
amount not to exceed $1,000,000 in aggregate principal amount,
and it is anticipated that additional certificates will be
issued on a parity with the Certificates to reflect any
increase in the fair market rental value of the Equipment as
indicated by the final acquisition price determined in the
eminent domain proceedings for the Equipment;

WHEREAS, the staff of the City has prepared, in
consultation with Bateman Eichler, Hill Richards Incorporated
(the "Underwriter") a preliminary official Statement for use in
connection with the sale of the Certificates;

WHEREAS, the City deems it proper and in the best
interest of the City to proceed with the above-referenced
acquisition and the financing transactions related thereto, and
the City deems such acquisition and financings to be an
appropriate municipal affair.

CCR154:RESOLVE:070590 1 90-0554
NOW, THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF STOCKTON, as follows:

1. That certain Municipal Lease and Option Agreement dated as of July 1, 1990, by and between the City and Batehill and that certain Agency Agreement dated as of July 1, 1990 by and between the City and Batehill, copies of which are on file in the office of the City Manager of the City, are both hereby approved, and the Mayor or the City Manager or any designee of either of them, is hereby authorized and directed to execute said agreements substantially in the forms herein approved with such changes, additions, deletions and corrections as shall be acceptable to the signing officer as conclusively evidenced by such officer's signature on such agreements, and the City is hereby authorized to pay the Lease Payments thereunder as finally determined by the Purchase Contract hereinafter approved.

2. The Preliminary Official Statement for the certificates is hereby approved for use by the Underwriter in connection with the sale and distribution of the Certificates substantially in the form now in the hands of the City Manager. This Council has been advised by the City's staff and, on such basis, finds that the Preliminary Official Statement is true and correct in all material respects and omits no statement of a material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. The Preliminary Official Statement shall be "deemed final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, and the staff of the City and the Underwriter are hereby authorized and directed to prepare a final Official Statement substantially in the form of the Preliminary Official Statement with such additions, changes and modifications as shall be acceptable to the City Manager and the Underwriter as conclusively evidenced by the signature of the Mayor or City Manager on the Official Statement.

3. Bateman Sichler, Hill Richards Incorporated (the "Underwriters") is hereby selected as the underwriters for the Certificates and the Mayor or the City Manager or any designee of either of them are hereby authorized and directed to execute and deliver a Purchase Contract to the Underwriters upon the terms and conditions as shall be acceptable to such signing officer as conclusively evidenced by such officer's signature on such Purchase Contract, provided however that the Purchase Contract for the Initial Certificates shall contain an underwriter's discount not greater than 1.5% of the principal amount of the Certificates and shall call for an interest rate of not more than 7.75% per annum.
4. The firm of Robinson & Pear is hereby approved as Special Counsel to the City for Certificates and Imperial Trust Company is hereby approved as Paying Agent under the Declaration of Paying Agent. The Treasurer is hereby authorized and directed to pay the fees and expenses of Special Counsel, the Paying Agent and other costs related to the issuance of the Certificates in the amounts and in the manner agreed to by the City Manager and the Underwriters.

5. The Mayor or the City Manager or their designees ("Officers") of the City are further authorized and directed to cause written notice to be provided to the California Debt Advisory Commission of the proposed sale of the Certificates of Participation as provided in Section 8855 et seq. of the California Government Code, to file the notice of final sale with that Commission, to file the written statement required by Section 53583 of the California Government Code, to file the debates and notices, if any are required under Sections 148(f) and 149(e) of the Internal Revenue Code of 1986, as amended, and to file such additional notices and reports as are deemed necessary or desirable by such Officers in connection with the Certificates and any prior such notices are hereby ratified, confirmed and approved.

6. The employees, agents and officers of the City are hereby authorized and directed to take all actions and do all things necessary or desirable for the sale of the Certificates which are not inconsistent with this Resolution, including but not limited to, the initial sale or transfer of the Equipment acquired by eminent domain to Batehill, acknowledging the Declaration of Paying Agency, executing documents, instruments, opinions, giving and publishing notices and paying fees related thereto; and any such actions previously taken consistent herewith are hereby ratified, confirmed and approved.

PASSED, APPROVED and ADOPTED this 6th day of AUGUST, 1990.

/s/ JOAN DARRAH
JOAN DARRAH, Mayor
of the City of Stockton

ATTEST:

/s/ FRANCES HONG
FRANCES HONG, City Clerk
of the City of Stockton

Ayes: Councilmembers McCarthy, McGaughy, Minnick, Panizza, Rust, Vice Mayor Weaver and Mayor Darrah
Noes: None
Absent: None
Resolution No. 92-0090

STOCKTON CITY COUNCIL

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

That the Director of Finance is hereby authorized and directed to make the following appropriation:

FROM:
Acct. #010-0000-285.10-00 General Fund Balance $900,000

TO:
Acct. #010-3026-640.62-08 Street Light Acquisition $900,000

This appropriation will provide the funds necessary for the final payment for the settlement of the condemnation of PG&E street lights (City of Stockton vs. Pacific Gas & Electric Company, et al., San Joaquin County Superior Court No. 227384).

PASSED, APPROVED and ADOPTED FEBRUARY 18, 1992.

/s/ JOAN DARRAH
JOAN DARRAH, Mayor of the City of Stockton

ATTEST:

/s/ FRANCES HONG
FRANCES HONG, City Clerk of the City of Stockton

CITY ATTORNEY REVIEW
FEB 05 1992

DATE
TO: Mayor and City Council
FROM: Dwane Milnes, City Manager
SUBJECT: APPROPRIATION FROM THE GENERAL FUND FOR BALANCE OF STREET LIGHTS PURCHASE

On Tuesday evening a resolution will be available authorizing the appropriation of $900,000 from the General Fund Balance to the Street Light Acquisition Account.

DISCUSSION

Background

In July of 1990, Resolution No. 90-0533, the City Council authorized a Resolution of Necessity for the purchase of approximately 5,739 street lights. It is in the City’s best interest to purchase the street lights since the City owned lights have an energy cost which is approximately $450,000 a year less than if the street lights are owned by Pacific Gas and Electric Company.

Current Situation

The City of Stockton filed in court to take possession of the street lights in October of 1990 based on previously authorized City Council action. Negotiations had taken place prior to the filing of the suit and Pacific Gas and Electric Company had offered the street lights to the City of Stockton for $2.6 million. This price was not acceptable to the City of Stockton and that resulted in a law suit being filed.

At a settlement conference on January 27, 1992, the City of Stockton agreed to a purchase price of $1.8 million. This is $800,000 less than Pacific Gas and Electric Company’s previous offer. The final price also included no interest being charged from the date of which the City of Stockton began to experience the reduced energy costs since the City of Stockton became the owner of the street lights in November of 1990. Discounting the purchase price for interest purposes (estimated to be $92,000) as well as the savings for not having to go to a trial (legal and expert testimony could run up to $100,000) equates to a net purchase price of approximately $1.6 million or $279 per light. This amount per light compares very favorable to what other agencies have paid. For example, Santa Rosa paid $380 per light, Petaluma paid $353 per light, Napa paid $355 per light, Arcata paid $326 per light, and South San Francisco paid $310 per light.

AGENDA ITEM 10.2
RESOLUTION NO.__________________

STOCKTON CITY COUNCIL

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TO:
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PASSED, APPROVED and ADOPTED ____________________________

__________________________
JOAN DARRAH, Mayor
of the City of Stockton

ATTEST:

__________________________
FRANCES HONG, City Clerk
of the City of Stockton

CITY ATTY
REVIEW

FEB 05 1992

DATE
MEMORANDUM

June 12, 1991

TO: R. Thomas Harris, City Attorney
FROM: James B. Giottonini, Public Works Director
SUBJECT: POLE CONTACT PERMIT FOR EXISTING STREET LIGHTS

Attached is a copy of a letter and three copies of a "Contact Permit" from Pacific Gas and Electric Company (PG&E). Their legal staff has advised Ms. Almon this initial permit needs to be a part of the Pole Contact Agreement executed by the City on March 13, 1991, copy attached. This document is a blanket permit covering all the existing street lights being included in the proposed purchase.

Please review and if satisfactory forward to the City Manager for execution. If you have any questions please contact James Escobar, Deputy Public Works Director/O&M, at 8438.

JAMES B. GIOTTONINI
PUBLIC WORKS DIRECTOR

JBG:JE:kh

Attachments

cc: Paul M. Sensibaugh, Deputy Public Works Director/CE
    Attn: Gary Tsutsumi, Senior Traffic Engineer
June 7, 1991

Mr. Jim Escobar
City of Stockton
Municipal Service Center
1465 South Lincoln Street
Stockton, CA 95206

Dear Jim:

This letter is a recap of our telephone conversation regarding the "Customer-Owned Streetlight Utility Pole Contact Agreement." The forms regarding permit to contact, Exhibit "A", needs to be filled out initially for all the current lights in addition to being used for future requests. Enclosed is a draft of what is required from you for the existing lights.

Thank you for working with me to get this additional piece added to the agreements.

If you have any questions, please call me at 942-1471.

Sincerely,

[Signature]
Sheryl Amon
Distribution Planning Supervisor

SBA: tjc
Enclosure
EXHIBIT "A"

PACIFIC GAS AND ELECTRIC COMPANY

CONTACT PERMIT

To: RON GIRARD

PACIFIC GAS AND ELECTRIC COMPANY

Division: STOCKTON

Date: June 6, 1991

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between City of Stockton and Pacific Gas and Electric Company dated

Date Checked:

By:

City of Stockton

By:

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked:

By:

Date: , 19__

Number of poles contacted under this permit:* Annual rental $___.00 each or $___.00 total.

* The number of poles per the billing inventory.

(PG&E Accounts:

TXTP178601  TXTP379401
TXTP378401  TXTP379601
TXTP378501  TXTP379801
TXTP378701  TXTP380301
TXTP379001  TXTP380901
TXTP379201  TXTP381101
TXTP379301  TXTP392701
TXTP380001  TXTP380101
TXTP379301

This permit pertains to all street lights owned by the City of Stockton and attached to PG&E-owned poles within the incorporated boundaries of the City of Stockton. (This description is in lieu of a sketch.)

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
EXHIBIT "A"

PACIFIC GAS AND ELECTRIC COMPANY

CONTACT PERMIT

To: RON GIRARD

PACIFIC GAS AND ELECTRIC COMPANY

Division: STOCKTON

Date: June 6, 1991

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between City of Stockton and Pacific Gas and Electric Company dated.

Date Checked: 

By: 

City of Stockton

By: 

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: 

By: 

Date: 

By: 

Number of poles contacted under this permit: * 

Annual rental: $0 each or $0 total.

* The number of poles per the billing inventory.

(PG&E Accounts:

TXTP178601
TXTP378401
TXTP378501
TXTP378701
TXTP379001
TXTP379201
TXTP379301
TXTP380001
TXTP379401
TXTP379601
TXTP379801
TXTP380301
TXTP380901
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To: RON GIRARD

PACIFIC GAS AND ELECTRIC COMPANY

Division: STOCKTON

Date: June 6, 1991

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Date Checked: ____________________________

By: ____________________________

City of Stockton

By: ____________________________

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: ____________________________

By: ____________________________

Date: ____________________________ 19________

By: ____________________________

Number of poles contacted under this permit.* Annual rental $_________ each or $_________ total.

* The number of poles per the billing inventory.

(PG&E Accounts:

TXTP178601 TXTP379401
TXTP378401 TXTP379601
TXTP378501 TXTP379801
TXTP378701 TXTP380301
TXTP379001 TXTP380901
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TXTP379301)

This permit pertains to all street lights owned by the City of Stockton and attached to PG&E-owned poles within the incorporated boundaries of the City of Stockton. (This description is in lieu of a sketch.)

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
OFFICE OF THE CITY ATTORNEY

CITY HALL
426 N. E. CORADO STREET
STOCKTON, CA 95202-1997
(209) 344-8333
(209) 344-8344 (TELEFAX)

DATE: June 27, 1991

TO: JAMES B. GIOTTONINI, Public Works Director

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: POLE CONTACT PERMIT FOR EXISTING STREET LIGHTS

Enclosed/Attached is a copy of the Customer-Owned Street
lights Utility Pole Contact Agreement.

____ For your files/information.
____ Pursuant to our conversation/your request.
____ Please sign and return to us promptly.
X Per your request, three copies of the "Contact Permit"
   have been forwarded to the City Manager for execution.

R. THOMAS HARRIS
CITY ATTORNEY

BY: GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP: ap

Attachments
LETTER OF TRANSMITTAL

WE ARE TRANSMITTING THE FOLLOWING ITEMS:

ATTACHED
_____ SEPARATE COVER
_____ PLANS
_____ SAMPLES
_____ SHOP DRAWINGS
_____ SUBMITTALS
_____ CHANGE ORDER
_____ SPECIFICATIONS
_____ FOR YOUR ACTION
_____ FOR YOUR USE
_____ FOR REVIEW
_____ AS REQUESTED
_____ REVIEWED
_____ EXCEPTIONS NOTED
_____ RESUBMIT
_____ CHECK(S)
_____ AGREEMENTS
_____ MAP
_____ FEES
_____ SPECIFIED BELOW:

COMMENTS:

Any questions please contact Bill Neel at 944-8428, Street Lighting Section.

COPIES TO:

SIGNED:

P.W. Fileu

PW 1437
PACIFIC GAS AND ELECTRIC COMPANY

CONTACT PERMIT

To: RON GIRARD
PACIFIC GAS AND ELECTRIC COMPANY

Division: STOCKTON

Date: June 6, 1991

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between City of Stockton and Pacific Gas and Electric Company dated.

Date Checked

By

City of Stockton

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked

By

Date

By

Number of poles contacted under this permit: *  
Annual rental $ 0 each or $ 0 total.

* The number of poles per the billing inventory.

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TXTP178601
TXTP378401
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TXTP381101
TXTP392701
TXTP380101

This permit pertains to all street lights owned by the City of Stockton and attached to PG&E-owned poles within the incorporated boundaries of the City of Stockton. (This description is in lieu of a sketch.)

APPROVED AS TO FORM

Date: June 27, 1991

Deputy

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
CITY OF STOCKTON (Applicant), has elected to enter into this Agreement with PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E).

PG&E owns, operates and maintains overhead electric distribution facilities located in geographic areas within the political jurisdiction of Applicant.

Applicant desires to enter into an agreement with PG&E that will (a) allow having that portion of the Applicant’s existing streetlights to contact PG&E’s distribution poles, and (b) specify conditions for future installation, operation, maintenance, use or removal of Applicant’s streetlights. PG&E is willing to permit Applicant to have such pole contacts under the following terms and conditions:

1. POLE CONTACT PERMISSION.
   a. Existing Streetlights. PG&E hereby gives Applicant general permission under the terms and conditions herein stated to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PG&E or jointly owned by PG&E and others. Such permission covers all existing lights owned by the Applicant that are mounted on PG&E-owned poles, based on the most current billing records as of the date of this Agreement. However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations.
   b. New Streetlights. Applicant or its contractor shall not install any new or additional equipment on PG&E’s poles without first securing PG&E’s written approval in the form of a Contact Permit for specific locations. Within (30) days of receipt of the application, PG&E will either grant the permit or deny the permit and specify why the action cannot be taken. Upon the receipt of each such approved Contact Permit, Applicant shall have the right to install, operate, maintain and use the additional equipment on the poles specified in such permit and under the terms and conditions specified in this Agreement, (hereafter included as Equipment), which shall be considered a part of each such permit without regard to whether this Agreement is referred to in each Contact Permit.

2. POLE CONTACT PERMITS. PG&E will provide Contact Permits in the form attached and marked Exhibit A to Applicant for the specific locations involved, and shall charge no pole contact fee for each electric distribution pole covered under this contact Agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (Commission).

3. PRIOR POLE CONTACT AGREEMENT. This Agreement shall supersede any previous pole contact agreement between PG&E and the Applicant insofar as it may pertain to street lighting.

4. PG&E REQUIREMENTS. Facilities installed under this Agreement shall be subject to all of the provisions of the General Orders of the Commission, and PG&E’s applicable tariff schedules on file with and authorized by the Commission and further shall at all times be subject to such changes or modifications as the Commission may, from time to time, direct in the exercise of its jurisdiction.
6. **SERVICE DELIVERY.** PG&E will supply electrical energy and service to streetlight equipment owned by Applicant in accordance with the provisions of rate Schedule LS-2 for customer-owned street and highway lighting.

6. **WORK ON POLES.** Any person working on applicant-owned Equipment mounted on PG&E-owned poles must be qualified to work on such Equipment in the vicinity of PG&E's energized conductors (i.e., Qualified Electrical Worker or performing work under the supervision of a Qualified Electrical Worker. See Title 8, Electrical Safety Orders, Section 2949). Any contractor used by Applicant to perform work on the Equipment contacting PG&E's distribution facilities shall be one previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in this Agreement. Upon request, PG&E will supply a list of approved contractors to Applicant.

All work on Applicant's Equipment installed on PG&E's poles shall be performed by Applicant's personnel or contractor operating from either a ladder or bucket truck. Direct climbing of PG&E-owned poles by Applicant's personnel or contractor is prohibited, unless access requires pole climbing by Applicant's authorized personnel qualified to climb.

7. **SAFETY PRECAUTIONS.** Applicant and PG&E shall perform all work in compliance with applicable federal, state and local laws, rules and regulations. Applicant shall inform all persons doing work on PG&E's facilities and insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property from injury. Work performed in areas adjacent to PG&E's energized electric facilities also shall be performed in accordance with PG&E's established safety rules and practices, as shown on PG&E's Engineering Standard identified as Exhibit B attached, or as directed by PG&E. In no case shall Applicant have work performed above the height of the 120/240 volt secondary conductors on PG&E's facilities.

8. **INSURANCE REQUIREMENTS.** Applicant shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law. Upon request, Applicant shall provide PG&E evidence of insurance or self-insurance and shall cause any contractor performing work under this Agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee Applicant's performance of the above indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured Insurer as this Agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, Applicant will furnish PG&E with original copies of the policies and endorsements. PG&E shall have the right to inspect the original policies of such insurance.

9. **REARRANGEMENT FOR INSTALLATION.** If any rearrangement of or addition to PG&E's existing electric distribution facilities is required to permit Applicant to Install Equipment on PG&E's poles, PG&E shall notify Applicant of the nature and PG&E's estimated cost of such work. If Applicant finds such cost acceptable, it shall notify PG&E by letter, including a purchase order number or equivalent authorization to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time and bill Applicant.

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Form 79-338
Marketing Services

-2-
10. **OTHER REARRANGEMENTS.** Should PG&E find it necessary to perform any work (removal, replacement or relocation) on its distribution poles on which Applicant maintains its Equipment, and such work is (a) requested by local governmental agencies, (b) requested by the State of California Department of Transportation (CalTrans), (c) needed to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E’s control, Applicant shall, at its own expense, rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles, if available, as designated by PG&E. PG&E will give Applicant thirty (30) days written notice for such necessary work, except in the case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. In the event that Applicant does not perform its work prior to PG&E’s scheduled work, or in cases of emergency, PG&E may at the expense of Applicant perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PG&E.

11. **SERVICE CONNECTION/DISCONNECTION.** Connection or disconnection of Applicant’s service wires to PG&E’s secondary conductors will be performed only by PG&E. This work shall be performed at Applicant’s expense based on the flat cost table attached as Exhibit C. This table is subject to change and use by PG&E annually under this agreement, without formal amendment to this Agreement.

12. **EQUIPMENT REMOVAL.** Applicant or its contractor may remove its Equipment from any poles hereunder upon giving ten (10) days advance written notice to PG&E; provided, however, in case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. Such notice shall be given by executing a Notice of Contract Removal in the form attached hereto as Exhibit D.

13. **EQUIPMENT ABANDONMENT.** Abandonment of any Equipment under this Agreement, at a location by Applicant shall terminate all of its rights and privileges at that location. Abandonment shall be presumed if any Equipment is not used for a three (3) month period, unless Applicant notifies PG&E in writing of a specific temporary period of disuse of its Equipment. In such instances, the Equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After the expiration of such period, PG&E shall have the right to remove and retain possession of the Equipment, provided that at least thirty (30) days prior to such removal or possession, PG&E has mailed to Applicant written notice of its intention, and Applicant has neither responded nor commenced using the Equipment. PG&E has the right to collect from Applicant all expenses incurred for removal of such Equipment. Equipment shall not be considered in disuse for any period in which it is inoperable due to failure of electrical service to it, or failure of any component requiring repair or replacement until a reasonable opportunity has been given to Applicant to effect the repair or replacement. Nor shall Equipment be considered disused if it becomes inoperable and this condition is not made known to the Applicant in a timely manner.

14. **INDEMNIFICATION.** Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of person, including but not limited to employees of PG&E, Applicant, or any third party, or any damage to property, including but not limited to, property of PG&E, Applicant, or any third party, arising out of or in any way connected with the performance of this Agreement and any and all construction activities however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys’ fees.

15. **GENERAL WAIVER.** Should either party fail to enforce any specific provision of this Agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.
16. PAYMENT FOR WORK. Any amount due from Applicant to PG&E for work performed under the provisions of this Agreement are payable in advance of PG&E commencing work, however, where prohibited by law, Applicant may pay the amount within a period of (30) days after the work is completed.

17. TERM OF AGREEMENT. Notwithstanding any other provisions hereof, this Agreement shall be and remain in effect for an initial period of ten (10) years from the date of this Agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise terminated by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or any subsequent term.

18. OBLIGATION AFTER TERMINATION. Any termination of Applicant's rights and privileges under this Agreement shall not relieve Applicant of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of Applicant's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

19. ASSIGNMENT. Applicant may assign this Agreement, in whole or part, only if PG&E consents in writing and the party to whom the Agreement is assigned (Assignee) agrees in writing to perform the obligations of Applicant hereunder and to be bound by this Agreement in all respects. Assignment of this Agreement shall not release Applicant from any of the obligations under this Agreement unless such a release is specifically agreed to in writing this Agreement unless such a release is specifically agreed to in writing by PG&E and the Assignee. Such assignment, unless otherwise provided therein, shall be deemed to include Applicant's right to any refunds then unpaid or which may thereafter become payable.

20. COMMISSION JURISDICTION. This Agreement shall be subject to all of PG&E's tariff schedules on file with and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction. These may include, but are not limited to changes or modifications to monthly cost of ownership charges (higher or lower percentage rates), extension rules, and rate schedules.

Execution Date: March 23, 1991

CITY OF STOCKTON

BY: [Signature]

(Authorized Signature)

GARY C. INGRAHAM

(Type or print name)

TITLE: ACTING CITY MANAGER

PACIFIC GAS & ELECTRIC COMPANY

BY: [Signature]

(Authorized Signature)

SHERYL R. ALMON

(Type or print name)

TITLE: DIVISION MANAGER

Division: Stockton

Applicant's Mailing Address:

Attachments:

Exhibits
A. Contact Permit Form
B. Engineering Standards
C. Flat Cost Table
D. Notice of Contract Removal

Approved as to form

Date: MAR 0 7/13/91
CONTACT PERMIT

To: ___________________________________________  Division: __________________________

__________________________________________  Date: ___________, 19___

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between ____________________________________________ and Pacific Gas and Electric Company dated ____________________________

Date Checked: ____________________________  By: ____________________________________________

By: ____________________________________________

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: ____________________________  Date: ___________, 19___

By: ____________________________________________  By: ____________________________________________

Number of poles contacted under this permit ______  Annual rental $______ each or $______ total.
Installation with Extended Rack Construction with Service Drop Present

NOTES:
(a) Construction shown in Fig. 5 is applicable when no end-of-arm service racks are present or contemplated.
(b) Customer will use sufficient conductor of this point to reach secondary conductors of R.G.E. will install it in underground bus and make secondary connection.
(c) All construction must comply to G.O. 95 (Rules For Overhead Line Construction) of the State of California Public Utilities Commission.

MATERIAL: FURNISHED AND INSTALLED BY P.G. & E.

ITEM | DESCRIPTION
--- | ---
A | Rack, Extended, Secondary, 5-Spool
B | Conduit, 1" PVC, Schedule 40
C | Conduit, 2" PVC, 100 Wall Thickness
D | Plumbers, 50" Length
E | Bolt, 1/4" x 10" Length
F | Washer, 2-1/4" Sq. 50 Bulk Size
H | Staple, Galvanized
I | Nail

MATERIAL: FURNISHED AND INSTALLED BY THE CUSTOMER

ITEM | DESCRIPTION
--- | ---
1 | Luminaire and mounting bracket
2 | Photocell Relay, Twist Lock Type
3 | Conduit, 1" PVC, Schedule 80
4 | Straps, Galvanized E 1/4" x 90° Bar Hanger
5 | Hanger, No. 10, Solid Copper, PVC, 600V
6 | Bolt, 1/2" x 10" Length
7 | Log Screw, 1/2" x 4" Length
8 | Washer, 2-1/4" Sq. 50 Bulk Size
9 | Identification

Authorized Municipally Owned Installations (120 Volt Operation)

Street Light Installations on Wood Poles

Department of Engineering
Pacific Gas and Electric Company
San Francisco, California
# FLAT COST TABLE

CUSTOMER-OWNED STREET LIGHTS ON PG&E-OWNED POLES

**RATE SCHEDULE NO. LS-2**

<table>
<thead>
<tr>
<th>Description</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a. New Service Connection (single trip)</td>
<td>$53.00</td>
</tr>
<tr>
<td>Load Less Than 2000 Watts</td>
<td></td>
</tr>
<tr>
<td>b. Each additional within single city/ lighting district</td>
<td>$27.00</td>
</tr>
<tr>
<td>2. Temporary Disconnect and Reconnect Service Wires (double trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td>$106.00</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$54.00</td>
</tr>
<tr>
<td>3. Relocation (remove and reinstall street light fixture, support arm, wiring, etc.) on wood pole (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td>$145.00</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$93.00</td>
</tr>
<tr>
<td>4. Permanent Disconnection: (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. Light installed 5 years or more</td>
<td>N/C</td>
</tr>
<tr>
<td>b. Light installed less than 5 years</td>
<td></td>
</tr>
<tr>
<td>(1) First light located within a single city or lighting district</td>
<td>$53.00</td>
</tr>
<tr>
<td>(2) Each additional light located within a single city or lighting district worked at the same time</td>
<td>$27.00</td>
</tr>
</tbody>
</table>

**NOTES:**

1. All charges shown above are subject to change annually by PG&E.

2. For connection and other charges for customer-owned street lights NOT on PG&E-owned poles, refer to the special conditions of Schedule LS-2.
NOTICE OF CONTACT REMOVAL

To: ______________________________ Division: ___________________________

Date: ____________________________ 19___

The attachments on the poles designated below, as covered by Contact Permit No. ____________________,
issued in accordance with the terms and conditions of the agreement between ________________________________ and Pacific Gas and Electric Company, dated ________________________________, have been removed.

Date Checked: ________________________________

By: ________________________________ By: ________________________________

______________________________

CONTACT REMOVAL ACKNOWLEDGED

Date Checked: ________________________________ Date: ____________________________ 19___

By: ________________________________

By: ________________________________

______________________________

Number of poles vacated under this removal notice: ____________________ Free

Exchange Area: __________________________

Note: Sketch to be drawn to suitable scale. Use reverse of this sheet if necessary.
April 25, 1991

Pacific Gas and Electric Company  
Post Office Box 930  
Stockton, CA  95201

Attention: Sheryl B. Almon, Service Planning Supervisor

STREET LIGHT SERVICE ISSUES

Since the change in ownership of the street lighting system a few months ago, several questions regarding service have developed. Following are the questions and issues we need to jointly discuss and clarify.

- City does not have personnel trained as Lineman to work on wood poles. This type of function is needed on wood poles that are not accessible to our bucket or lift trucks. Can PG&E provide this service when needed and bill the City? If not, does PG&E have a list of Contractors approved to work on their facilities?

- Will PG&E continue to assist on emergency calls for knock downs of wood street light poles? When energized lines are down?

- Some of the street light circuits the City has acquired do not meet our standards. We need more information on the layout and wiring of these circuits. These are typically series circuits like Bour's Park and Castle/Pacific/Pine area. Does PG&E have more detailed information?

- Is there a clear and precise way of determining where the City's area of responsibility begins? PG&E's?

- When PG&E responds to a street light call and finds a problem not covered by the LS-2B Rate Schedule can they make the repairs and bill the City for extra costs? This would be similar to the extended service agreement we have for photocells or fuses.
STREET LIGHT SERVICE ISSUES

♦ Does PG&E have a list of suppliers for wood pole mounted equipment? Does PG&E have surplus stock they could sell to the City?

♦ When we discover equipment or installations that were out of compliance with accepted standards prior to the change of ownership will PG&E correct the problem? Who is an acceptable person or agency to determine if installation is out of compliance?

The above listing was developed with help from our field crews. As we discussed on April 24, 1991 a meeting which includes some of our key field personnel should answer most of the questions. I suggest we schedule a meeting soon after May 20, 1991, as I will be on annual leave until then. If you have any questions, please contact Jun Masuoka, Associate Traffic Engineer/O&M at 944-8534.

JAMES ESCOBAR
DEPUTY PUBLIC WORKS DIRECTOR/O&M

JE:kh

cc: James B. Giottonini, Public Works Director (informational)
    Gary Tsutsumi, Senior Traffic Engineer
    Bill Noel, Engineering Technician
    Jun Masuoka, Associate Traffic Engineer/O&M
    John Gaffney, Pacific Gas & Electric
CITY MANAGER'S OFFICE
TRANSMITTAL MEMORANDUM
CITY HALL - 944-8212

TO: Jim Girottonini, Director of Public Works
    Attn: Jim Escobar, Deputy Director
FROM: Gary C. Ingraham, Acting City Manager
SUBJECT: STREET LIGHT ACQUISITION BILLING

DATE: 4/17/91

<table>
<thead>
<tr>
<th>NO. COPIES</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Invoice from the Law Offices of McCracken, Byers &amp; Martin for services rendered with regard to the street light acquisition.</td>
</tr>
</tbody>
</table>

INSTRUCTIONS/REMARKS/COMMENTS

For your information and appropriate handling.

Gary C. Ingraham
Acting City Manager

GCI: deb
Attachment

4/18/91

For handling

APR 1991
RECEIVED
Public Works Dept.
FILE COPY
CITY OF STOCKTON
ATT: MR. GARY INGRAHAM
CITY HALL
425 NO. EL DORADO
STOCKTON, CA 95202

RE: STREET LIGHT ACQUISITION
361-0539.1

FOR PROFESSIONAL SERVICES RENDERED: 03/1/91 - 03/31/91

<table>
<thead>
<tr>
<th>DATE</th>
<th>ATTY</th>
<th>DESCRIPTION</th>
<th>HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/08/91</td>
<td>KJH</td>
<td>Telephone Conferences: Civil Clerk in San Joaquin County to Obtain an At-Issue Memorandum.</td>
<td>0.30</td>
</tr>
<tr>
<td>03/12/91</td>
<td>KJH</td>
<td>Telephone Conferences: Civil Clerk to Obtain At-Issue Memorandum for San Joaquin County; Document Preparation: At-Issue Memorandum; Legal Research: Issue of Time Allotment Between At-Issue Filing and Trial Date Setting.</td>
<td>0.70</td>
</tr>
</tbody>
</table>

TOTAL HOURS BILLED

KJH 1.00 hr @ 125 $ 125.00

ATTORNEY FEES

1.00 HOURS $ 125.00

DISBURSEMENTS

02/14/91 Delivery Service Invoice from Foster City to San Francisco $ 30.00

TOTAL DISBURSEMENTS $ 30.00

TOTAL NEW CHARGES $ 155.00
City of Stockton
FOR PROFESSIONAL SERVICES RENDERED: 03/1/91 - 03/31/91
361-0539.1

PAYMENTS AND CREDITS

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/29/91</td>
<td>Payment received - thank you (Check # 193642)</td>
<td>5.00</td>
</tr>
</tbody>
</table>

TOTAL PAYMENTS AND CREDITS: $ 5.00

STATEMENT SUMMARY

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance Carried Forward</td>
<td>$ 5.00</td>
</tr>
<tr>
<td>Total New Charges</td>
<td>155.00</td>
</tr>
<tr>
<td>Payments and Credits</td>
<td>5.00</td>
</tr>
</tbody>
</table>

TOTAL NEW BALANCE, PLEASE PAY BY OUR FILE NO.: $ 155.00

DUE ON RECEIPT
April 1, 1991

TO: File
FROM: Gary Tsutsumi, Sr. Traffic Engineer
SUBJECT: Street Light Acquisition -- As-Built Drawings

Staff has been in contact with Sherley Almon of PG&E in regards to plotting existing street light facilities. She has indicated that it is the position of PG&E that they will no longer provide this service at no cost to the City. She indicated that the system now belongs to the City therefore, the City has the following options:

1. Pay PG&E to plot all existing facilities.
2. City to provide personnel to plot facilities.
3. City to pay to have the existing As-Builts duplicated.

cc: Jim Escobar
    Bill Noel
Mr. Al Williams  
Marketing Services  
Pacific Gas & Electric Company  
123 Mission Street, 26th Floor  
San Francisco, California 94106  

Re: Pole Contact Agreement Between Pacific Gas & Electric Company And City Of Stockton

Dear Al:

The following are my proposed modifications to Pacific Gas & Electric's ('PG&E') proposed Customer-Owned Streetlights Utility Pole Contact Agreement. My modifications are based on the Pole Contract and Operating Agreement that was negotiated between PG&E and the Peninsula Street Light Authority. I can see no reason for the significant changes between the two agreements since PG&E earlier signed the first Agreement. In any event here are my modifications and questions:

1. Page 1, paragraph 1.a.: "However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations." Can't this be done with a single 'blanket' permit like Stockton issues to PG&E?

2. Page 1, paragraph 1.b.: The paragraph is unacceptable. The public should not be burdened with Stockton having to secure PG&E's written approval with a thirty (30) day notice in order to install new street lights. As a public service, Stockton would like to install street lights earlier if the engineering is acceptable to PG&E. Therefore I would request additional sentences at the end of paragraph 1.d. which would state: 'Notwithstanding the foregoing, in the event Stockton orally authorizes PG&E to install street lights on existing poles, within three (3) days PG&E service personal and Stockton service personal would go to the location to determine how a street light can be installed. PG&E may give
verbal permission to install a street light at that time. Otherwise a street light will be installed in accordance with this agreement."

3. **Page 2, paragraph 6:** Stockton needs to know exactly what Title 8, Electrical Safety Orders, Section 2949 is. A sentence should be added which state: "Employees of the City of Stockton can perform work on poles."

4. **Page 2, paragraph 6:** The last sentence beginning with the words "Direct climbing . . ." is rather ambiguous. Stockton would normally prefer to use a bucket truck but on occasion may have to climb the pole when necessary. Who is to judge whether it is permitted under this section? I would suggest that this sentence be struck.

5. **Page 2, paragraph 7:** The phrase "insure that all work of non-PG＆E employees is planned and conducted in a manner to safeguard persons and property for injury," is not proper because it may conflict with the indemnity provisions in this agreement. Those provisions should control not this sentence. I suggest that this be struck to ensure that the negligence issues are determined by the indemnity provisions.

6. **Page 2, paragraph 8:** What does this mean?

7. **Page 2, paragraph 9:** Previously in the PSIA agreement additional language was acceptable to PG＆E. I request that language again:

   "If applicant determines that the cost by PG＆E is unacceptable, it shall notify PG＆E by letter and may independently contract for the work. Such notifications shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work. In the event that applicant contracts for such work, it shall reimburse PG＆E its expense for the design of the work and any inspection that may be necessary."

8. **Page 3, paragraph 11:** Does this amount include the CIAC tax?

9. **Page 3, paragraph 12:** Why is it necessary to give PG＆E
ten (10) days written advance notice?

10. Page 3, paragraph 14: Indemnification. Previously we had worked on indemnification language. I would suggest we use the same indemnification language we had in paragraph 17.a., b. and c of the previous agreement.

11. Page 4, paragraph 16: Stockton does not pay anybody in advance for work but they do pay. They will not be paying PG&E in advance.


I would hope we can have our meeting on Friday, December 21, 1990 so we can resolve these issues. I look forward to seeing you then.

Very truly yours,

McCRACKEN, BYERS & MARTIN

[Signature]

DAVID J. BYERS

DJB:jd
cc: Jim Escobar,
c/o City of Stockton
1465 So. Lincoln Street
Stockton, California 95206
28 December 1990

Mr. James Escobar  
City of Stockton  
City Hall  
Stockton, CA  95202  

Dear Jim:

Enclosed are the Pole Contact Agreements between Pacific Gas and Electric Company and the City of Stockton. Please make the appropriate arrangements within the City for approval of the agreements and then please return them to me.

Thank you for the opportunity to sit down and review your concerns and to discuss the review between David Byers and Al Williams. If you have any further questions please let me know.

Sincerely,

[Signature]

Sheryl B. Almon  
Service Planning Supervisor  

cc: Ken Cooper  

Enclosure

Hold any actions on current until Byers notifies.

1/2/91  

Byers  
1/26/91

COMPUTE THIS, SUCKER!

[Signature]
January 2, 1991

Mr. Marshall Brown
Mr. Al Williams
Pacific Gas & Electric Company
Marketing Department
123 Mission Street, 26th Floor
San Francisco, California 94106

Re: Pole Contact Agreement Between Pacific Gas & Electric Company ("PG&E") And City Of Stockton

Dear Marshall and Al:

I enjoyed meeting with you on the 21st day of December 1990. I say enjoyed because both of you gentlemen were polite. However, the meeting clearly was not an effort to negotiate the Pole Contact Agreement between the respective parties but for PG&E to inform me as what my client would have to accept and what it is in my client's interest to accept.

I do not enjoy wasting my time attending meetings to negotiate a contract when the other party does not come forth in good faith to negotiate it. I have had many meetings with PG&E over the years and I have found its employees to be thoroughly professional. I would think by now PG&E recognizes that when I attend a meeting I do so to represent my client to negotiate a deal and not act as a messenger boy between PG&E Company and my client. When PG&E is interested in actually negotiating the Pole Contact Agreement with my client I suggest it inform me. With regards to contacting your legal department I suggest they also research the issue of adhesion contracts.

Very truly yours,

MCCracken, Byers & Martin

David J. Byers

DJB:jd
cc: Jim Escobar,
    c/o City of Stockton
    1465 So. Lincoln Street
    Stockton, California 95206
    Robert R. Rickett, Esq.,
    Pacific Gas & Electric

EXHIBIT E
MEMORANDUM

February 27, 1991

TO: R. Thomas Harris, City Attorney
FROM: James B. Giottonini, Public Works Director
SUBJECT: POLE CONTACT AGREEMENT: PACIFIC GAS AND ELECTRIC

Attached are three (3) copies of a Pole Contract Agreement prepared by Pacific Gas and Electric Company (PG&E). This agreement sets forth the terms and conditions under which City owned street light hardware and circuitry is allowed to contact and be maintained on jointly owned poles.

PG&E will not implement the rate reductions based on the change of ownership of the street lights until the City executes this agreement. David Byers of McCracken, Byers & Martin, who represents the City in the street light acquisition proceedings, has protested the agreement and PG&E's non-negotiable stance on the issue to the California Public Utilities Commission (CPUC). He is currently exchanging correspondence, motions, etc., with that agency.

We met with PG&E representatives on Monday, February 5, 1991 to discuss the issue of the Pole Contact Agreement and implementation of the reduced rates. They offered to split out jointly owned poles bearing street lights and remove them from the rate reduction effective November 14, 1990 and make them a part of future negotiations. Mr. Byers was contacted following this meeting and advised us to sign the agreement indicating a "bird in hand ..."

Please review the document and advise if it meets our form requirements and does it require Council action or can the City Manager execute.

JAMES B. GIOTONINI  
PUBLIC WORKS DIRECTOR

JBG:JE:eh

Attachment

cc: Gary C. Ingraham, Acting City Manager  
    Paul M. Sensibaugh, Deputy Public Works Director/CE  
    Attn: Gary Tsutsumi, Senior Traffic Engineer
TO: Francis Hong, City Clerk
FROM: James B. Giottonini, Public Works Director
SUBJECT: PACIFIC GAS & ELECTRIC UTILITY POLE CONTRACT AGREEMENT

DESCRIPTION

1 Fully executed copy of Utility Pole Contract Agreement between the City of Stockton and Pacific Gas and Electric Company.

If you should require further information, please contact James Escobar at 944-8438.

JAMES B. GIOOTONINI
PUBLIC WORKS DIRECTOR

Attachment

Copy to: Manager
Attorney of.
CITY OF STOCKTON (Applicant), has elected to enter into this Agreement with PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E).

PG&E owns, operates and maintains overhead electric distribution facilities located in geographic areas within the political jurisdiction of Applicant.

Applicant desires to enter into an agreement with PG&E that will (a) allow having that portion of the Applicant’s existing streetlights to contact PG&E’s distribution poles, and (b) specify conditions for future installation, operation, maintenance, use or removal of Applicant’s streetlights. PG&E is willing to permit Applicant to have such pole contacts under the following terms and conditions:

1. POLE CONTACT PERMISSION.
   a. Existing Streetlights. PG&E hereby gives Applicant general permission under the terms and conditions herein stated to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PG&E or jointly owned by PG&E and others. Such permission covers all existing lights owned by the Applicant that are mounted on PG&E-owned poles, based on the most current billing records as of the date of this Agreement. However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations.
   b. New Streetlights. Applicant or its contractor shall not install any new or additional equipment on PG&E’s poles without first securing PG&E’s written approval in the form of a Contact Permit for specific locations. Within (30) days of receipt of the application, PG&E will either grant the permit or deny the permit and specify why the action cannot be taken. Upon the receipt of each such approved Contact Permit, Applicant shall have the right to install, operate, maintain and use the additional equipment on the poles specified in such permit and under the terms and conditions specified in this Agreement, (hereafter included as Equipment), which shall be considered a part of each such permit without regard to whether this Agreement is referred to in each Contact Permit.

2. POLE CONTACT PERMITS. PG&E will provide Contact Permits in the form attached and marked Exhibit A to Applicant for the specific locations involved, and shall charge no pole contact fee for each electric distribution pole covered under this contact Agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (Commission).

3. PRIOR POLE CONTACT AGREEMENT. This Agreement shall supersede any previous pole contact agreement between PG&E and the Applicant insofar as it may pertain to street lighting.

4. PG&E REQUIREMENTS. Facilities installed under this Agreement shall be subject to all of the provisions of the General Orders of the Commission, and PG&E’s applicable tariff schedules on file with and authorized by the Commission and further shall at all times be subject to such changes or modifications as the Commission may, from time to time, direct in the exercise of its jurisdiction.
5. **SERVICE DELIVERY.** PG&E will supply electrical energy and service to streetlight equipment owned by Applicant in accordance with the provisions of rate Schedule LS-2 for customer-owned street and highway lighting.

6. **WORK ON POLES.** Any person working on applicant-owned Equipment mounted on PG&E-owned poles must be qualified to work on such Equipment in the vicinity of PG&E's energized conductors (i.e., Qualified Electrical Worker or performing work under the supervision of a Qualified Electrical Worker. See Title 8, Electrical Safety Orders, Section 2949). Any contractor used by Applicant to perform work on the Equipment contacting PG&E's distribution facilities shall be one previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in this Agreement. Upon request, PG&E will supply a list of approved contractors to Applicant.

All work on Applicant's Equipment installed on PG&E's poles shall be performed by Applicant's personnel or contractor operating from either a ladder or bucket truck. Direct climbing of PG&E-owned poles by Applicant's personnel or contractor is prohibited, unless access requires pole climbing by Applicant's authorized personnel qualified to climb.

7. **SAFETY PRECAUTIONS.** Applicant and PG&E shall perform all work in compliance with applicable federal, state and local laws, rules and regulations. Applicant shall inform all persons doing work on PG&E's facilities and insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property from injury. Work performed in areas adjacent to PG&E's energized electric facilities also shall be performed in accordance with PG&E's established safety rules and practices, as shown on PG&E's Engineering Standard identified as Exhibit B attached, or as directed by PG&E. In no case shall Applicant have work performed above the height of the 120/240 volt secondary conductors on PG&E's facilities.

8. **INSURANCE REQUIREMENTS.** Applicant shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law. Upon request, Applicant shall provide PG&E evidence of insurance or self-insurance and shall cause any contractor performing work under this Agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee Applicant's performance of the above indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured insofar as this Agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, Applicant will furnish PG&E with original copies of the policies and endorsements. PG&E shall have the right to inspect the original policies of such insurance.

9. **REARRANGEMENT FOR INSTALLATION.** If any rearrangement of or addition to PG&E's existing electric distribution facilities is required to permit Applicant to install Equipment on PG&E's poles, PG&E shall notify Applicant of the nature and PG&E's estimated cost of such work. If Applicant finds such cost acceptable, it shall notify PG&E by letter, including a purchase order number or equivalent authorization to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time and bill Applicant.
10. **OTHER REARRANGEMENTS.** Should PG&E find it necessary to perform any work (removal, replacement or relocation) on its distribution poles on which Applicant maintains its Equipment, and such work is (a) requested by local governmental agencies, (b) requested by the State of California Department of Transportation (CalTrans), (c) needed to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E’s control, Applicant shall, at its own expense, rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles, if available, as designated by PG&E. PG&E will give Applicant thirty (30) days written notice for such necessary work, except in the case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. In the event that Applicant does not perform its work prior to PG&E’s scheduled work, or in cases of emergency, PG&E may at the expense of Applicant perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PG&E.

11. **SERVICE CONNECTION/DISCONNECTION.** Connection or disconnection of Applicant’s service wires to PG&E’s secondary conductors will be performed only by PG&E. This work shall be performed at Applicant’s expense based on the flat cost table attached as Exhibit C. This table is subject to change and use by PG&E annually under this agreement, without formal amendment to this Agreement.

12. **EQUIPMENT REMOVAL.** Applicant or its contractor may remove its Equipment from any poles hereunder upon giving ten (10) days advance written notice to PG&E; provided, however, in case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. Such notice shall be given by executing a Notice of Contract Removal in the form attached hereto as Exhibit D.

13. **EQUIPMENT ABANDONMENT.** Abandonment of any Equipment under this Agreement, at a location by Applicant shall terminate all of its rights and privileges at that location. Abandonment shall be presumed if any Equipment is not used for a three (3) month period, unless Applicant notifies PG&E in writing of a specific temporary period of disuse of its Equipment. In such instances, the Equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After the expiration of such period, PG&E shall have the right to remove and retain possession of the Equipment, provided that at least thirty (30) days prior to such removal or possession, PG&E has mailed to Applicant written notice of its Intention, and Applicant has neither responded nor commenced using the Equipment. PG&E has the right to collect from Applicant all expenses incurred for removal of such Equipment. Equipment shall not be considered in disuse for any period in which it is inoperable due to failure of electrical service to it, or failure of any component requiring repair or replacement until a reasonable opportunity has been given to Applicant to effect the repair or replacement. Nor shall Equipment be considered disused if it becomes inoperable and this condition is not made known to the Applicant in a timely manner.

14. **INDEMNIFICATION.** Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of person, including but not limited to employees of PG&E, Applicant, or any third party, or any damage to property, including but not limited to, property of PG&E, Applicant, or any third party, arising out of or in any way connected with the performance of this Agreement and any and all construction activities however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys’ fees.

15. **GENERAL WAIVER.** Should either party fail to enforce any specific provision of this Agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.
16. **PAYMENT FOR WORK.** Any amount due from Applicant to PG&E for work performed under the provisions of this Agreement are payable in advance of PG&E commencing work; however, where prohibited by law, Applicant may pay the amount within a period of (30) days after the work is completed.

17. **TERM OF AGREEMENT.** Notwithstanding any other provisions hereof, this Agreement shall be and remain in effect for an initial period of ten (10) years from the date of this Agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise terminated by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or any subsequent term.

18. **OBLIGATION AFTER TERMINATION.** Any termination of Applicant’s rights and privileges under this Agreement shall not relieve Applicant of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of Applicant’s equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

19. **ASSIGNMENT.** Applicant may assign this Agreement, in whole or part, only if PG&E consents in writing and the party to whom the Agreement is assigned (Assignee) agrees in writing to perform the obligations of Applicant hereunder and to be bound by this Agreement in all respects. Assignment of this Agreement shall not release Applicant from any of the obligations under this Agreement unless such a release is specifically agreed to in writing this Agreement unless such a release is specifically agreed to in writing by PG&E and the Assignee. Such assignment, unless otherwise provided therein, shall be deemed to include Applicant’s right to any refunds then unpaid or which may thereafter become payable.

20. **COMMISSION JURISDICTION.** This Agreement shall be subject to all of PG&E’s tariff schedules on file with and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction. These may include, but are not limited to changes or modifications to monthly cost of ownership charges (higher or lower percentage rates), extension rules, and rate schedules.

Execution Date: **March 13, 1991**

**CITY OF STOCKTON**

BY: **Gary C. Ingraham**

(Authorized Signature)

GARY C. INGRAHAM

(Type or print name)

TITLE: **ACTING CITY MANAGER**

**PACIFIC GAS & ELECTRIC COMPANY**

BY: **Sheryl B. Alman**

(Authorized Signature)

SHERYL B. ALMAN

(Type or print name)

TITLE: **A DIVISION MANAGER**

Division: **Stockton**

Attachment:

Exhibits

A. Contact Permit Form
B. Engineering Standards
C. Flat Cost Table
D. Notice of Contract Removal
Contact Permit

To: ____________________________  Division: ____________________________

Date: ____________________________  Date: ____________________________, 19

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between ____________________________ and Pacific Gas and Electric Company dated ____________________________.

Date Checked: ____________________________  By: ____________________________

Date Checked: ____________________________  By: ____________________________

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: ____________________________  Date: ____________________________, 19

By: ____________________________  By: ____________________________

Number of poles contacted under this permit: ______  Annual rental $ ______ each or $ ______ total.

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
### Material Furnished and Installed by the Customer

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Luminaires and mounting bracket</td>
</tr>
<tr>
<td>2</td>
<td>Photocell, Resistor, Twist Lock type</td>
</tr>
<tr>
<td>3</td>
<td>Conduct, 1/2&quot; PVC, Schedule 80</td>
</tr>
<tr>
<td>4</td>
<td>Staple, Galvanized, 2&quot; x 2.5(\text{in})</td>
</tr>
<tr>
<td>5</td>
<td>Wire, &quot;LC Solid Copper, PVC, 600 V.</td>
</tr>
<tr>
<td>6</td>
<td>Bolt, Mach. (\frac{3}{8})&quot; x 10&quot; Length</td>
</tr>
<tr>
<td>7</td>
<td>Lag Screw, (\frac{1}{2})&quot; x 4&quot; Length</td>
</tr>
<tr>
<td>8</td>
<td>Washer, (\frac{1}{2})&quot; Sq., (\frac{3}{8})&quot; Bolt Size</td>
</tr>
<tr>
<td>9</td>
<td>Identification</td>
</tr>
</tbody>
</table>

### Material Furnished and Installed by P.G. & E.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Rock, Extended, Secondary, 3-Spool</td>
</tr>
<tr>
<td>B</td>
<td>Conduit, 1/2&quot; PVC, Schedule 40</td>
</tr>
<tr>
<td>C</td>
<td>Conduit 2&quot;, PVC, 100° Wall Thickness</td>
</tr>
<tr>
<td>D</td>
<td>Plumber's Tape, Galvanized</td>
</tr>
<tr>
<td>E</td>
<td>Bolt, Mach. (\frac{3}{8})&quot; x 10&quot; Length</td>
</tr>
<tr>
<td>F</td>
<td>Washer, (\frac{3}{8})&quot; Sq., (\frac{3}{8})&quot; Bolt Size</td>
</tr>
<tr>
<td>G</td>
<td>Connector, Alum, H-Type Compression</td>
</tr>
<tr>
<td>H</td>
<td>Connector, Cu, Split Bolt (For Cu Secondary to #10 Cu)</td>
</tr>
<tr>
<td>I</td>
<td>Staple, Galvanized</td>
</tr>
</tbody>
</table>

**NOTES:**
- (a) Construction shown in Fig. 5 is applicable when no end-of-arm service takes off are present or contemplated.
- (b) Customer will leave sufficient conductor at this point to reach secondary conductor. PG & E will install it in underground bus and make secondary connection.
- (c) All construction must comply to G.O. 95 (Rules for Overhead Line Construction) of the State of California Public Utilities Commission.

---

For \#10 Aluminum or ACSR Secondary to \#10 Cu.
- For Aluminum Secondary Larger than \#40 to \#10 Cu. Make up tail of \#10 Cu. to \#10 Aluminum with a Code 30-5842 connector and insert end of \#10 Aluminum in appropriate PG Clamp taken from Dwg. 028852.

---

**Authorized Municipally Owned Installations (120 Volt Operation)**

---

**Street Light Installations on Wood Poles**

Department of Engineering
Pacific Gas and Electric Company
San Francisco, California
FLAT COST TABLE

CUSTOMER-OWNED STREET LIGHTS ON PG&E-OWNED POLES

RATE SCHEDULE NO. LS-2

<table>
<thead>
<tr>
<th>Description</th>
<th>Charge</th>
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</thead>
<tbody>
<tr>
<td>1.a. New Service Connection (single trip)</td>
<td>$53.00</td>
</tr>
<tr>
<td>Load Less Than 2000 Watts</td>
<td></td>
</tr>
<tr>
<td>b. Each additional within single city/lighting district</td>
<td>$27.00</td>
</tr>
<tr>
<td>2. Temporary Disconnect and Reconnect Service Wires (double trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td>$106.00</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$54.00</td>
</tr>
<tr>
<td>3. Relocation (remove and reinstall street light fixture, support arm, wiring, etc.) on wood pole (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td>$145.00</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$93.00</td>
</tr>
<tr>
<td>4. Permanent Disconnection: (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. Light installed 5 years or more</td>
<td>N/C</td>
</tr>
<tr>
<td>b. Light installed less than 5 years</td>
<td></td>
</tr>
<tr>
<td>(1) First light located within a single city or lighting district</td>
<td>$53.00</td>
</tr>
<tr>
<td>(2) Each additional light located within a single city or lighting district worked at the same time</td>
<td>$27.00</td>
</tr>
</tbody>
</table>

NOTES: 1. All charges shown above are subject to change annually by PG&E.

2. For connection and other charges for customer-owned street lights NOT on PG&E-owned poles, refer to the special conditions of Schedule LS-2.
NOTICE OF CONTACT REMOVAL

To: ................................................................. Division: .................................................................

................................................................. Date: ................................................................. 19

The attachments on the poles designated below, as covered by Contact Permit No. ................................................................. issued in accordance with the terms and conditions of the agreement between ................................................................. and Pacific Gas and Electric Company, dated ................................................................., have been removed.

Date Checked: .................................................................

By: ........................................................................... By: ...........................................................................

.................................................................

CONTACT REMOVAL ACKNOWLEDGED

Date Checked: ................................................................. Date: ................................................................. 19

By: ........................................................................... By: ...........................................................................

Pay

Number of poles vacated under this removal notice: ................................................................. Free

Exchange Area: .................................................................

Note: Sketch to be drawn to suitable scale. Use reverse of this sheet if necessary.
CITY OF STOCKTON (Applicant), has elected to enter into this Agreement with PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E).

PG&E owns, operates and maintains overhead electric distribution facilities located in geographic areas within the political jurisdiction of Applicant.

Applicant desires to enter into an agreement with PG&E that will (a) allow having that portion of the Applicant's existing streetlights to contact PG&E's distribution poles, and (b) specify conditions for future installation, operation, maintenance, use or removal of Applicant's streetlights. PG&E is willing to permit Applicant to have such pole contacts under the following terms and conditions:

1. POLE CONTACT PERMISSION.

   a. Existing Streetlights. PG&E hereby gives Applicant general permission under the terms and conditions herein stated to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PG&E or jointly owned by PG&E and others. Such permission covers all existing lights owned by the Applicant that are mounted on PG&E-owned poles, based on the most current billing records as of the date of this Agreement. However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations.

   b. New Streetlights. Applicant or its contractor shall not install any new or additional equipment on PG&E's poles without first securing PG&E's written approval in the form of a Contact Permit for specific locations. Within (30) days of receipt of the application, PG&E will either grant the permit or deny the permit and specify why the action cannot be taken. Upon the receipt of each such approved Contact Permit, Applicant shall have the right to install, operate, maintain and use the additional equipment on the poles specified in such permit and under the terms and conditions specified in this Agreement, (thereafter included as Equipment), which shall be considered a part of each such permit without regard to whether this Agreement is referred to in each Contact Permit.

2. POLE CONTACT PERMITS. PG&E will provide Contact Permits in the form attached and marked Exhibit A to Applicant for the specific locations involved, and shall charge no pole contact fee for each electric distribution pole covered under this contact Agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (Commission).

3. PRIOR POLE CONTACT AGREEMENT. This Agreement shall supersede any previous pole contact agreement between PG&E and the Applicant insofar as it may pertain to street lighting.

4. PG&E REQUIREMENTS. Facilities installed under this Agreement shall be subject to all of the provisions of the General Orders of the Commission, and PG&E's applicable tariff schedules on file with and authorized by the Commission and further shall be subject to such changes or modifications as the Commission may, from time to time, direct in the exercise of its jurisdiction.
5. SERVICE DELIVERY. PG&E will supply electrical energy and service to streetlight equipment owned by Applicant in accordance with the provisions of rate Schedule LS-2 for customer-owned street and highway lighting.

6. WORK ON POLES. Any person working on applicant-owned Equipment mounted on PG&E-owned poles must be qualified to work on such Equipment in the vicinity of PG&E's energized conductors (i.e., Qualified Electrical Worker or performing work under the supervision of a Qualified Electrical Worker, See Title 8, Electrical Safety Orders, Section 2949). Any contractor used by Applicant to perform work on the Equipment contacting PG&E's distribution facilities shall be one previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in this Agreement. Upon request, PG&E will supply a list of approved contractors to Applicant.

All work on Applicant's Equipment installed on PG&E's poles shall be performed by Applicant's personnel or contractor operating from either a ladder or bucket truck. Direct climbing of PG&E-owned poles by Applicant's personnel or contractor is prohibited, unless access requires pole climbing by Applicant's authorized personnel qualified to climb.

7. SAFETY PRECAUTIONS. Applicant and PG&E shall perform all work in compliance with applicable federal, state and local laws, rules and regulations. Applicant shall inform all persons doing work on PG&E's facilities and insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property from injury. Work performed in areas adjacent to PG&E's energized electric facilities also shall be performed in accordance with PG&E's established safety rules and practices, as shown on PG&E's Engineering Standard identified as Exhibit B attached, or as directed by PG&E. In no case shall Applicant have work performed above the height of the 120/240 volt secondary conductors on PG&E's facilities.

8. INSURANCE REQUIREMENTS. Applicant shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law. Upon request, Applicant shall provide PG&E evidence of Insurance or self-insurance and shall cause any contractor performing work under this Agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee Applicant's performance of the above Indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured insofar as this Agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, Applicant will furnish PG&E with original copies of the policies and endorsements. PG&E shall have the right to inspect the original policies of such insurance.

9. REARRANGEMENT FOR INSTALLATION. If any rearrangement of or addition to PG&E's existing electric distribution facilities is required to permit Applicant to install Equipment on PG&E's poles, PG&E shall notify Applicant of the nature and PG&E's estimated cost of such work. If Applicant finds such cost acceptable, it shall notify PG&E by letter, including a purchase order number or equivalent authorization to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time and bill Applicant.
10. OTHER REARRANGEMENTS. Should PG&E find it necessary to perform any work (removal, replacement or relocation) on its distribution poles on which Applicant maintains its Equipment, and such work is (a) requested by local governmental agencies, (b) requested by the State of California Department of Transportation (CalTrans), (c) needed to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E’s control, Applicant shall, at its own expense, rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles, if available, as designated by PG&E. PG&E will give Applicant thirty (30) days written notice for such necessary work, except in the case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. In the event that Applicant does not perform its work prior to PG&E’s scheduled work, or in cases of emergency, PG&E may at the expense of Applicant perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PG&E.

11. SERVICE CONNECTION/DISCONNECTION. Connection or disconnection of Applicant’s service wires to PG&E’s secondary conductors will be performed only by PG&E. This work shall be performed at Applicant’s expense based on the flat cost table attached as Exhibit C. This table is subject to change and use by PG&E annually under this agreement, without formal amendment to this Agreement.

12. EQUIPMENT REMOVAL. Applicant or its contractor may remove its Equipment from any poles hereunder upon giving ten (10) days advance written notice to PG&E; provided, however, in case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. Such notice shall be given by executing a Notice of Contract Removal in the form attached hereto as Exhibit D.

13. EQUIPMENT ABANDONMENT. Abandonment of any Equipment under this Agreement, at a location by Applicant shall terminate all of its rights and privileges at that location. Abandonment shall be presumed if any Equipment is not used for a three (3) month period, unless Applicant notifies PG&E in writing of a specific temporary period of disuse of its Equipment. In such instances, the Equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After the expiration of such period, PG&E shall have the right to remove and retain possession of the Equipment, provided that at least thirty (30) days prior to such removal or possession, PG&E has mailed to Applicant written notice of its Intention, and Applicant has neither responded nor commenced using the Equipment. PG&E has the right to collect from Applicant all expenses incurred for removal of such Equipment. Equipment shall not be considered in disuse for any period in which it is inoperable due to failure of electrical service to it, or failure of any component requiring repair or replacement until a reasonable opportunity has been given to Applicant to effect the repair or replacement. Nor shall Equipment be considered disused if it becomes inoperable and this condition is not made known to the Applicant in a timely manner.

14. INDEMNIFICATION. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of person, including but not limited to employees of PG&E, Applicant, or any third party, or any damage to property, including but not limited to, property of PG&E, Applicant, or any third party, arising out of or in any way connected with the performance of this Agreement and any and all construction activities however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys’ fees.

15. GENERAL WAIVER. Should either party fail to enforce any specific provision of this Agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.
PAYMENT FOR. Any amount due from Applicant to for work performed under the provisions of this Agreement are payable in advance of PG&E commencing work, however, where prohibited by law, Applicant may pay the amount within a period of (30) days after the work is completed.

TERM OF AGREEMENT. Notwithstanding any other provisions hereof, this Agreement shall be and remain in effect for an initial period of ten (10) years from the date of this Agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise terminated by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or any subsequent term.

OBLIGATION AFTER TERMINATION. Any termination of Applicant’s rights and privileges under this Agreement shall not relieve Applicant of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of Applicant’s equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

ASSIGNMENT. Applicant may assign this Agreement, in whole or part, only if PG&E consents in writing and the party to whom the Agreement is assigned (Assignee) agrees in writing to perform the obligations of Applicant hereunder and to be bound by this Agreement in all respects. Assignment of this Agreement shall not release Applicant from any of the obligations under this Agreement unless such a release is specifically agreed to in writing this Agreement unless such a release is specifically agreed to in writing by PG&E and the Assignee. Such assignment, unless otherwise provided therein, shall be deemed to include Applicant’s right to any refunds than unpaid or which may thereafter become payable.

COMMISSION JURISDICTION. This Agreement shall be subject to all of PG&E’s tariff schedules on file with and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction. These may include, but are not limited to changes or modifications to monthly cost of ownership charges (higher or lower percentage rates), extension rules, and rate schedules.

Execution Date: March 13, 1991

CITY OF STOCKTON

BY: [Signature]

Authorized Signature

GARY C. INGRAHAM

Type or print name

TITLE: ACTING CITY MANAGER

PACIFIC GAS & ELECTRIC COMPANY

BY: [Signature]

Authorized Signature

SHERYL B. ALMON

Type or print name

TITLE: A DIVISION MANAGER

Division: Stockton

Applicant’s Mailing Address:

Attachments:

Exhibits

A. Contact Permit Form
B. Engineering Standards
C. Flat Cost Table
D. Notice of Contract Removal
FIG. 4
Installation with Extended Rack Construction with Service Drop Present

FIG. 5
Installation with No Service Drops Present (See Note (a))

FIG. 6
Installation with Service Drops Present

NOTES:
(a) Construction shown in Fig. 5 is applicable when no end-of-arm service takeoffs are present or contemplated.

(b) Customer will leave sufficient conductor at this point to reach secondary conductors. PG&E will install it in underground bus and make secondary connection.

(c) All construction must comply with G 0.35 (Rules for Overhead Line Construction) of the State of California Public Utilities Commission.

MATERIAL: FURNISHED AND INSTALLED BY THE CUSTOMER

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Batten and mounting bracket</td>
</tr>
<tr>
<td>2</td>
<td>Photocell Relay, Twist Lock Type</td>
</tr>
<tr>
<td>3</td>
<td>Conduit, 12&quot; PVC, Schedule 40</td>
</tr>
<tr>
<td>4</td>
<td>Sgle, Galvanized 20° x 25° x .062</td>
</tr>
<tr>
<td>5</td>
<td>Wire, #10, Solid Copper, PVC, 600V</td>
</tr>
<tr>
<td>6</td>
<td>Bolt, M8 x 10&quot; Length</td>
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<tr>
<td>7</td>
<td>Nut, #0 &quot; screw, 2½&quot; Length</td>
</tr>
<tr>
<td>8</td>
<td>Washer, 2 X 2, 2½&quot; Bolt Size</td>
</tr>
<tr>
<td>9</td>
<td>Identification</td>
</tr>
</tbody>
</table>

MATERIAL: FURNISHED AND INSTALLED BY P.G. & E.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
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<tr>
<td>A</td>
<td>Rack, Extended, Secondary, 3-Spool</td>
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<tr>
<td>B</td>
<td>Conduit, 1½&quot; PVC, Schedule 40</td>
</tr>
<tr>
<td>C</td>
<td>Conduit 2½&quot; PVC, 10° Wall Thickness</td>
</tr>
<tr>
<td>D</td>
<td>Plumb, Tape, Galvanized</td>
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<tr>
<td>E</td>
<td>Bolt, M8 x 10&quot; Length</td>
</tr>
<tr>
<td>F</td>
<td>Washer, 2½&quot; x 2½&quot; Bolt Size</td>
</tr>
<tr>
<td>G</td>
<td>Connector, Alum, H-Type Compression</td>
</tr>
<tr>
<td>H</td>
<td>Connector, Cu, Split Bolt (for Cu Secondary to #10 Cu)</td>
</tr>
<tr>
<td>I</td>
<td>Slip, Galvanized</td>
</tr>
</tbody>
</table>

Q For 1/0 Aluminum or ACSR Secondary to #10 Cu.
A For Aluminum Secondary Larger than 4/0 to #10 Cu. Make up as #10 Cu.

AUTHORIZED MUNICIPALLY OWNED INSTALLATIONS (120 VOLT OPERATION)

STREET LIGHT INSTALLATIONS ON WOOD POLES

PACIFIC GAS AND ELECTRIC COMPANY
SAN FRANCISCO, CALIFORNIA
MEMORANDUM

March 12, 1991

TO:        James Escobar, Deputy Public Works Director
FROM:      James B. Giottonini, Public Works Director
SUBJECT:   POLE CONTRACT AGREEMENT: PACIFIC GAS & ELECTRIC

Attached for your handling is a copy of the March 7, 1991, memo from the City Attorney’s Office forwarding three original agreements with PG&E regarding the above-described matter. As requested, please forward these agreements to PG&E for signature before execution by the City. Jim, I would appreciate your expediting this matter.

JAMES B. GIOOTONINI
PUBLIC WORKS DIRECTOR

JBG:gh

Attachment

cc:    Gary Ingraham, Acting City Manager
       Guy Petzold, Deputy Public Works Director
DATE: March 7, 1991

TO: JAMES B. GIOTTONINI, Public Works Director

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: POLE CONTRACT AGREEMENT: PACIFIC GAS & ELECTRIC

Enclosed/Attached are three original agreements regarding the above-described matter, which have been approved as to form. Please forward these agreements to P.G. & E for signature BEFORE execution by the City. Council consideration is not required for the above.

Please transmit an original agreement to the City Clerk, which has been fully executed:
   ___ For your files/information.
   ___ Pursuant to our conversation/your request.
   ___ Please sign and return to us promptly.

R. THOMAS HARRIS
CITY ATTORNEY

BY  
GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP: ap

Enclosures

cc: Gary Ingraham, Acting City Manager
CITY MANAGER'S OFFICE
TRANSMITTAL MEMORANDUM
CITY HALL - 944-8212

TO: Jim Giottonini, Director of Public Works
FROM: Gary C. Ingraham, Acting City Manager
SUBJECT: INVOICE -- STREET LIGHT ACQUISITION

<table>
<thead>
<tr>
<th>NO. COPIES</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>1</td>
<td>Invoice from Law Offices of McCracken, Byers &amp; Martin for services rendered with regard to street light acquisition.</td>
</tr>
</tbody>
</table>

INSTRUCTIONS/REMARKS/COMMENTS

Please process for payment as appropriate.

GARY C. INGRAHAM
ACTING CITY MANAGER

GCI: deb
Attachment

3/11/91

Gary T - handling
BC
Boe 3/18/91
CITY OF STOCKTON
ATT: MR. GARY INGRAHAM
CITY HALL
425 NO. EL DORADO
STOCKTON, CA  95202

RE: STREET LIGHT ACQUISITION
361-0539.1

FOR PROFESSIONAL SERVICES RENDERED: 2/01/91 - 2/28/91

Balance Carried Forward  $  622.00

ATTOYEE FEES

<table>
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<tr>
<th>DATE</th>
<th>ATTY</th>
<th>DESCRIPTION</th>
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<td>02/13/91</td>
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TOTAL HOURS BILLED

DJB  5.00 hr @ 125  $  625.00

ATTOYEE FEES  5.00 HOURS  $  625.00
City of Stockton  
FOR PROFESSIONAL SERVICES RENDERED: 2/01/91 - 2/28/91
361-0539.1

DISBURSEMENTS

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STATEMENT SUMMARY

Balance Carried Forward | $ -622.00 |
Total New Charges       | 627.00    |
Payments and Credits    | 0.00      |

TOTAL NEW BALANCE, PLEASE PAY BY OUR FILE NO. | $ 5.00 |

DUE ON RECEIPT
MEMORANDUM

February 27, 1991

TO: R. Thomas Harris, City Attorney
FROM: James B. Giottonini, Public Works Director
SUBJECT: POLE CONTACT AGREEMENT: PACIFIC GAS AND ELECTRIC

Attached are three (3) copies of a Pole Contract Agreement prepared by Pacific Gas and Electric Company (PG&E). This agreement sets forth the terms and conditions under which City owned street light hardware and circuitry is allowed to contact and be maintained on jointly owned poles.

PG&E will not implement the rate reductions based on the change of ownership of the street lights until the City executes this agreement. David Byers of McCracken, Byers & Martin, who represents the City in the street light acquisition proceedings, has protested the agreement and PG&E's non-negotiable stance on the issue to the California Public Utilities Commission (CPUC). He is currently exchanging correspondence, motions, etc., with that agency.

We met with PG&E representatives on Monday, February 11, 1991 to discuss the issue of the Pole Contact Agreement and implementation of the reduced rates. They offered to split out jointly owned poles bearing street lights and remove them from the rate reduction effective November 14, 1990 and make them a part of future negotiations. Mr. Byers was contacted following this meeting and advised us to sign the agreement indicating a "bird in hand ...".

Please review the document and advise if it meets our form requirements and does it require Council action or can the City Manager execute.

JAMES B. GIOTTONINI
PUBLIC WORKS DIRECTOR

JBG:JE:eh

Attachment

cc: Gary C. Ingraham, Acting City Manager
    Paul M. Sensibaugh, Deputy Public Works Director/CE
    Attn: Gary Tsutsumi, Senior Traffic Engineer
McCRACKEN, BYERS & MARTIN
ATTORNEYS AT LAW
METRO CENTER
919 EAST HILLSDALE BOULEVARD, SUITE 101
FOSTER CITY, CALIFORNIA 94404
(415) 873-5551
FAX (415) 873-5507

February 26, 1991

Mr. Cleo Allen
Commission Advisory and
Compliance Division
California Public Utilities Commission
505 Van Ness Avenue, Room 3200
San Francisco, California 94102

Re: Protest To PG&E Advice Letter No. 1626-G/1335-E

Dear Mr. Allen:

As you know this office represents the City of Stockton and the California City/County Street Light Association ("CAL-SLA"). As you requested in our phone conversation of February 19, 1991 enclosed are our comments both to the proposed Pole Contact Agreement and also to the Deed of Conveyance.

1. Page 1, paragraph 1.a.: The words "However, specific permission for such streetlights must be in the form of poles Contact Permits for specific locations," should be struck. In view of the fact that a city issues a single blanket encroachment permit to PG&E and that suffices, a blanket pole contact permit should suffice for the purposes of PG&E. A new sentence should be inserted which will read:

"PG&E shall use a blanket pole contact permit for all existing street lights within the applicant’s jurisdiction."

2. Page 1, paragraph 1.b.: This paragraph is unacceptable. The public should not be burdened with an applicant having to secure PG&E's written approval with thirty (30) days advance notice in order to install new street lights. Often new street lights may need to be installed for purposes of crime prevention or public safety in a much shorter period. Therefore an additional sentence at the end of paragraph 1.b. should state:

"Notwithstanding the foregoing, in the event applicant orally requests PG&E to install street lights on existing poles, within three (3) days PG&E service personnel and applicant
service personnel would go to the location to determine how a street light can be installed. PG&E may give verbal permission to install a street light at that time. Otherwise a street light installation will be in accordance with this agreement."

3. **Page 1, paragraph 3:** This paragraph should be struck in its entirety. PG&E should not be permitted to supersede existing contracts unilaterally with the local agencies who have negotiated agreements.

4. **Page 2, paragraph 6:** The last sentence "Direct climbing of PG&E - owned poles by Applicant’s personnel or contractor is prohibited, unless access requires pole climbing by Applicant’s authorized personnel qualified to climb," is very ambiguous. It says on the one hand you cannot on the pole and on the other hand you can climb on the pole if access requires pole climbing. This sentence should be struck.

5. **Page 2, paragraph 7:** The phrase "insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property for injury," is not proper because it may conflict with the indemnity provisions in this agreement. Those specific indemnity provisions should control instead of this sentence. This sentence should be struck.

6. **Page 2, paragraph 9:** This sentence should be added to paragraph 9 which states:

   "If applicant determines that the cost by PG&E is unacceptable, it shall notify PG&E by letter and may independently contract for the work. Such notifications shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work. In the event that applicant contracts for such work, it shall reimburse PG&E its expense or the design of the work in any inspection that may be necessary."

   This language was previously agreed to by PG&E in other agreements.

7. **Page 3, paragraph 12:** Why is it necessary to give PG&E ten (10) days written advance notice? This paragraph should be struck.
8. Page 3, paragraph 14: This is a one sided indemnification provision. Previously PG&E had agreed in other contracts for other language that has cross indemnification. I suggest this paragraph be struck and the following be substituted.

"14.a. Any and all liability for injury or death of any person (including the general public, employees, agents, representatives, contractors and contractor’s employees, agents, representatives and sub-contractors of the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any poles, towers, fixtures or light standards or any attachments thereto, or any failure of any party hereto to observe and perform any obligations hereunder shall be borne by the parties hereto as follows:

(1) Any such liability for injury to or death of an employee, agent, representative, contractor (including contractors’ employees, agents, representative and sub-contractors) of a party hereto shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(2) Subject to (1) above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(3) Subject to (1) above, any such liability caused by the joint or concurrent negligence of the parties hereto or by the joint or concurrent failure of the parties hereto to observe or perform any obligation hereunder, shall be borne equally by such parties, except that each such party shall
assume all risk of loss or destruction of or damage to its property.

(4) Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability, except that each party shall assume all risk of loss or destruction or damage to its property.

14.b. In the adjustment between the parties hereto of any claim of such liability, the liability assumed by such parties under paragraph 14.a. of this section shall include, in addition to the amounts paid to the claimant, all expenses incurred by such party in connection therewith, which shall include costs, attorney’s fees, disbursements and other proper charges and expenditures.

14.c. If any party hereto, as the result of claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this section, such party shall have, to the extent of the excess so paid by it, the right of contribution from the other party affected by such claim."

This language was previously agreed to in the Peninsula Street Light Authority matter.

9. Page 4 paragraphs 16: Local agencies do not pay anybody in advance for work. This sentence should be struck.

10. Deed of Conveyance. CAL-SLA is concerned that PG&E will use this to preclude local agencies from using the doctrines of resulting trust and public trust to obtain street lights that were dedicated to PG&E without PG&E paying any money. That issue should be determined by court as provided for in East Yolo Community Services District v. Washington Water and Light Company, (1975) 1 Cal. P.U.C.2d 475 (East Yolo 1) as modified, East Yolo Community Services District v. Washington Water and Light Company, (1975) 2 Cal. P.U.C.2d 298, (East Yolo 2). Therefore the Deed of Conveyance should state at the end of the sentence "This Deed of Conveyance shall be given by construed in accordance with the laws of the State of California. This Deed of Conveyance does not modify the present existing doctrines of resulting trust or public trust."
I hope this letter indicates the problems we have with PG&E's advice letter. I would be happy to assist you in anyway with regards to resolving these problems.

Very truly yours,

McCRACKEN, BYERS & MARTIN

David J. Byers
DAVID J. BYERS

DJB:jd
cc: Mr. James Escobar
    Public Works/General Services
    City of Stockton
Mr. Reed V. Schmidt
    Senior Consultant
    Bartle Wells Associates
Mr. Gordon Smith
    Vice President
    Pacific Gas & Electric Company
    77 Beale Street
    San Francisco, California 94105
February 14, 1991

Energy Branch Chief
Commission Advisory and Compliance Division
California Public Utilities Commission
505 Van Ness Avenue, Room 3200
San Francisco, CA 94102

Re: Protest to PG&E Advice Letter No. 1626-G\1335-E

Dear Sir or Madam:

This office represents the City of Stockton and the California City/County Street Light Association ("CAL/SLA"). By this letter, both parties protest the filing by Pacific Gas and Electric Company ("PG&E") of the above-denominated advice letter.

In order to describe the basis for this protest, some historical perspective is necessitated. This office has also represented the Marin Street Light Acquisition Joint Powers Authority, the Peninsula Street Light Authority (composed of seven cities within the County of San Mateo), and the City of Fresno in condemnation actions initiated by those local agencies to acquire street light facilities owned by PG&E.

Although new street light facilities typically consist of street lights placed on street light only dedicated poles, older installations often include street lights on PG&E distribution poles. Therefore, when a local agency initiates a condemnation action, PG&E requests an agreement regarding the existing placement of the street lights which will now be the property of the local agency on its distribution poles. The local agencies do not object to entering into a fair agreement.

The first condemnation case this office handled involved the Marin Street Light Acquisition Joint Powers Authority ("MSLAJPA") which consist of Marin County and twelve local agencies within the County of Marin. Initially, PG&E placed a totally unacceptable agreement before the MSLAJPA and told the MSLAJPA to sign it or else. The MSLAJPA received a court order to compel PG&E to negotiate in good faith. The MSLAJPA was then able to negotiate important terms within the agreement and came to a satisfactory one. (See Exhibit A.)
In the Peninsula Street Light Authority ("PSLA") case PG&E recognized that the local agencies would now demand negotiations. The parties met in good faith and a suitable agreement was developed. (See Exhibit B.)

In the Fresno case PG&E again recognized the necessity for negotiations. Again Fresno entered into negotiations and a satisfactory agreement was developed. (See Exhibit C.)

In the City of Stockton case, PG&E decided to change its tune. It no longer wanted to negotiate with local agencies. Instead it developed on its own a pole contact agreement which was unacceptable to the City of Stockton. The City of Stockton indicated its objections to the agreement in a letter from this office. (See Exhibit D.) Subsequently I met with the representatives of PG&E to handle the negotiations. PG&E did not attempt to negotiate in good faith. Instead of negotiating the agreement it simply stated take it or else. (See Exhibit E.) Now PG&E is using the advice letter process to "shove an agreement down the throat" of the City of Stockton. The agreement has significant flaws as detailed in the letter from the City of Stockton. Speaking as a representative of CAL/SLA our position is that we have no objection to a standard agreement because the issues effecting local agencies are general in nature and a standard agreement could be used. However, PG&E refuses to negotiate such an agreement. Moreover, with regards to the existing agreements between MSLAJPA, PSLA, and Fresno, Paragraph 3 of the proposed agreement would seek to unilaterally modify them. This should not be permitted. Those agreements were freely negotiated by the parties and PG&E should be forced to retain those contracts. PG&E has given no reason why those agreements should be rescinded. PG&E cannot unilaterally rescind those contracts through the advice letter process.

Moreover, the Deed of Conveyance possesses significant problems with ongoing and future condemnation action. Certain street lights are contribut-ed to PG&E by developers. It is our position that these street lights are held in trust by PG&E for the benefit of the local agencies. This position was discussed by the California Public Utilities Commission in two separate decisions: East Yolo Community Services District v. Washington Water and Light Company, (1975) 1 Cal. P.U.C.2d 475, (East Yolo 1) as modified, East Yolo Community Services District v. Washington Water and Light Company, (1975) 2 Cal. P.U.C. 2d 298, (East Yolo 2). It is the position of the City of Fresno in pending litigation that it should be permitted to put the evidence of contributions before the trier-of-fact. In this specific issue, PG&E has moved for partial
summary judgment. The summary judgment has been denied by the Superior Court of the County of Fresno. (See Exhibit F.) It appears that PG&E is attempting to decide legal issues in future condemnation actions through the advice letter process. Therefore, the Deed must also be modified to ensure that it cannot be used to preclude a local agency from litigating the issue of contributions in a condemnation action.

We would request that the Commission Advisory and Compliance Division review the comments we have made and to meet with us so that the issues can be resolved. We believe that if those issues can be resolved, a form agreement can be used.

This is a serious matter and if our issues are not adequately addressed a Complaint by the customers of PG&E -- the local agencies who are the ratepayers and customers for street lights will be filed. We would like to resolve this short of such action. If you have any questions, do not hesitate to call.

Sincerely,

McCRAKEN, BYERS & MARTIN

David J. Byers

DAVID J. BYERS

DJB/mlj
Encls.
cc: Mr. James McVicor,
    Deputy Commissioner
    Advisory and Compliance Division
    California Public Utilities Commission
Mr. Gordon Smith, Vice President,
    Pacific Gas & Electric Co.
    77 Beale Street
    San Francisco, CA  94106
Mr. James Escobar,
    Public Works/General Services
    City of Stockton
Mr. Reed Schmidt,
    Senior Consultant
    Bartle Wells Associates
POLE CONTACT AND OPERATING AGREEMENT

THIS AGREEMENT is entered into this sixteenth day of September, 1985, by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PGandE), and the MARIN STREET LIGHT ACQUISITION JOINT POWERS AUTHORITY, a joint public entity (MSLAJPA).

WHEREAS, MSLAJPA represents twelve (12) member agencies consisting of the County of Marin, Marinwood Community Services District, Bel Marin Keys Community Services District, City of Belvedere, Town of Fairfax, City of Mill Valley, City of San Rafael, Town of Tiburon, City of Novato, City of Larkspur, Town of San Anselmo, and the City of Sausalito;

WHEREAS, PGandE owns, operates and maintains overhead electric distribution facilities within the geographic areas of the member agencies of MSLAJPA;

WHEREAS, MSLAJPA has recently acquired possession of certain street lights from PGandE within the geographic areas of the member agencies of MSLAJPA, a portion of which are installed on PGandE's overhead electric distribution poles;

WHEREAS, MSLAJPA desires to enter into a general agreement with PGandE that will (1) allow having the existing street lights remain on PGandE's distribution poles and (2) specify conditions for future installation, operation, maintenance, use or removal of street lights; and

WHEREAS, PGandE is willing to permit MSLAJPA to have such pole contacts under certain terms and conditions;

EXHIBIT A

- 1 -
NOW THEREFORE, in consideration of the foregoing and in consideration of the foregoing, MSLAJPA hereby agree to the following:

1. PGandE hereby gives MSLAJPA permission, under the terms and conditions herein stated, to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PGandE or jointly owned by PGandE and others. Such permission covers all existing lights in each jurisdiction that are mounted on PGandE-owned poles based on the most current billing records as of the date of this agreement.

2. After the final inventory, conducted by PGandE at its expense, is completed, PGandE will provide Contact Permits in the form attached and marked Exhibit A to MSLAJPA for each of the locations involved in the acquisition, and shall charge no pole contact fee for each electric distribution pole covered under this contact agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (CPUC). In the event any member agency of MSLAJPA abandons its Eminent Domain action against PGandE, MSLAJPA agrees to reimburse PGandE that member agency's pro rata share of the inventory expense.

3. Any contractor used by MSLAJPA to perform work on PGandE's distribution facilities shall be one previously approved by PGandE as qualified to perform such work, and shall meet the insurance requirements outlined in paragraph 19. Upon request, PGandE will supply a list of approved contractors to MSLAJPA.

4. MSLAJPA or its contractor shall not install any additional equipment on PGandE's poles without first securing PGandE's written approval as a Contact Permit. Within thirty (30) days of receipt of the application, PGandE will
grant or deny the permit, or specify why the action cannot be taken. Upon receipt of each such approved Contact Permit, MSLAJPA shall have the right of installing, operating, maintaining and using such additional equipment on the poles specified in such permit and under the terms and conditions specified in this agreement, (thereafter included as Equipment), which shall be considered a part of each such permit irrespective of whether this agreement be referred to in each such Contact Permit.

5. All Equipment attachments made by MSLAJPA or its contractor shall be in accordance with the drawing identified as Exhibit B attached.

6. If any rearrangement of or addition to existing PGandE electric distribution facilities is required in order to permit use by MSLAJPA, PGandE shall notify MSLAJPA of the nature and estimated cost of such work. If MSLAJPA finds such estimated cost acceptable, to use any such poles, it shall notify PGandE by letter of the MSLAJPA's willingness to reimburse PGandE for the cost of such work. PGandE shall thereafter complete the work within a reasonable time and bill MSLAJPA for the cost. If MSLAJPA determines that the cost by PGandE is unacceptable, it shall notify PGandE by letter and may independently contract for the work. Such notification shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work.

7. This agreement may be assigned by MSLAJPA to its member agencies with the prior written notice to PGandE, provided the assignee agrees to the terms and conditions of this agreement. This agreement may be assigned by MSLAJPA to other than its member agencies only with the prior written consent of PGandE.

EXHIBIT A

- 3 -
8. All work on MSLAJPA's street lights on PGandE's ( ) shall be performed by MSLAJPA's personnel or contractor operating from ladder trucks or bucket trucks.

9. MSLAJPA will specify service voltages to be 120 or 240 volts to ensure maximum energy efficiency. Photocells will be calibrated, at the service voltage, for an operating schedule of 4,100 hours per year.

10. Connection or disconnection of MSLAJPA's service wires to PGandE's secondary conductors will be performed by PGandE at MSLAJPA's expense based on the flat cost table attached as Exhibit C. This table is subject to change by PGandE annually. If MSLAJPA believes the annual increase in flat costs are not reasonable, it may request a breakdown of the charges from PGandE, and may petition the CPUC for review.

11. MSLAJPA or its contractor may remove its Equipment from any poles hereunder upon giving ten (10) days advance written notice to PGandE; provided, however, that said notice period will be inapplicable in case of emergency. Such notice shall be given by executing a Notice of Contact Removal in the form attached hereto as Exhibit D.

12. PGandE will supply electrical energy and service to street light equipment owned by MSLAJPA in accordance with its applicable tariff schedules.

13. Abandonment of Equipment by MSLAJPA shall terminate all of its rights and privileges, at that location, under this agreement. Abandonment shall be presumed if Equipment is not used for a six (6) month period. After the expiration of such period, PGandE shall have the right to remove and retain possession of the Equipment, provided that at least ten (10) days prior to such removal or possession
PGandE has mailed to AJPA written notice of its intention and MSLAJPA has neither responded nor brought to use the equipment.

14. MSLAJPA shall install and maintain Equipment at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules, and regulations.

15. PGandE shall install and maintain its facilities at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules, and regulations.

16. Should PGandE find it necessary to perform work on (rearrange, remove or relocate) its distribution poles, on which MSLAJPA maintains its Equipment, and such work is (a) at the request of local governmental agencies, (b) at the request of the State of California Department of Transportation (Cal-Trans), (c) to replace deteriorated poles, or (d) caused by an emergency (storm damage, accidents, etc.) MSLAJPA shall at its own expense, rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles, if available, as designated by PGandE. PGandE will give MSLAJPA thirty (30) days written notice for such necessary work, except in the case of an emergency. In the event that MSLAJPA does not perform its work prior to PGandE's scheduled work, or in cases of emergency, PGandE may at the expense of MSLAJPA perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PGandE.

17.a. Any and all liability for injury or death of any person (including employees, agents, representatives, contractors and contractor's employees, agents, representatives and sub-contractors of
the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any poles, towers, fixtures or light standards or any attachments thereto, or any failure of any party hereto to observe and perform any obligations hereunder shall be borne by the parties hereto as follows:

(1) Any such liability for injury to or death of an employee, agent, representative, contractor (including contractors' employees, agents, representative and sub-contractors) of a party hereto shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(2) Subject to (1) above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(3) Subject to (1) above, any such liability caused by the joint or concurrent negligence of the parties hereto or by the joint or concurrent failure of the parties hereto to observe or perform any obligation hereunder, shall be borne equally by such parties, except that each such party shall assume all risk of loss or destruction of or damage to its property.

(4) Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability,
except that each party shall assume all risk of loss, destruction or damage to its property.

17.b. In the adjustment between the parties hereto of any claim of such liability, the liability assumed by such parties under paragraph 17.a. of this section shall include, in addition to the amounts paid to the claimant, all expenses incurred by such party in connection therewith, which shall include costs, attorney's fees, disbursements and other proper charges and expenditures.

17.c. If any party hereto, as the result of claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this section, such party shall have, to the extent of the excess so paid by it, the right of contribution from the other party affected by such claim.

18. MSLAJP shall provide evidence to PGandE of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law.

19. Upon request, MSLAJP shall provide PGandE evidence of insurance or self-insurance and shall cause any contractor performing work under this agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000.00 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PGandE and shall guarantee MSLAJP's performance of the above indemnity obligation and shall also be endorsed to (a) include PGandE as an additional named

EXHIBIT A

- 7 -
insured insofar as this agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PGandE at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, MSLAJPA will furnish PGandE with original copies of the policies and endorsements. PGandE shall have the right to inspect the original policies of such insurance.

20. Should either party fail to enforce any specific provision of this agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.

21. Any amounts payable by MSLAJPA to PGandE under the provisions of this agreement shall not be due until services have been rendered and shall be due and payable within thirty (30) days after the work is completed.

22. Any termination of MSLAJPA's rights and privileges hereunder shall not relieve MSLAJPA of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of MSLAJPA's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

23. This agreement shall supersede any previous pole contact agreement between PGandE and the jurisdictions represented by MSLAJPA insofar as it may pertain to street lighting.

24. This agreement shall be subject to all of the provisions of the California Public Utilities Code and PGandE's applicable tariff schedules on file with and authorized by the CPUC and further shall at

EXHIBIT A

- 8 -
all times be subject to such changes or modifications as the CPUC may, from time to time, direct in the exercise of its jurisdiction.

25. Notwithstanding any other provisions hereof, this agreement shall be and remain in effect for an initial period of ten (10) years from the date of this agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise cancelled by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or any subsequent term.

PACIFIC GAS AND ELECTRIC COMPANY

By

John B. Benzon

Its Marin District Manager

MARIN STREET LIGHT ACQUISITION JOINT POWERS AUTHORITY

By

Thomas Campanella

Its Chairman, Governing Board of MSLAJPA

Approved As to Form

David Byers

Attorney for MSLAJPA

Attachments: Exhibits A, B, C and D.
CONTACT PERMIT

To: ___________________________ Division: ___________________________
                                               Date: ____________  19__

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between ___________________________ and Pacific Gas and Electric Company dated ___________________________.

Date Checked: ___________________________  By: ___________________________

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: ___________________________ Date: ____________  19__

By: ___________________________  By: ___________________________

Number of poles contacted under this permit: ___________. Annual rental $_________ each or $_________ total.

EXHIBIT A

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
FIG. 4
Installation with Extended Rock Construction with Service Drop Present

FIG. 5
Installation with No Service Drops Present (See Note (a))

FIG. 6
Installation with Service Drops Present

NOTES:
(a) Construction shown in Fig. 5 is applicable when no end-of-arm service laterals are present or contemplated.
(b) Customer will leave sufficient conductor at this point to reach secondary conductor. P.G. & E. will install it in underarm bus and make secondary connection.
(c) All construction must comply to 60.95 (Rules for Overhead Line Construction) of the State of California Public Utilities Commission.

MATERIAL: FURNISHED AND INSTALLED BY THE CUSTOMER

ITEM
1. Luminaire and mounting bracket
2. Photocell Relay, Twist Lock Type
3. Conduit 1½" PVC, Schedule 40
4. Pipe Strap, 1½" (minimum spacing = 36 inches)
5. Wire #10 Solid Copper, PVC, 600V
6. Bolt, Mach. 5/8" x 10" Length
7. Log Screw, 3/4" x 4" Length
8. Washer, 2¼" Sq. 3/4" Bolt Size
9. Identification

DEPARTMENT OF ENGINEERING
PACIFIC GAS AND ELECTRIC COMPANY
SAN FRANCISCO, CALIFORNIA

EXHIBIT A
FLAT COST TABLE
CUSTOMER-OWNED STREET LIGHTS ON PGANDE-OWNED POLES
RATE SCHEDULE NO. LS-2
SEPTEMBER 1985

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<tbody>
<tr>
<td>1. New Service Connection (single trip) Load Less Than 2000 Watts</td>
<td>$40</td>
</tr>
<tr>
<td>2. Temporary Disconnect and Reconnect Service Wires (double trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district.</td>
<td>$80</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time.</td>
<td>$40</td>
</tr>
<tr>
<td>3. Relocation (remove and reinstall street light fixture, support arm, wiring, etc.) on wood pole (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district.</td>
<td>$112</td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time.</td>
<td>$43</td>
</tr>
<tr>
<td>4. Permanent Disconnection: (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. Light installed 5 years or more</td>
<td>None</td>
</tr>
<tr>
<td>b. Light installed less than 5 years</td>
<td></td>
</tr>
<tr>
<td>(1) First light located within a single city or lighting district.</td>
<td>$40</td>
</tr>
<tr>
<td>(2) Each additional light located within a single city or lighting district worked at the same time.</td>
<td>$20</td>
</tr>
</tbody>
</table>

NOTES: 1. All charges shown above are subject to change annually by PGandE.

2. For connection and other charges for customer-owned street lights NOT on PGandE-owned poles, refer-to the special conditions of Schedule LS-2.

EXHIBIT A
NOTICE OF CONTACT REMOVAL

To: ................................................................. Division: .................................................................

................................................................. Date: ................................................................. 19...

The attachments on the poles designated below, as covered by Contact Permit No. .................................................................

issued in accordance with the terms and conditions of the agreement between .................................................................

and Pacific Gas and Electric Company, dated ................................................................., have been removed.

Date Checked: .................................................................................................................................

By: ................................................................................................................................. By: .................................................................

TITLE

CONTACT REMOVAL ACKNOWLEDGED

Date Checked: ................................................................................................................................. Date: ................................................................. 19...

By: .................................................................................................................................

By: .................................................................................................................................

Pay

Number of poles vacated under this removal notice ................................................................. Free

Exchange Area: .................................................................

EXHIBIT A

Note: Sketch to be drawn to suitable scale. Use reverse of this sheet if necessary.
POLE CONTACT AND OPERATING AGREEMENT

THIS AGREEMENT is entered into this twenty sixth day of June 1988, by and between PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation (PG&E), and the Peninsula Streetlighting Authority, a joint public entity (PSLA).

WHEREAS, PSLA represents member agencies consisting of the cities of South San Francisco, Daly City, Pacifica, Millbrae, San Bruno, Belmont, and San Carlos;

WHEREAS, PG&E owns, operates and maintains overhead electric distribution facilities within the geographic areas of the member agencies of PSLA;

WHEREAS, PSLA has recently acquired possession of certain streetlights from PG&E within the geographic areas of the member agencies of PSLA, a portion of which are installed on PG&E's overhead electric distribution poles;

WHEREAS, PSLA desires to enter into a general agreement with PG&E that will (1) allow having the existing streetlights remain on PG&E's distribution poles and (2) specify conditions for future installation, operation, maintenance, use or removal of streetlights; and

WHEREAS, PG&E is willing to permit PSLA to have such pole contacts under certain terms and conditions;

EXHIBIT B
NOW THEREFORE, in consideration of the foregoing, E and PSLA hereby agree to the following:

1. PG&E hereby gives PSLA permission, under the terms and conditions herein stated, to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PG&E or jointly owned by PG&E and others. Such permission covers all existing lights in each jurisdiction that are mounted on PG&E-owned poles based on the most current billing records as of the date of this agreement.

2. PG&E will provide Contact Permits in the form attached and marked Exhibit A to PSLA for each of the locations involved in the acquisition, and shall charge no pole contact fee for each electric distribution pole covered under this contact agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (CPUC). In the event any member agency of PSLA abandons its Eminent Domain action against PG&E, PSLA agrees to reimburse PG&E that member agency's pro rata share of PG&E's expenses incurred as a result of this agreement.

3. Any contractor used by PSLA to perform work on PG&E's distribution facilities shall be one previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in paragraph 19. Upon request, PG&E will supply a list of approved contractors to PSLA.

EXHIBIT B
-2-
4. PSLA or its contractor shall not install any additional equipment on PG&E's poles without first securing PG&E's written approval as a Contact Permit. Within thirty (30) days of receipt of the application, PG&E will grant or deny the permit, and specify why the action cannot be taken. Upon receipt of each such approved Contact Permit, PSLA shall have the right of installing, operating, maintaining and using such additional equipment on the poles specified in such permit and under the terms and conditions specified in this agreement, (thereafter included as Equipment), which shall be considered a part of each such permit irrespective of whether this agreement be referred to in each such Contact Permit.

5. All Equipment attachments made by PSLA or its contractor shall be in accordance with the drawing identified as Exhibit B attached or as PG&E may direct based on design changes made.

6. If any rearrangement of or addition to existing PG&E electric distribution facilities is required in order to permit use by PSLA, PG&E shall notify PSLA of the nature and PG&E's estimated cost of such work. If PSLA finds such estimated cost acceptable, it shall notify PG&E by letter with purchase order number of PSLA's willingness to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time and bill PSLA. If PSLA determines that the cost by PG&E is unacceptable, it shall notify PG&E by letter and may independently contract for the work. Such notification shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work. In the event that PSLA contracts...
for such work, it shall reimburse PG&E its expense for the design of the work and any inspection that may be necessary.

7. This agreement may be assigned by PSLA to its member agencies with the prior written notice to PG&E, provided the assignee agrees to the terms and conditions of this agreement. This agreement may be assigned by PSLA to other than its member agencies only with the prior written consent of PG&E.

8. All work on PSLA's streetlights on PG&E's poles shall be performed by PSLA's personnel or contractor operating from ladder trucks or bucket trucks.

9. PSLA will specify service voltages to be 120 or 240 volts to ensure maximum energy efficiency. Photocells will be calibrated, at the service voltage, for an operating schedule of 4,100 hours per year.

10. Connection or disconnection of PSLA's service wires to PG&E's secondary conductors will be performed by PG&E at PSLA's expense based on the flat cost table attached as Exhibit C. This table is subject to change by PG&E annually. If PSLA believes the annual increase in flat costs are not reasonable, it may request a breakdown of the charges from PG&E, and may petition the CPUC for review.

11. PSLA or its contractor may remove its Equipment from any poles hereunder upon giving ten (10) days advance written notice to PG&E; provided, however, that said notice period will be inapplicable in case of emergency. Such notice shall be given by executing a Notice of Contact Removal in the form attached hereto as Exhibit D.

EXHIBIT B
12. PG&E will supply electrical energy and service to streetlight equipment owned by PSLA in accordance with its applicable tariff schedules.

13. Abandonment of Equipment by PSLA shall terminate all of its rights and privileges, at that location, under this agreement. Abandonment shall be presumed if Equipment is not used for a three (3) month period and unless PSLA notifies PG&E of a temporary period of disuse of its Equipment. In such instances, the Equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After the expiration of such period, PG&E shall have the right to remove and retain possession of the Equipment, provided that at least ten (10) days prior to such removal or possession PG&E has mailed to PSLA written notice of its intention and PSLA has neither responded nor brought to use the Equipment. PG&E has the right to collect from PSLA all expenses incurred for removal of such Equipment.

14. PSLA shall install and maintain Equipment at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules, and regulations. In no case shall PSLA have work performed above the height of the 120/240 volt secondary conductors on PG&E's facilities.

15. PG&E shall install and maintain its facilities at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules and regulations.
16. Should PG&E find it necessary to perform any work (rearrange, remove, replace or relocate) its distribution poles, on which PSLA maintains its Equipment, and such work is (a) at the request of local governmental agencies, (b) at the request of the State of California Department of Transportation (Cal-Trans), (c) to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E’s control, PSLA shall at its own expense rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles, if available, as designated by PG&E. PG&E will give PSLA thirty (30) days written notice for such necessary work, except in the case of an emergency. In the event that PSLA does not perform its work prior to PG&E's scheduled work, or in cases of emergency, PG&E may at the expense of PSLA perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PG&E.

17.a. Any and all liability for injury or death of any person (including the general public, employees, agents, representatives, contractors and contractor's employees, agents, representatives and subcontractors of the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any poles, towers, fixtures or light standards or any attachments thereto, or any failure of any party hereto to observe and perform any obligations hereunder shall be borne by the parties hereto as follows:

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EXHIBIT B
(1) Any such liability for injury to or death of an employee, agent, representative, contractor (including contractors' employees, agents, representative and sub-contractors) of a party hereto shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(2) Subject to (1) above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

(3) Subject to (1) above, any such liability caused by the joint or concurrent negligence of the parties hereto or by the joint or concurrent failure of the parties hereto to observe or perform any obligation hereunder, shall be borne equally by such parties, except that each such party shall assume all risk of loss or destruction of or damage to its property.

(4) Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability, except that each party shall assume all risk of loss or destruction or damage to its property.

17.b. In the adjustment between the parties hereto of any claim of such liability, the liability assumed by such parties under paragraph 17.a. of this section shall include, in addition to the amounts paid to the

-7-

EXHIBIT B
claimant, all expenses incurred by such party in connexion therewith, which shall include costs, attorney's fees, disbursements and other proper charges and expenditures.

17.c. If any party hereto, as the result of claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this section, such party shall have, to the extent of the excess so paid by it, the right of contribution from the other party affected by such claim.

18. PSLA shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law.

19. Upon request, PSLA shall provide PG&E evidence of insurance or self-insurance and shall cause any contractor performing work under this agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000.00 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee PSLA's performance of the above indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured insofar as this agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, PSLA will furnish PG&E with

EXHIBIT B
original copies of the policies and endorsements. PG & E shall have the right to inspect the original policies of such insurance.

20. Should either party fail to enforce any specific provision of this agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.

21. Any amounts payable by PSLA to PG&E under the provisions of this agreement shall not be due until services have been rendered and shall be due and payable within thirty (30) days after the work is completed.

22. Any termination of PSLA's rights and privileges hereunder shall not relieve PSLA of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of PSLA's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

23. This agreement shall supersede any previous pole contact agreement between PG&E and the jurisdictions represented by PSLA insofar as it may pertain to streetlighting.

24. This agreement shall be subject to all of the provisions of the California Public Utilities Code and PG&E's applicable tariff schedules on file with and authorized by the CPUC and further shall at all times be subject to such changes or modifications as the CPUC may, from time to time, direct in the exercise of its jurisdiction.

25. Notwithstanding any other provisions hereof, this agreement shall be and remain in effect for an initial period of ten (10) years from the

-9-

EXHIBIT B
date of this agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise cancelled by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or any subsequent term.

PACIFIC GAS AND ELECTRIC COMPANY  
By ____________________________  
       Pete Nelson  
       Manager - Skyline Division  
       PG&E

PENINSULA STREETLIGHTING AUTHORITY  
By ____________________________  
       Its Chairman, Governing Board of PSLA

By ____________________________  
       Bill McLoughlin  
       Manager - Peninsula Division  
       PG&E

Approved  
As to Form ____________________________  
Attorney for PSLA

Attachments: Exhibits A, B, C and D

EXHIBIT B
CONTACT PERMIT

To:........................................................................

Division..................................................

Date................................. 19

Permission is requested to place attachments on the poles designated below in accordance with the terms and conditions of the agreement between...........................................................

and Pacific Gas and Electric Company
dated.............................

Date Checked..................................................

By..................................................

By..................................................

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked..................................................

By..................................................

By..................................................

Number of poles contacted under this permit........ Annual rental $.................. each or $.................. total.

EXHIBIT B

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
STREETLIGHT DISTRIBUTION SYSTEM
OPERATING AGREEMENT

THIS AGREEMENT is entered into this 21st day of August, 1990, by and between PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation "PG&E", and the CITY OF FRESNO, CALIFORNIA, a California Charter City "City".

WHEREAS, PG&E owns, operates and maintains overhead electric distribution facilities within the geographic areas of the City; and

WHEREAS, City has recently acquired possession of certain streetlights from PG&E in conjunction with an eminent domain action entitled City of Fresno vs. PG&E, Fresno Superior Court No. 393325-6 filed December 27, 1988, within the geographic area of the City, a number of which are installed on PG&E's overhead electric distribution poles; and

WHEREAS, the City desires to enter into a general agreement with PG&E that will specify conditions for the installation, operation, maintenance, use or removal of streetlights recognizing and accommodating the interests and relationship between PG&E and the City concerning the streetlights and the distribution poles which will be established by the City's acquisition of those streetlights;

NOW THEREFORE, in consideration of the foregoing, PG&E and the City hereby agree to the following:

1. PG&E hereby acknowledges whatever rights the City may obtain by its acquisition of said lights, under the terms and conditions herein stated, to replace and maintain existing

EXHIBIT C

APPROVED BY CITY COUNCIL
(Aug 21, 1990)
JACQUELINE L. RYLE, CITY CLERK
By CITY DEPUTY
luminaires, lamps, photovoltaic plates, support arms and twice wiring facilities (hereinafter "equipment") installed on poles owned by PG&E or jointly owned by PG&E and others. This Agreement covers all existing lights in City's jurisdiction that are mounted on PG&E-owned poles based on the most current billing records as of the date of this agreement.

2. City will fill-out Contact Permits in the form attached and marked as Exhibit "A" for each location involved in the acquisition. PG&E will not charge a pole contact fee for electric distribution poles covered under this agreement. City reserves the right to object to any proposal (by any application, request, proceeding or otherwise) for the adoption, grant or enactment of any such pole contact fee requirement.

3. Any contractor used by City to install streetlight equipment on PG&E's distribution facilities shall be one previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in paragraph 18. Upon request, PG&E will supply a list of approved contractors to City.

4. City or its contractor shall not install any additional equipment on PG&E's poles without first securing PG&E's written approval as a Contact Permit. ("Additional equipment," as used in this provision, means mast arm luminaire, brackets, wire, etc.). Within thirty (30) days of receipt of the application, PG&E will grant or deny the permit, and specify why the action cannot be taken. Upon receipt of each such Approved Contact Permit, City shall have the right of installing, operating, maintaining and
using such additional equipment on the poles specified in such permit and under the terms and conditions specified in this agreement (thereafter included as equipment), which shall be considered a part of each such permit irrespective of whether this agreement be referred to in each such Contact Permit.

5. All equipment attachments made by City or its contractor shall be in accordance with the drawing identified as Exhibit B attached or as PG&E may direct based on design changes made applicable to similar equipment attachments, generally.

6. If City requests a streetlight equipment contact to an existing PG&E electric distribution facility to permit use by City, PG&E shall notify City of the nature and PG&E's estimated installation cost of such work. If City finds such estimated cost acceptable, City shall notify PG&E by letter with work order number of City's willingness to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time and bill City. If City determines that the cost by PG&E is unacceptable, City shall notify PG&E by letter and seek alternate means of light installation.

7. All work on City's streetlights and streetlight conductors on PG&E's poles shall be performed by City's personnel or contractor operating from ladder trucks or bucket trucks unless access restrictions require pole climbing by authorized personnel qualified to climb.

8. City will specify service voltages to be 120 or 240 volts to ensure maximum energy efficiency. However if neither is available, the City may elect to use 120/208 or 277/480 voltage or request the installation of additional equipment.

EXHIBIT C

3330D
9. Connection or disconnection of City's ice wires to PG&E's secondary conductors will be performed by PG&E at City's expense based on the flat cost table attached as Exhibit C. This table is subject to change by PG&E annually. If City believes the annual change in flat costs are not reasonable, it may request a breakdown of the charges from PG&E and may petition the CPUC for review.

10. City or its contractor may remove City's equipment from any poles hereunder upon giving ten (10) days advance written notice to PG&E; provided, however, that said notice period will be inapplicable in case of emergency. Such notice shall be given by executing a Notice of Contact Removal in the form attached hereto as Exhibit D.

11. PG&E will supply electrical energy and service to streetlight equipment owned or being acquired in the eminent domain action referenced above by City in accordance with PG&E's applicable tariff schedules, including but not limited to Exhibit E.

12. Abandonment of equipment at a particular location shall be presumed if City notifies PG&E in writing that it wishes to disconnect streetlight equipment from a distribution pole at that location and abandons inoperable equipment for a continuous period of three (3) months. The City will not be deemed to have abandoned the equipment if City notifies PG&E of a temporary disuse of its equipment. In such instances, the equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After expiration of such period, PG&E

EXHIBIT C

(4)
shall have the right to remove and take possession of the equipment, provided that at least thirty (30) days prior to such removal or taking of possession PG&E has mailed to City written notice of its intention and City has neither responded nor brought to use the equipment. Equipment shall not be considered in disuse for any period in which it is inoperable due to failure of electrical service to it or failure of any component requiring repair or replacement. Nor shall equipment be considered disused if its condition of inoperability is not made known to the City of Fresno General Services Department.

13. City shall install and maintain equipment at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules, and regulations. In no case shall City have work performed above the height of the 120/240, 120/208 or 277/480 volt secondary conductors on PG&E's facilities.

14. PG&E shall install and maintain its facilities at its sole risk and expense, in a safe and workmanlike manner, in compliance with reasonable safety regulations and work practices and with all applicable federal, state and local laws, rules and regulations.

15. Should it become necessary for PG&E to rearrange, remove, replace or relocate its distribution poles, on which City maintains its equipment, and such work is (a) at the lawful requirement of local governmental agencies, (b) at the lawful requirement of the State of California Department of

EXHIBIT C

(5)
Transportation (Cal-Trans), (c) to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E's control, then PG&E will give City fifteen (15) days prior written notice for such necessary work, except in the case of emergency. If City fails to respond, and if PG&E elects to complete the needed work and PG&E is either legally unable or actually unable (after reasonable attempts) to recover compensation from the person causing the need for such work, then it may charge City in accordance with the flat rate schedule. If City rearranges or removes, relocates, replaces or transfers its equipment to substitute poles, if available, it shall do so at its own expense.

16.a. PG&E shall indemnify, hold harmless and defend the City and its Council, boards, commissions, officers, employees and agents from any and all loss, liability, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and/or property damage), and from any and all claims and actions in law or equity (including attorneys' fees and legal expenses), arising out of, or in any way connected with performance of this Agreement by PG&E which includes PG&E employees, agents, officials, representatives, contractor's employees, agents, representatives and subcontractors.

16.b. City shall indemnify, hold harmless and defend PG&E and its officers and employees from any and all loss, liability, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at anytime
and/or property damage) and from all claims and actions in law or equity (including attorneys' fees and legal expenses), arising out of, or in any way connected with performance of this Agreement by the City.

17. City shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation in compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law.

18. Upon request, City shall provide PG&E evidence of insurance or self-insurance and shall cause any contractor performing work under this agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of not less than $2,000,000 combined single limit (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee City's performance of the above indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured insofar as this agreement is concerned, (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty days prior to cancellation or material change in the form of such policies or endorsements. Upon request, City will furnish PG&E with original copies of policies and endorsements. PG&E shall have the right to inspect the original policies of such insurance.

EXHIBIT C
19. Should either party fail to enforce any specific provision of this agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.

20. Any amounts payable by City to PG&E under the provisions of this agreement shall not be due until services have been rendered and shall be due and payable within thirty (30) days after the work is completed and billed to the City.

21. Nothing in this Agreement alters or modifies any inconsistent provision in City's current franchise to PG&E.

22. This agreement shall be subject to all of the provisions of the California Public Utilities (CPUC) Commission and PG&E's applicable tariff schedules on file with and authorized by the CPUC to the extent specified herein or applicable in the absence of this Agreement; and further shall at all times be subject to such changes or modifications as the CPUC may, from time to time, direct in the exercise of its jurisdiction over this Agreement or over the City of Fresno. City reserves the right to object to any proposal (by any application, request, proceeding or otherwise) for the adoption, grant or enactment of any law, regulation, tariff or order which could affect this Agreement.

23. Nothing in this agreement is intended to enlarge, diminish, modify or otherwise alter the property rights of either the City of Fresno or PG&E as they existed before the execution of this agreement. It is the intent of this agreement to establish the conditions under which on-going maintenance and repair of property (the streetlights) which the city is acquiring from PG&E can be conducted.

EXHIBIT C
(8)

3330D
24. Notwithstanding any other provisions of this agreement, this agreement shall be and remain in effect for an initial period of ten (10) years from the date of this agreement, and shall extend thereafter for successive terms of one (1) year each, unless otherwise cancelled by either party on not less than twelve (12) months advance written notice to the other party at the expiration of the initial or subsequent term. Amendments to this agreement may be made throughout its term and effective the date of approval by both parties.

PACIFIC GAS AND ELECTRIC COMPANY
By
Gas & Electric Operations Manager

CITY OF FRESNO
By
Approved as to form

By
Deputy City Attorney

Attest:
JACQUELINE RYLE, C.M.C.
CITY CLERK

Deputy

EXHIBIT C

3159D
Attachments: Exhibit A, B, C, D and E

3330D
(9)
December 19, 1990

VIA FAXSIMILE
(415) 973-8494
ORIGINAL BY MAIL

Mr. Al Williams
Marketing Services
Pacific Gas & Electric Company
123 Mission Street, 26th Floor
San Francisco, California 94106

Re: Pole Contact Agreement Between Pacific Gas & Electric Company And City Of Stockton

Dear Al:

The following are my proposed modifications to Pacific Gas & Electric's ("PG&E") proposed Customer-Owned Streetlights Utility Pole Contact Agreement. My modifications are based on the Pole Contract and Operating Agreement that was negotiated between PG&E and the Peninsula Street Light Authority. I can see no reason for the significant changes between the two agreements since PG&E earlier signed the first Agreement. In any event here are my modifications and questions:

1. Page 1, paragraph 1.a.: "However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations." Can't this be done with a single "blanket" permit like Stockton issues to PG&E?

2. Page 1, paragraph 1.b.: The paragraph is unacceptable. The public should not be burdened with Stockton having to secure PG&E's written approval with a thirty (30) day notice in order to install new street lights. As a public service Stockton would like to install street lights earlier if the engineering is acceptable to PG&E. Therefore I would request additional sentences at the end of paragraph 1.d. which would state: "Notwithstanding the foregoing, in the event Stockton orally requests PG&E to install street lights on existing poles, within three (3) days PG&E service personal and Stockton service personal would go to the location to determine how a street light can be installed. PG&E may give
verbal permission to install a street light at that time. Otherwise a street light will be installed in accordance with this agreement."

3. **Page 2, paragraph 6:** Stockton needs to know exactly what Title 8, Electrical Safety Orders, Section 2949 is. A sentence should be added which state: "Employees of the City of Stockton can perform work on poles."

4. **Page 2, paragraph 6:** The last sentence beginning with the words "Direct climbing . . ." is rather ambiguous. Stockton would normally prefer to use a bucket truck but on occasion may have to climb the pole when necessary. Who is to judge whether it is permitted under this section? I would suggest that this sentence be struck.

5. **Page 2, paragraph 7:** The phrase "insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property for injury," is not proper because it may conflict with the indemnity provisions in this agreement. Those provisions should control not this sentence. I suggest that this be struck to ensure that the negligence issues are determined by the indemnity provisions.

6. **Page 2, paragraph 8:** What does this mean?

7. **Page 2, paragraph 9:** Previously in the PSLA agreement additional language was acceptable to PG&E. I request that language again:

   "If applicant determines that the cost by PG&E is unacceptable, it shall notify PG&E by letter and may independently contract for the work. Such notifications shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work. In the event that applicant contracts for such work, it shall reimburse PG&E its expense for the design of the work and any inspection that may be necessary."

8. **Page 3, paragraph 11:** Does this amount include the CIAC tax?

9. **Page 3, paragraph 12:** Why is it necessary to give PG&E

EXHIBIT D
ten (10) days written advance notice?

10. Page 3, paragraph 14: Indemnification. Previously we had worked on indemnification language. I would suggest we use the same indemnification language we had in paragraph 17.a., b. and c of the previous agreement.

11. Page 4, paragraph 16: Stockton does not pay anybody in advance for work but they do pay. They will not be paying PG&E in advance.


I would hope we can have our meeting on Friday, December 21, 1990 so we can resolve these issues. I look forward to seeing you then.

Very truly yours,

McCRACKEN, BYERS & MARTIN

David J. Byers

DAVID J. BYERS

DJB: jd
cc: Jim Escobar,
c/o City of Stockton
1465 So. Lincoln Street
Stockton, California 95206

EXHIBIT D
January 2, 1991

Mr. Marshall Brown
Mr. Al Williams
Pacific Gas & Electric Company
Marketing Department
123 Mission Street, 26th Floor
San Francisco, California 94106

Re: Pole Contact Agreement Between Pacific Gas & Electric Company ("PG&E") And City Of Stockton

Dear Marshall and Al:

I enjoyed meeting with you on the 21st day of December 1990. I say enjoyed because both of you gentlemen were polite. However, the meeting clearly was not an effort to negotiate the Pole Contact Agreement between the respective parties but for PG&E to inform me as what my client would have to accept and what it is in my client’s interest to accept.

I do not enjoy wasting my time attending meetings to negotiate a contract when the other party does not come forth in good faith to negotiate it. I have had many meetings with PG&E over the years and I have found its employees to be thoroughly professional. I would think by now PG&E recognizes that when I attend a meeting I do so to represent my client to negotiate a deal and not act as a messenger boy between PG&E Company and my client. When PG&E is interested in actually negotiating the Pole Contact Agreement with my client I suggest it inform me. With regards to contacting your legal department I suggest they also research the issue of adhesion contracts.

Very truly yours,

McCRACKEN, BYERS & MARTIN

[Signature]

DAVID J. BYERS

DJB:jd
cc: Jim Escobar,
c/o City of Stockton
1465 So. Lincoln Street
Stockton, California 95206
Robert R. Rickett, Esq.,
Pacific Gas & Electric

EXHIBIT E
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CITY OF FRESNO ) No. 393325-6 Dept. 14

Plaintiff, ) DECISION ON DEFENDANT

VS. ) P.G. & E.'S MOTION FOR
PACIFIC GAS and ELECTRIC ) ADJUDICATION (437c(F))
COMPANY, DOES ONE to TEN, )
inclusive, and all persons )
unknown claiming any right, title )
or interest in or to the property )
described in this eminent domain )
action. )

Defendants. )

Defendant P.G. & E.'s motion for "partial summary judgment" came on regularly for hearing in Department Fourteen of the Fresno County Superior Court on January 31, 1991. Counsel Robert R. Rickett appeared on behalf of moving party Pacific Gas & Electric Company. Counsel David J. Byers appeared on behalf of opposing plaintiff City of Fresno. After oral argument the matter was taken under submission.

By this motion, defendant Pacific Gas & Electric Company (P.G. & E.) seeks "partial summary judgment" in its favor. There is no such remedy under the law as "partial summary judgment."

EXHIBIT F
It is apparent from the moving points and authorities that this is a request for adjudication of the second and third causes of action pursuant to Code of Civil Procedure § 437c(f).

This action arose because of the City of Fresno’s desire to acquire street lighting facilities within its boundaries by means of eminent domain (complaint, paras. 5 and 6). The City contends that it should be allowed to take over these facilities because it can provide the same level of lighting at a lower cost because it can obtain lower electric rates from P.G. & E. (complaint, para. 5). It is alleged that P.G. & E. is the only entity interested in these facilities (complaint, para. 8) and that part of the property involved in this action was given to the defendants by the plaintiff (complaint, para. 10) and by developers under this Subdivision Map Act (complaint, para. 12).

The specific issue that is the focus of this motion is whether the City is required to pay for property such as poles, brackets, luminaries and wiring that the City and the developers allegedly contributed to P.G. & E. In other words, were the pieces of property held in trust or did it become part of the property of P.G. & E.?

The complaint was filed on December 27, 1988, in three causes of action as follows:

1. Eminent domain;
2. Resulting trust; and
3. Public trust.

Evidence Objections/Judicial Notice

In support of this motion, the defendant provides seven allegedly undisputed facts and asks the Court to take judicial
notice of its attached street lighting tariff schedules approved by the Public Utilities Commission. In opposition the plaintiff disputes Fact No. 3 through 5, objects to Fact No. 6 as a conclusion of law, claims that Fact No. 7 is irrelevant, and adds one disputed fact of its own. The plaintiff asserts that the defendant’s statement of undisputed facts is defective because it does not reference the supporting evidence as required by C.C.P. § 437c(b) and also because it does not negate the elements in the second and third causes of action.

The plaintiff also objects to the declaration of Bruce Smith on grounds that he has no “personal knowledge” and that “he knows nothing of the intention of the parties or the particularities of the actual contributions.” Smith’s declaration states that he works in P.G. & E.’s rate department, that he is responsible for developing and submitting street lighting tariff schedules to the PUC, that he is familiar with the terms and conditions of these schedules, and that he has examined the copies that are attached. The rest of his declaration appears to be his interpretation of those schedules. There is no indication of personal knowledge of the ownership issue, and furthermore his declaration is not referenced in support of any of the supporting facts. Thus, it appears that his declaration is valid only for the purpose of attesting to the fact that the attached schedules are correct copies (para. 2). Otherwise insufficient evidence has been submitted to confirm that he can speak from personal knowledge. The objection therefore is sustained.

// // //

EXHIBIT F -3-
Criteria for Summary Adjudication

A motion for summary adjudication is brought under the provisions of C.C.P. § 437c. Subdivision (f) was amended effective January 1, 1991 allowing for specific items to be adjudicated, including causes of action, affirmative defenses, claims for punitive damages, or issues having to do with duty allegedly owed to the plaintiff.

Since adjudication is a drastic remedy, courts strictly construe the affidavits of the moving party and liberally construe those of the opposition. Doubts are resolved in favor of the party opposing the motion. (Kilpatrick v. Beebe (1990) 219 Cal.App.3d 1527)

Discussion

The defendant contends that no trust was intended, that this matter falls under the PUC's jurisdiction, and the PUC has declined to establish a public trust for contributed property.

In opposition, the plaintiff contends that the defendant has failed to comply with the evidence requirement of C.C.P. § 437c(b), that past PUC decisions indicate that contributed capital is held in the public trust, that P.G. & E. is not entitled to compensation for contributed property, that P.G. & E. has not negated the contention that a public trust was intended, that Fresno is not asking for a tariff modification, and that the repeal of Civ. Code § 853 is irrelevant.

Each fact in a statement of undisputed facts "shall be followed by a reference to the supporting evidence." C.C.P. § 437c(b). This mandatory section has not been complied with by moving defendant in this case. Failure to do so "may, in the
court's discretion, constitute a sufficient ground for denial of the motion." With the possible exception of Fact Nos. 2 and 7, no supporting evidence is referenced following the defendant's facts. By inference, it appears as though Fact Nos. 3, 4 and 6 are based in part on the tariff schedules. To complicate the matter, the facts do not indicate the cause of action to which they are addressed.

It is undisputed that P.G. & E. is a public utility operating under the laws of California and that it provides street lighting pursuant to PUC-approved tariff schedules. It is also undisputed that under the LS-2 tariff schedules, the City had the option of having P.G. & E. pay for and own part of an installation while the City paid for and owned the other part and that this would affect the rate paid by the City and the customer.

Of defendant's facts, Nos. 3, 4, 5 and 6 are in dispute. With regard to Fact No. 3, the City, in opposition, disputes the use of the word "owned" and implies that P.G. & E. has received double compensation. There is no evidence, however, cited in support of either the fact or its opposition.

With regard to Fact No. 4, the opposition alleges that the City is under the first option (no evidence cited) and contends that the rates have been incorrectly computed (declaration of Hughes, pp. 3 and 4). However, while the accuracy of these rates may be relevant to the first cause of action dealing with the justification for eminent domain, they do not resolve the main issues raised by the second and third causes, i.e., where the property was given to the defendant by the City and the developers resulted in the trust.
Concerning the defendant's fifth fact, the City in opposition correctly asserts that the defendant has failed to identify the actual contributions made by the City or by developers.

Finally, with regard to the defendant's sixth fact, the City objects to this fact on the ground that it is a conclusion of law, that it is not material, that the condition does not preclude imposition of a public trust, that it provides no evidence of the parties' intent, and nothing in that condition affects computation in the event of condemnation proceedings. The opposition cites no evidence in support of its position. It appears that this fact is valid for the limited purpose of stating what is in the document and on that limited basis, the objection is overruled.

The plaintiff's only disputed fact states that the second and third causes of action are for imposition of a public trust, an element of these causes is the intent of the parties at the time the property was donated, and the City had no intention that the "property donated at P.G. & E. would have to be paid for in the event of condemnation." This is a statement of multiple facts plus conclusions of law. It is supported by the declaration of Gaydon, but there is no indication of his involvement at the time of these transactions (see declaration of Gaydon at p. 2, ll. 2 through 7). The declaration is insufficient in and of itself, but it also is a legal conclusion that must be determined by a review of all of the facts behind the program.

The critical issue under this eminent domain proceeding is whether P.G. & E. is entitled to compensation for lighting
facilities that were contributed to it at the time of installation, i.e., whether or not it owned that contributed capital or merely held it in trust. In that regard the parties agree that the intent at the time of transfer is critical. P.G. & E. contends that the contributed capital affected the rates that resulted (declaration of Smith at p. 2) while the City argues that there was no intent to have to pay for property given to P.G.& E., and that that property was later subject to eminent domain (declaration of Gaydon at p. 2). The facts provided with this motion are disputed, supporting evidence citations are missing, the supporting declarations are defective, the evidence is stated in general terms, and much of that evidence does not specifically relate to the property in question.

Because of these deficiencies and because it is unclear what the intent of the parties was or how it may have affected the resulting rate schedules, the motion for adjudication of issues as to causes of action numbers two and three is denied.

DATED this 31st day of January, 1991.

[Signature]

LAWRENCE J. O'NEILL
Judge of the Superior Court

EXHIBIT F -7-
28 December 1990

Mr. James Escobar
City of Stockton
City Hall
Stockton, CA 95202

Dear Jim:

Enclosed are the Pole Contact Agreements between Pacific Gas and Electric Company and the City of Stockton. Please make the appropriate arrangements within the City for approval of the agreements and then please return them to me.

Thank you for the opportunity to sit down and review your concerns and to discuss the review between David Byers and Al Williams. If you have any further questions please let me know.

Sincerely,

[Signature]

Sheryl B. Almon
Service Planning Supervisor

cc: Ken Cooper

Enclosure
December 19, 1990

VIA FACSIMILE
(415) 973-8494
ORIGINAL BY MAIL

Mr. Al Williams
Marketing Services
Pacific Gas & Electric Company
123 Mission Street, 26th Floor
San Francisco, California 94106

Re: Pole Contact Agreement Between Pacific Gas & Electric Company And City Of Stockton

Dear Al:

The following are my proposed modifications to Pacific Gas & Electric's ("PG&E") proposed Customer-Owned Streetlights Utility Pole Contact Agreement. My modifications are based on the Pole Contract and Operating Agreement that was negotiated between PG&E and the Peninsula Street Light Authority. I can see no reason for the significant changes between the two agreements since PG&E earlier signed the first Agreement. In any event here are my modifications and questions:

1. Page 1, paragraph 1.a.: "However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations." Can't this be done with a single "blanket" permit like Stockton issues to PG&E?

2. Page 1, paragraph 1.b.: The paragraph is unacceptable. The public should not be burdened with Stockton having to secure PG&E's written approval with a thirty (30) day notice in order to install new street lights. As a public service Stockton would like to install street lights earlier if the engineering is acceptable to PG&E. Therefore I would request additional sentences at the end of paragraph 1.d. which would state: "Notwithstanding the foregoing, in the event Stockton orally requests PG&E to install street lights on existing poles, within three (3) days PG&E service personal and Stockton service personal would go to the location to determine how a street light can be installed. PG&E may give
verbal permission to install a street light at that time. Otherwise a street light will be installed in accordance with this agreement."

3. **Page 2, paragraph 6**: Stockton needs to know exactly what Title 8, Electrical Safety Orders, Section 2949 is. A sentence should be added which state: "Employees of the City of Stockton can perform work on poles."

4. **Page 2, paragraph 6**: The last sentence beginning with the words "Direct climbing . . ." is rather ambiguous. Stockton would normally prefer to use a bucket truck but on occasion may have to climb the pole when necessary. Who is to judge whether it is permitted under this section? I would suggest that this sentence be struck.

5. **Page 2, paragraph 7**: The phrase "insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property for injury," is not proper because it may conflict with the indemnity provisions in this agreement. Those provisions should control not this sentence. I suggest that this be struck to ensure that the negligence issues are determined by the indemnity provisions.

6. **Page 2, paragraph 8**: What does this mean?

7. **Page 2, paragraph 9**: Previously in the PSIA agreement additional language was acceptable to PG&E. I request that language again:

   "If applicant determines that the cost by PG&E is unacceptable, it shall notify PG&E by letter and may independently contract for the work. Such notifications shall include: (a) the name of the contractor, (b) the work locations, and (c) the dates of the scheduled work. In the event that applicant contracts for such work, it shall reimburse PG&E its expense for the design of the work and any inspection that may be necessary."

8. **Page 3, paragraph 11**: Does this amount include the CIAC tax?

9. **Page 3, paragraph 12**: Why is it necessary to give PG&E
ten (10) days written advance notice?

10. Page 3, paragraph 14: Indemnification. Previously we had worked on indemnification language. I would suggest we use the same indemnification language we had in paragraph 17.a., b. and c of the previous agreement.

11. Page 4, paragraph 16: Stockton does not pay anybody in advance for work but they do pay. They will not be paying PG&E in advance.


I would hope we can have our meeting on Friday, December 21, 1990 so we can resolve these issues. I look forward to seeing you then.

Very truly yours,

McCRAKKNEN, BYERS & MARTIN

[Signature]

DAVID J. BYERS

DJB:jd
cc: Jim Escobar,
    c/o City of Stockton
    1465 So. Lincoln Street
    Stockton, California 95206
MEMORANDUM

November 29, 1990

TO: Gary C. Ingraham, Assistant City Manager
FROM: James B. Giottonini, Public Works Director
SUBJECT: STATUS: STREET LIGHT ACQUISITION

Dave Byers of McCracken, Byers and Martin, the City's legal representatives for this action, submitted the claim for immediate possession on October 14, 1990. This legal action means the City has possession of the 5700± street lights as of November 14, 1990.

Pacific Gas and Electric (PG&E) staff contacted Jim Escobar on November 13 and forwarded a pole contact agreement, copy attached. This agreement needs to be executed before they will implement the new rates. The concept of this type agreement was discussed with Dave Byers on November 14, 1990. He indicated it was a common agreement for cities and counties acquiring street lights and is being refined through evolution. A copy was "faxed" to Mr. Byers on November 15, 1990 by PG&E. We were able to discuss the contract by phone with Mr. Byers on November 27, 1990. He was going to contact PG&E to discuss some of the specifics in the proposed contract that could become operational problems.

JAMES B. GIOTTONINI
PUBLIC WORKS DIRECTOR

JBG:JE:kh
Attachment
PACIFIC GAS AND ELECTRIC COMPANY
STOCKTON DIVISION
4040 WEST LANE, STOCKTON, CALIFORNIA 95204

Requested Fax to Dan Byers @ (415) 573-5507. PG & E & Sm Dec 11/14/89 573-5551

PRIORITY MESSAGE FACSIMILE COVER LETTER

DATE: 11-14-90

TO: NAME: Jim Escobar
LOCATION/ROOM NO.: City of Stockton
PHONE NUMBER: Fax 942-8244

FROM: NAME: Sheryl Almen
LOCATION:
PHONE NUMBER: 942-1471

SPECIAL INSTRUCTIONS: Jim, please review and sign.

SIGNED: Sheryl

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 9

TRANSMITTING FROM: HARRIS/3M 2123 FACSIMILE LOCATED IN SUPPORT SERVICES DEPARTMENT
- COMPANY NO.: 842-1761
- PACIFIC BELL NO.: (209) 942-1761

TRANSMITTING TO: FACSIMILE MACHINE - COMPANY NO.: 964-9272
- PACIFIC BELL NO.

FOR QUESTIONS CONCERNING TRANSMITTED PAGES, CALL COMPANY NO. 842-1526 OR PACIFIC BELL NO. (209) 942-1526.
Customer-Owned Streetlights Utility Pole Contact Agreement

has elected to enter into this Agreement with PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E).

PG&E owns, operates and maintains overhead electric distribution facilities located in geographic areas within the political jurisdiction of Applicant.

Applicant desires to enter into an agreement with PG&E that will (a) allow having that portion of the Applicant’s existing streetlights to contact PG&E’s distribution poles, and (b) specify conditions for future installation, operation, maintenance, use or removal of Applicant’s streetlights. PG&E is willing to permit Applicant to have such pole contacts under the following terms and conditions:

1. POLE CONTACT PERMISSION.
   a. **Existing Streetlights.** PG&E hereby gives Applicant general permission under the terms and conditions herein stated to contact, replace, operate, maintain, and use existing luminaires, lamps, photocells, support arms and service wiring facilities (hereinafter Equipment) installed on poles owned by PG&E or jointly owned by PG&E and others. Such permission covers all existing lights owned by the Applicant that are mounted on PG&E-owned poles, based on the most current billing records as of the date of this Agreement. However, specific permission for such streetlights must be in the form of pole Contact Permits for specific locations.

   b. **New Streetlights.** Applicant or its contractor shall not install any new or additional equipment on PG&E’s poles without first securing PG&E’s written approval in the form of a Contact Permit for specific locations. Within (30) days of receipt of the application, PG&E will either grant the permit or deny the permit and specify why the action cannot be taken. Upon the receipt of each such approved Contact Permit, Applicant shall have the right to install, operate, maintain and use the additional equipment on the poles specified in such permit and under the terms and conditions specified in this Agreement; thereafter included as Equipment, which shall be considered a part of each such permit without regard to whether this Agreement is referred to in each Contact Permit.

2. POLE CONTACT PERMITS. PG&E will provide Contact Permits in the form attached and marked Exhibit A to Applicant for the specific locations involved, and shall charge no pole contact fee for each electric distribution pole covered under this contact Agreement unless such a fee is permitted in the future under authorization by the California Public Utilities Commission (Commission).

3. PRIOR POLE CONTACT AGREEMENT. This Agreement shall supersede any previous pole contact agreement between PG&E and the Applicant insofar as it may pertain to street lighting.

4. PG&E REQUIREMENTS. Facilities installed under this Agreement shall be subject to all of the provisions of the General Orders of the Commission, and PG&E’s applicable tariff schedules on file with and authorized by the Commission and further shall at all times be subject to such changes or modifications as the Commission may, from time to time, direct in the exercise of its jurisdiction.
5. SERVICE DELIVERY. PG&E will supply electrical energy and service to streetlight equipment owned by Applicant in accordance with the provisions of rate Schedule LA-2 for customer-owned street and highway lighting.

6. WORK ON POLES. Any person working on applicant-owned Equipment mounted on PG&E owned poles must be qualified to work on such Equipment in the vicinity of PG&E's energized overhead lines (i.e., qualified electrical worker or professional working under the supervision of a Qualified Electrical Worker. See Title 8, Electrical Safety Orders, Section 2940). Any contractor used by Applicant to perform work on the Equipment contacting PG&E's distribution facilities shall be previously approved by PG&E as qualified to perform such work, and shall meet the insurance requirements outlined in this Agreement. Upon request, PG&E will supply a list of approved contractors to Applicant.

All work on Applicant's Equipment installed on PG&E's poles shall be performed by Applicant's personnel or contractor operating from either a ladder or bucket truck. Direct climbing on PG&E owned poles by Applicant's personnel or contractor is prohibited unless access requires pole climbing by Applicant's authorized personnel qualified to climb.

7. SAFETY PRECAUTIONS. Applicant and PG&E shall perform all work in compliance with applicable federal, state and local laws, rules and regulations. Applicant shall inform all persons doing work on PG&E's facilities and insure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property from injury. Work performed in areas adjacent to PG&E's energized electric facilities also shall be performed in accordance with OSHA safety rules and practices, as shown on PG&E's Engineering Standards. (Identified as Exhibit 3 attached or as directed by PG&E.) In no case shall Applicant have work performed above the height of the 120/240 volt secondary conductors on PG&E's facilities.

8. INSURANCE REQUIREMENTS. Applicant shall provide evidence to PG&E of insurance or self-insurance to secure the payment of Worker's Compensation In compliance with the Labor Code of California and, where applicable, shall secure payment of liability under any other similar applicable law. Upon request, Applicant shall provide PG&E evidence of insurance or self-insurance and shall cause any contractor performing work under this Agreement to procure and maintain in effect during the term of his work bodily injury liability insurance with limits of $200,000 per occurrence (including automobile) for bodily injury and property damage as a result of any one occurrence. Such contractor's insurance must be satisfactory to PG&E and shall guarantee Applicant's performance of the above Indemnity obligation and shall also be endorsed to (a) include PG&E as an additional named insured. (b) contain a cross-liability clause, and (c) provide that written notice shall be given to PG&E at least thirty (30) days prior to cancellation or material change in the form of such policies or endorsements. Upon request, Applicant will furnish PG&E with original copies of the policies and endorsements. PG&E shall have the right to inspect the original policies of such insurance.

REARRANGEMENT FOR INSTALLATION. If any rearrangement of or addition to PG&E's existing electric distribution facilities is required to permit Applicant to install Equipment on PG&E's poles, Applicant shall notify PG&E of the nature and PG&E's estimated cost of such work. If Applicant finds such cost acceptable, it shall notify PG&E by letter, including a purchase order number or equivalent authorization to reimburse PG&E for the cost of such work. PG&E shall, thereafter, complete the work within a reasonable time after receipt of application.
10. OTHER REARRANGEMENTS. Should PG&E find it necessary to perform any work (removal, replacement or relocation) on its distribution poles on which Applicant maintains its Equipment, and such work is (a) requested by local governmental agencies, (b) requested by the State of California Department of Transportation (CalTrans), (c) needed to replace deteriorated poles, (d) caused by an emergency (storm damage, accidents, etc.), or (e) caused by the actions of a third party or parties outside of PG&E's control, Applicant shall, at its own expense, rearrange its Equipment as necessary, or remove, relocate, replace, or transfer its Equipment to substitute poles if available, as designated by PG&E. PG&E will give Applicant thirty (30) days written notice for such necessary work, except in the case of an emergency, said notice may be delayed but for not more than (10) days after commencement of the emergency work. In the event that Applicant does not perform its work prior to PG&E's scheduled work, or in cases of emergency, PG&E may at the expense of Applicant perform such work or other associated work in connection with the Equipment that may be required for the operating needs of PG&E.

11. SERVICE CONNECTION/DISCONNECTION. Reference for disconnection of Applicant's service wires to PG&E's secondary conductors is to be performed only by PG&E. This work shall be performed at Applicant's expense based on the flat rate table attached as Exhibit C. This table is subject to change and use by PG&E annually under this agreement, without formal amendment to this Agreement.

12. EQUIPMENT REMOVAL. Applicant or its contractor may remove its Equipment from any location upon giving ten (10) days advance written notice to PG&E provided, however, in case of emergency, said notice may be given by personal service to PG&E not less than seven (7) days before commencing the emergency work. Such notice shall be given by executing a Notice of Contract Removal in the form attached hereto as Exhibit D.

13. EQUIPMENT ABANDONMENT. Abandonment of any Equipment under this Agreement at a location by Applicant shall terminate all of its rights and privileges in that location. Abandonment shall be presumed if any Equipment is not used for a three (3) month period, unless Applicant notifies PG&E in writing of a specific temporary period of disuse of its Equipment. In such instance, the Equipment will not be considered abandoned until three months after the temporary disuse period has lapsed. After the expiration of such period, PG&E shall have the right to remove and retain possession of any Equipment provided that a thirty (30) day, written notice of such intention has been given to Applicant, and Applicant has failed to respond nor commenced using the Equipment. PG&E has the right to collect from Applicant all expenses incurred for removal of such Equipment. Equipment shall not be considered in disuse for any period in which it is inoperable due to failure of electrical service to it, or failure of any component requiring repair or replacement until a reasonable opportunity has been given to Applicant to effect the repair or replacement. Nor shall Equipment be considered in disuse if it becomes inoperable and this condition is not made known to the Applicant in a timely manner.

14. INDEMNIFICATION. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of person, including but not limited to employees of PG&E, Applicant, or any third party, or any damage to property, including but not limited to, property of PG&E, Applicant, or any third party, arising out of or in any way connected with the performance of this Agreement and any and all construction activities however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.

15. GENERAL WAIVER. Should either party fail to enforce any specific provision of this Agreement, it shall not be deemed a general waiver or relinquishment by that party of any provision in this agreement.
16. PAYMENT FOR WORK. Provisions of this Agreement are payable in advance. In the event of non-payment by either party, the work shall be continued until such time as payment is made. Where the failure to pay is prohibited by law, Applicant may pay the amount due within a period of 30 days after the work is completed.

17. TERM OF AGREEMENT. Notwithstanding any other provisions hereof, this Agreement shall be and remain in effect for an indefinite period of time commencing from the date of this Agreement, and shall extend thereupon for successive terms of one (1) year from the date of the initial or any subsequent term.

18. OBLIGATION AFTER TERMINATION. Any termination of Applicant's obligations under this Agreement shall not release Applicant of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of Applicant's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

19. ASSIGNMENT. Applicant may assign this Agreement in whole or in part to the party to whom the Agreement is assigned (Assignee) in writing to perform the obligations of Applicant hereunder and to be bound by this Agreement in all respects. Assignment of this Agreement shall not release Applicant from any of the obligations under this Agreement unless such a release is specifically agreed to in writing by PG&E and the Assignee. Such assignment, unless otherwise provided therein, shall be deemed to include Applicant's right to any refund then unpaid of which may thereafter become payable.

20. COMMISSION JURISDICTION. This Agreement shall be subject to all of PG&E's tariff schedules on file with and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction. These may include, but are not limited to changes or modifications to monthly cost of ownership charges (higher or lower percentage rates), extension rules, and rate schedules.

Execution Date: ______________, 19___

Applicant

BY: ____________________________

(Authorized Signature)

Type or print name)

TITLE: ____________________________

PACIFIC GAS & ELECTRIC COMPANY

BY: ____________________________

(Authorized Signature)

TITLE: ____________________________

(Title or print name)

DMision: ____________________________

Applicant's Mailing Address:

Attachments:
Exhibits A. Contact Permit Form
B. Engineering Standards
C. Flat Cost Table
D. Notice of Contract Removal
PACIFIC GAS AND ELECTRIC COMPANY

CONTACT PERMIT

To: ________________________________________________

Division: __________________________________________

Date: ___________ 19__________

Permission is requested to place attachments on the poles designated below in
accordance with the terms and conditions of the agreement between

_____________________________________________________

and Pacific Gas and Electric Company

dated______________________________________

Date Checked: ______________________________________

By: ____________________________________________

By: ____________________________________________

THE ABOVE PERMISSION IS HEREBY GRANTED

Date Checked: ______________________________________

By: ____________________________________________

By: ____________________________________________

Number of poles contacted under this permit: __________ Annual rental: $________ each or $________ total.

NOTE: Sketch to be drawn to suitable scale. Use reverse side of this sheet if necessary.
MATERIAL: Furnished and Installed by the Customer

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<td>Cond., 1&quot; PVC, Schedule 40</td>
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<td>4</td>
<td>Spike, Galvanized, 2¼&quot; × 2¼&quot; × 2½&quot;</td>
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<td>5</td>
<td>Wire, #10, Solid Copper, PVC, 600V</td>
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<tr>
<td>6</td>
<td>Bolt, M10, 40° × 10&quot; Length</td>
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<td>7</td>
<td>Log Screw, No. 6, 4&quot; length</td>
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<td>8</td>
<td>Washer, 5/16° x 0.025 Bolt Size</td>
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<td>Identification</td>
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MATERIAL: Furnished and Installed by P.G. E.

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<th>DESCRIPTION</th>
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<tr>
<td>A</td>
<td>Racc., Ext., 3, 3-Pole</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Cond., 1&quot; PVC Schedule 40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Cond., 1&quot; PVC, 100° Wall Thickness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Products, Taper, Galvanized</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Bolt, M10, 40° × 10&quot; Length</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>Washer, 5/16° x 0.025 Bolt Size</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>Connector, Alum., H-Type Compression</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>Connector, Cu., Split Bolt (For Cu. Secondary to #10 Cu.)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q For 1/2" Aluminum or ACSR Secondary to #10 Cu.
A For Aluminum Secondary Larger than 4/0 to #10 Cu. Make up tail of #10 Cu. to 1/2" Aluminum with a Code 5-554 connector and insert end of 1/2" Aluminum in appropriate PG Clamps (Eaton from Dwy 02/8/2).

NOTES:

(a) Construction shown in Fig. 5 is applicable where end-of-arm service nipples are present or contemplated.

(b) Customer will have sufficient conductor at this point to reach secondary terminals on P.G. E. It will be installed in underground box and made ready for connection.

(c) All construction must comply with 602.65 (Rules for Overhead Line Construction) of the State of California Public Utilities Commission.

STREET LIGHT INSTALLATIONS ON WOOD POLES

DEPARTMENT OF ENGINEERING
PACIFIC GAS AND ELECTRIC COMPANY
SAN FRANCISCO, CALIFORNIA
**FLAT COST TABLE**

**CUSTOMER-OWNED STREET LIGHTS ON PG&E-OWNED POLES**

RATE SCHEDULE NO. LS-2

<table>
<thead>
<tr>
<th>Description</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. New Service Connection (single trip) Load Less Than 2000 Watts</td>
<td>$50 + CIAC Tax</td>
</tr>
<tr>
<td>2. Temporary Disconnect and Reconnect Service Wires (double trip)</td>
<td>$100 + CIAC Tax</td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td></td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$60 + CIAC Tax</td>
</tr>
<tr>
<td>3. Relocation (remove and reinstall street light fixture, support arm, wiring, etc.) on wood pole (single trip)</td>
<td>$365 + CIAC Tax</td>
</tr>
<tr>
<td>a. First light located within a single city or lighting district</td>
<td></td>
</tr>
<tr>
<td>b. Each additional light located within a single city or lighting district worked at the same time</td>
<td>$50 + CIAC Tax</td>
</tr>
<tr>
<td>4. Permanent Disconnection: (single trip)</td>
<td></td>
</tr>
<tr>
<td>a. Light installed 5 years or more</td>
<td></td>
</tr>
<tr>
<td>b. Light installed less than 5 years</td>
<td></td>
</tr>
<tr>
<td>(1) First light located within a single city or lighting district</td>
<td></td>
</tr>
<tr>
<td>(2) Each additional light located within a single city or lighting district worked at the same time</td>
<td>$33 + CIAC Tax</td>
</tr>
</tbody>
</table>

**NOTES:**

1. All charges shown above are subject to change annually by PG&E.

2. For connection and other charges for customer-owned street lights NOT on PG&E-owned poles, refer to the special conditions of Schedule LS-2.
NOTICE OF CONTACT REMOVAL

To: .................................................  Division: .................................................

Date: .................................................

The attachments on the poles designated below, as covered by Contact Permit No. ................................................., have been removed.

Date Checked: .................................................  By: .................................................

Date Checked: .................................................  By: .................................................

CONTACT REMOVAL ACKNOWLEDGED

Number of poles vacated under this removal notice: .................................................

Free

Exchange Area: .................................................

Note: Sketch to be drawn to suitable scale. Use reverse of this sheet if necessary.
September 7, 1990

Jim Escobar
Public Works Department
City of Stockton
425 North El Dorado Street
Stockton, CA 95202

Dear Jim:

Enclosed is my billing for services during August. It took considerable effort to reconcile the errors in the "detail list," and fortunately I was able to find two major errors on the PG&E part. The final adjusted count is 5,720 lights to be acquired. This number is being used on the complaint which Dave Byers has filed in Superior Court.

One remaining task which I must do is spot-check about 150 lights in the field. This should not take more than two days if you can provide me with a knowledgeable person to drive to correct locations.

I will call you some time the week of September 17-21 to establish timing.

Sincerely,

Russell L. Hamm
Management Consultant

RLH:k

Enclosure
July 30, 1990

Reed V. Schmidt
Bartle Wells Associates
1636 Bush Street
San Francisco, CA 94109

STREET LIGHT APPRAISAL

Please find attached executed copy of Agreement for minimal services that are to be rendered in conjunction with the City's acquisition of street lights from Pacific Gas & Electric.

Please advise if I may be of further assistance.

Signed

GARY C. INGRAHAM
ASSISTANT CITY MANAGER

GCI:bg

cc: David Byers
    McCracken, Byers & Martin
    919 E. Hillsdale Blvd., Suite 101
    Foster City, CA 94404

    Patrick Samsell
    Jim Escobar
July 6, 1990

Gary Ingraham, Assistant City Manager
City of Stockton
425 North Eldorado Street
Stockton CA  95202

Re:  STREET LIGHT APPRAISAL.

Dear Mr. Ingraham:

This letter-proposal responds to the requests made by you and David J. Byers, special legal counsel to the City of Stockton, for an appraisal of the street lighting facilities the City of Stockton is seeking to acquire from Pacific Gas & Electric Company.

Scope of Services
Bartle Wells Associates proposes to offer the following professional services to the City of Stockton:

- Appraise the fair market value of the lighting facilities.
- Provide information on (1) public utility regulation in California; (2) street light rates charged by PG&E; and (3) the costs to own, operate and maintain street light facilities.
- Review and analyze any appraisals performed by PG&E and R. W. Beck and Associates.

Experience
As you may be aware, I have provided services similar to those proposed here to the County of San Mateo, the Marin Street Light Acquisition Joint Powers Authority, the Peninsula Street Light Authority (PSLA), the City of Fresno, the City of San Juan Capistrano, and the City of San Marcos.

My experiences with these six public agencies are directly applicable to the City of Stockton's street light acquisition. I have prepared appraisals using the capitalization of net income approach and have provided information and advice on CPUC rate-making for street lights and the regulation of public utilities. In the cases of the Marin JPA and PSLA, I have appeared as an expert witness on valuation of public utility property.

For the County of San Mateo, I valued 2,545 lights and provided a report on CPUC rate regulation of Pacific Gas & Electric. The county and PG&E settled the condemnation suit before trial.

In the Marin JPA eminent domain action to acquire 11,357 street lights from PG&E, I successfully testified in Superior Court. The trial court set just compensation exactly equal to my valuation of $879,158. It was considerably less that PG&E’s valuation of $4.6 million.

In December 1988 I testified on behalf of the PSLA in Superior Court. The jury awarded just compensation at 90% of what PG&E requested.
City of Stockton  
July 6, 1990  
Page 2

Currently I am consulting to the City of Fresno in its street light condemnation suit against PG&E. I have completed my appraisal of 22,520 lights and am awaiting trial, which is expected to occur sometime in Autumn 1990.

I have finished my appraisal of the San Juan Capistrano lighting system and expect that condemnation trial will occur this summer.

Besides my appraisal projects, I have conducted economic feasibility studies of street light acquisitions for the cities of Fresno, Concord, Irvine, Oxnard, and Mission Viejo. As part of these feasibility studies were the determinations of ranges of possible acquisition costs using the three standard methods to value public utility property.

Since 1982, I have been the rate consultant to the California City-County Street Light Association (CAL-SLA). On their behalf I have testified on street light rates and cost of service before the California Public Utilities Commission in rate cases involving the three major electric utilities in California. I have testified in seven different proceedings. My effort in these cases has been successful. In every case, street lighting customers have received rate decreases, which total $40 million.

I will be the primary consultant directly in charge of this project and will be assisted by Kent South. Our resumes are enclosed.

**Work Plan**

We plan to conduct the appraisal according to the following tasks.

1. Compile an inventory of lighting facilities the city is considering to acquire. Conduct a brief “drive-by” inspection of the street light system.

2. Review and analyze unit costs for installation of specific lighting equipment.

3. Review and analyze depreciation due to age, physical deterioration and functional obsolescence.

4. Examine purchases of street lighting systems that have occurred in California.

5. Determine gross rental income, deductions from gross income, and resulting net rental income for the Stockton lighting facilities.

6. Derive a capitalization rate applicable to the Stockton lighting system.

7. Give an independent opinion of the fair market value of the lighting facilities the City of Stockton is considering to purchase.

8. Prepare an appraisal report and submit it, as an attorney work product, to David J. Byers.
Availability and Fees
For the appraisal proposed in this letter, the professional services will not exceed $15,000 plus direct expenses of $2,000. The total fee will not exceed $17,000.

My hourly billing rate is $110 and Kent South’s billing rate is $95. Technical typing, word processing, and computer-assisted services related to report production, including all costs associated with owned and leased equipment, are charged as a direct expense at $40 per hour. Other expenses directly identifiable to the project are charged at cost plus 10 percent and include, but not limited to: travel, telephone and FAX, mail and delivery, photocopying and binding.

The fees are based on doing the appraisal in our offices in San Francisco, one site visit to the Stockton lighting system, three meetings in Stockton, and three meetings with the city’s special counsel in his offices in Foster City.

Bartle Wells Associates will furnish the city with a monthly statement for fees and direct expenses.

If the project is terminated for any reason, Bartle Wells Associates is to be reimbursed for professional services and direct expenses up to the time we receive written notification of such termination.

We are prepared to begin work upon acceptance of this proposal. If our proposal is acceptable to you, please countersign one copy of this letter and return it to us.

We look forward to being of professional service to the City of Stockton in its street light acquisition.

Very truly yours,

BARTLE WELLS ASSOCIATES

Reed V. Schmidt

RVS:mt
Enc.

Bartle Wells Associates is authorized to provide the services outlined above, at the fee stated, subject to termination as provided.

By: [Signature] Date: 7/25/90

For: CITY OF STOCKTON
QUALIFICATIONS OF REED V. SCHMIDT
PUBLIC UTILITY VALUATION

Experience
Reed V. Schmidt is a senior consultant with over 15 years of practical experience in financial and economic consulting, research, and analysis. He has directed over 50 projects for cities and counties in the areas of public utility pricing and valuation, public works financing, and energy planning.

On behalf of public agencies using streetlight service from California electric utilities, Mr. Schmidt has testified on cost of service and utility rate design in seven general rate cases before the California Public Utilities Commission. As a result of his effort, public agencies have received electric bill decreases totaling $40 million. Mr. Schmidt has appeared as an expert witness on utility rates and costs before regulatory agencies in California, Nevada, Texas, Arkansas, and Ohio.

Mr. Schmidt has appraised the fair market value of streetlight facilities being acquired by local governments and has been qualified as an expert witness on public utility valuation in superior courts in Marin and San Mateo counties. He has conducted fiscal impact studies to determine possible costs and revenues to municipalities due to urban development, mass transit, and government regulations and programs.

Before joining Bartle Wells Associates, Mr. Schmidt was a partner in Chester and Schmidt Consultants and had also worked as an independent consultant. He began his consulting career as senior financial analyst with Turner, Collie & Braden, Inc., in Houston, and was also senior economist and utilities analyst with Jones-Tillson & Associates in San Mateo.

Recent Assignments

- **California Street Light Association**: Electric cost-of-service studies and rate design
- **Peninsula Street Light Authority**: Appraisal of public utility plant and expert witness testimony
- **City of Mission Viejo**: Project feasibility evaluation
- **Marin Joint Powers Authority**: Appraisal of public utility plant and expert witness testimony
- **City of Fresno**: Appraisal of street light system

Memberships and Professional Affiliations

- National Association of Business Economists
- International Association of Energy Economics
- American Water Works Association

Education
B.A., magna cum laude, Economics - University of Houston
M.A., Economics - University of Houston
Experience
Kent South is a senior consultant specializing in financial plans and bond marketing for government agencies. He is experienced in debt issue structuring, innovative financing options, pay-as-you-go financing techniques, fee structures, refundings, and government loan analysis.

Mr. South has over 20 years of experience in local government finance. Prior to joining Bartle Wells Associates, he was a finance administrator for two California cities, and also a financial advisor and investment banker to public agencies, initiating and structuring tax-exempt debt securities.

As a finance director for two California cities, he was responsible for debt administration and capital projects financing. He administered debt for a variety of joint power authorities and nonprofit corporations. Mr. South supervised general obligation, revenue, lease revenue, special assessment, parking authority, tax allocation, industrial development, water, sewer, and airport bond issues.

As an investment banker, Mr. South developed innovative financing techniques including intergovernmental agreements, pooled financings, and master lease-purchase agreements.

Recent Assignments
- Olivenhain Municipal Water District: Financing plan for multiple-agency use of water storage facilities
- City of Solvang: Water and sewer rate study and financing plan
- City of Huntington Beach: Financing plan for water system master plan projects
- City of Redwood City: Sewer and water rate study to facilitate capital expansion plan
- Santa Ana Watershed Project Authority: Financing plan and bond sale for projects requested by member agencies to improve water quality in the watershed area
- City of San Bernardino, Water Department: Financial plan for expansion of water and sewerage system
- County Sanitation Districts of Orange County: Capital expansion master plan
- County of San Bernardino: Special assessment bond sale; development supported by developer fee structure
- Fairbanks North Star Borough: Planning and sale of general obligation bonds

Memberships and Professional Affiliations
Mr. South is a member of the California Society of Municipal Finance Officers (CSMFO), the American Public Works Association, and the American Correctional Association. He served as president of CSMFO and has also served as chairman or member of various CSMFO and League of California Cities committees. He was a member of the Debt Administration Committee of the Government Finance Officers Association of the U.S. and Canada.

Education
B.S., Business Administration - Brigham Young University
M.B.A., Business Administration - UCLA
July 31, 1990

Law Offices of McCracken,
Byers & Martin
Metro Center
919 East Hillsdale Boulevard., Suite 101
Foster City  CA  94404

STREET LIGHT ACQUISITION

Attached is the information you requested for the acquisition of street lights. It is anticipated the monies from the Municipal Lease and Option Agreement between the City of Stockton and Balehill Leasing Corporation will be available August 15, 1990.

If additional information is required, please contact James Escobar, Deputy Public Works Director/GS at (209) 944-8282 or Gary Ingraham, Assistant City Manager at (209) 944-8212.

JAMES B. GIOTTONINI
PUBLIC WORKS DIRECTOR

JBG:JE:eh

cc:  Gary Ingraham
     James Escobar
MEMORANDUM

July 23, 1990

TO:        Honorable Mayor and City Council
FROM:      Alan N. Harvey, City Manager
SUBJECT:   ACQUISITION OF STREET LIGHTS

On Monday evening a resolution will be available for adoption
approving and authorizing the execution of the Municipal Lease and
Option Agreement, the Agency Agreement, the Purchase Contract, the
Official Statement and related documents relating to the
acquisition of certain street lighting and authorizing and
directing certain actions with respect thereto.

DISCUSSION

Background

The City Council has previously adopted a "Resolution of Necessity"
for the acquisition of the remaining 5,717 street lights that are
currently owned by the Pacific Gas and Electric Company. In order
to receive the lower energy rates for City owned street lights, it
is necessary for the City to take possession of the street lights
that are being condemned. Therefore, a deposit must be placed with
the Court in an amount that is supported by an appraisal. The
City's appraisal by R. W. Beck and Associates places the fair
market value based on historical cost less depreciation at
approximately $900,000.

Current Situation

For the City Council's consideration, a resolution has been
prepared by outside counsel which will, if adopted, authorize the
execution of a Municipal Lease, the Agency Agreement, the Purchase
Contract, the Official Statement and related documents.

This financing is being structured to provide for the pay back in
6 years. It is estimated that (at current market rates) the
interest rate will be less than 7%. The transaction has been
designed to close on August 1st. Funds have to be placed on
deposit with the Court prior to the City being able to gain
possession. The City's energy costs will be reduced by an
estimated $33,000 a month as soon as the City takes possession
which should be within 30 days of posting funds with the Court.
For City Council review, a copy of all documents are attached. Bateman Eichler, Hill Richards, Incorporated have been selected as "Underwriters" for this transaction. The underwriter discount for this transaction is at 1.5%. Robinson & Pearman, a 100% minority owned law firm, has been selected as outside counsel for this financing. Their fee for this financing will not exceed 1.0%. Written notice has been provided by Bateman Eichler, Hill Richards to the California Debt Advisory Commission on the proposed sale as required by California Government Code Section 8855 et. seq.

Representatives from Bateman Eichler, Hill Richards, Incorporated are in attendance to review with the City Council the documents that are being considered for execution this evening. The law firm of Robinson & Pearman will also be represented to discuss any legal details of the proposed financing.

Affirmative Action

The attached table compares the 1980 Census population of the City of San Francisco to Bateman Eichler, Hill Richards Public Finance Branch work force as of July 1990. The table also provides (in terms of percentages) a breakdown of numbers of employees, employee hours, and underutilization in employee numbers and hours over the 12-month period prior to the bid opening. Underutilizations are determined by subtracting percentages from the 1980 Census figures.

Since last reviewed in January 1990, the Company has had no change in personnel for the past 18 months. It is anticipated that the workforce will remain the same for the remainder of 1990. If employment opportunities arise, the firm will seek individuals possessing experience in banking and finance. Recruitment is usually in San Francisco and throughout the State. Sources of recruitment continue to be financial institutions; public finance associations; and state universities and colleges.

The law firm of Robinson and Pearman is a 100% minority owned law firm with 8 employees.

Note: Attached are the Affirmative Action Statement (Exhibit 1-B) and the Company Work Force Report (Exhibit 1-C) for the San Francisco Public Finance office of Bateman Eichler, Hill Richards, Incorporated.

Financial Summary

The proceeds from this financing will be used to pay for the purchase of the street lights. The monthly savings of $33,000 will be more than adequate to pay this financing off in 6 years.
RECOMMENDATION

It is recommended that the City Council adopt the resolution that is up for consideration.

Respectfully submitted,

[Signature]

ALAN N. HARVEY
CITY MANAGER

ANH:GI/bg

Attachments
AFFIRMATIVE ACTION OVERVIEW

(NAME OF FIRM)

Bateman Eichler
Hill Richard
Public Affairs Branch
San Francisco

1980 CENSUS/CLYGF:
Black: 12.7
Hispanics: 12.4
Islander: 21.9
Native American: 5
Women: 49.8
White: 59.2

CURRENT EMPLOYEE NUMBERS AS OF JUNE 1978:
Black: 12.5
Hispanics: 0
Islander: 12.5
Native American: 0
Women: 25.0
White: 75.0

CURRENT EMPLOYEE UNDERUTILIZATION:
Black: 12
Hispanics: 12.4
Islander: 9.4
Native American: 15
Women: 24.8
White: 0

1980 CENSUS/
Same as above

12-MONTH PERIOD PERCENTAGE BREAKDOWN OF EMPLOYEE NUMBERS:
Black: 12.0
Hispanics: 0
Islander: 12.5
Native American: 0
Women: 25
White: 75

UNDERUTILIZATION IN EMPLOYEE NUMBERS:
Black: .7
Hispanics: 12.4
Islander: 9.4
Native American: 15
Women: 24.8
White: 0

1980 CENSUS/
Same

12-MONTH PERIOD PERCENTAGE BREAKDOWN OF EMPLOYEE HOURS:
Black: 12.5
Hispanics: 0
Islander: 12.5
Native American: 0
Women: 25
White: 75

UNDERUTILIZATION IN EMPLOYEE HOURS:
Black: 12
Hispanics: 12.4
Islander: 9.4
Native American: 15
Women: 24.8
White: 0

Attached are the Affirmative Action Statement (Exhibit 1-B) and the Company Work Force Report (Exhibit 1-C) on all bidders for this project. Also attached are Monthly EEO Compliance Reports on the low bidder.
AFFIRMATIVE ACTION CERTIFICATION STATEMENT

The Respondent to a City of Stockton Request for Proposals hereby certifies:

1. That it shall demonstrate compliance with the requirements established in the AFFIRMATIVE ACTION GUIDELINES AND PROCEDURES FOR RESPONDENTS TO A CITY OF STOCKTON REQUEST FOR PROPOSALS.

2. That it fully understands that the provisions contained in the City's AFFIRMATIVE ACTION GUIDELINES AND PROCEDURES shall be considered a part of its contractual agreement with the City in the event of award of contract.

3. That it is in compliance with all Executive Orders and federal, state and local laws (including Stockton Municipal Code Chapter 3, Part V) regarding fair employment practices and nondiscrimination in employment.

Philip A. Hoon
(Print/Type Name of Company Official)

Vice President - Public Finance
(Title)

Date: June 24, 1990

City of Stockton
Mainers Point Associates, Ltd. Project

Name of Project: Multi-Family Housing Revenue Refunding Bonds, Series 1990 A

Name of Firm: Bateman Eichler Hill Richards

Address: 555 California St., San Francisco, Ca 94104

Telephone: (415) 291-1350

Name of Personnel:

Please check appropriate:

( ) Prime ( ) Subcontractor ( ) Supplier of Goods or Services

FOR OFFICIAL USE ONLY - DO NOT WRITE IN SPACE BELOW

<table>
<thead>
<tr>
<th>CIV'S GOALS</th>
<th>WOMEN</th>
<th>HISPANIC</th>
<th>BLACK</th>
<th>ASIAN/PAC. ISL.</th>
<th>NATIVE AMERICAN</th>
<th>WHITE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pub. Company Personnel</td>
<td>25%</td>
<td>(——) 12.5%</td>
<td>12.5%</td>
<td>——</td>
<td>75%</td>
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<tr>
<td>Total Personnel</td>
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<td>(——) 1</td>
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<td>6 = 8</td>
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City of San Francisco: 49.8% 12.4% 12.7% 21.9% .5% 59.2%
### COMPANY WORK FORCE REPORT

**NAME OF FIRM:** Bateman Eichler, Hill Richards Public Funds  
**NAME/TITLE OF COMPANY OFFICIAL:** Philip A. Hoan, Vice President  
**NAME OF PROJECT:** City of Stockton Multifamily Housing Revenue Bond  
(Maneuver Points Project)

**DIRECTIONS:**

This form must be submitted with each request for proposal exceeding $20,000.  
(Contractors must submit before hand of City contractor to the prime contractor.)

**UNDERWRITING**  
San Francisco, Los Angeles, San Diego

**TABLE A:** Indicate below the permanent and temporary makeup of your company, office and field personnel,  
currently employed. Statistics shown below should reflect individuals employed at the office  
location where the City project will be administered.

<table>
<thead>
<tr>
<th>JOB CATEGORIES</th>
<th>TOTAL ALL</th>
<th>HISPANIC</th>
<th>BLACK</th>
<th>ASIAN</th>
<th>FILIPINO</th>
<th>INDIAN</th>
<th>WHITE</th>
<th>OTHER</th>
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<tbody>
<tr>
<td>1. Officials &amp; Managers</td>
<td>2</td>
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<td>2. Professionals</td>
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<td>3. Clerical &amp; Office</td>
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<td>4. Field Supervisor</td>
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<td>5. Skilled-Specific Trade</td>
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<td>7. TOTAL - Items 1-6</td>
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1. For definition of minority, see Paragraph 1-3 of the AFFIRMATIVE ACTION GUIDELINES AND PROCEDURES OF THE  
DEPARTMENT TO A CITY OF STOCKTON REQUEST FOR PROPOSALS.

2. M = Male  
F = Female

*NOTE: COMPLETE THIS FORM FOR EACH CITY OF STOCKTON PROJECT.*
Resolution No. 90-0533

STOCKTON CITY COUNCIL

A RESOLUTION OF THE CITY OF STOCKTON DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF THE STREET LIGHTING FACILITIES AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the City Council has considered the advisability of acquiring street light facilities owned by Pacific Gas & Electric Co. (hereinafter referred to as "P.G.&E." and determined that it is in the public interest; and

WHEREAS, notice has been properly given as required by the provisions of section 1245.235 of the Code of Civil Procedure of the State of California and the hearing has been regularly held and conducted in the manner provided by law at which all persons whose property is to be acquired by eminent domain have been given a reasonable opportunity to appear and be heard before the City Council on the following matters:

a. The public interest and necessity require the acquisition of the street light facilities as authorized by section 37351 of the Government Code.

b. The acquisition is planned and located in the manner that will be the most compatible with the greatest public good and least private injury.

c. The property sought to be acquired is necessary for the acquisition, operation, and maintenance of the street lighting facilities by the City.
d. The offer required by section 7267.2 of the Government Code in the form of a written offer has been made to the owner of record.

e. The property being taken is for a more necessary public use pursuant to the provisions of sections 1240.610 and 1240.650 of the Code of Civil Procedure.

WHEREAS, the City Council of the City of Stockton is vested with the power to acquire property by eminent domain, by virtue of the laws of the State of California; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The public interest and necessity require the acquisition of title in fee simple to street light facilities located within the jurisdiction of the City of Stockton as described in the attached Exhibit "A" for owning, operating, and maintaining the same for street lighting facilities, a public improvement.

2. The proposed acquisition and any improvements proposed to be made thereto, are planned and located in the manner which will be most compatible with the greatest public good and least private injury.

3. The property described in Exhibit "A" is necessary for the proposed project.

4. The law firm of McCracken, Byers & Martin is directed to institute and conduct, to a conclusion, an action in
eminent domain for the acquisition of the property, including obtaining the necessary order for prejudgment possession.

5. The offer required by section 7267.2 of the Government Code has been made to the owner of record.

PASSED, APPROVED and ADOPTED this 23rd day of JULY 1990.

/s/ JOAN DARRAH

JOAN DARRAH, Mayor of the City of Stockton

ATTEST:

/s/ FRANCES HONG

FRANCES HONG, City Clerk of the City of Stockton

Ayes: Councilmembers McCarthy, McGaughey, Minnick, Panizza, Panizza and Vice Mayor Weaver

Noes: None

Absent: Mayor Darrah (Minnick stepped down on this item)
TO: Mayor and City Council

FROM: Alan N. Harvey, City Manager

SUBJECT: ACQUISITION OF STREET LIGHTS FROM PACIFIC GAS & ELECTRIC COMPANY (PG&E)

On Monday evening a Resolution of Necessity will be presented for your consideration. This resolution determines it is in the public's best interest and a necessity for the City to acquire the street lighting system from PG&E and directs the filing of eminent domain proceedings.

DISCUSSION

Background

It is estimated that there are 11,708 street lights in the City of Stockton. The City of Stockton owns 5,991 of these lights and the remainder are owned by Pacific Gas and Electric Company. Current energy costs as authorized by the Public Utilities Commission allow Pacific Gas and Electric to charge the City of Stockton a much higher rate for Pacific Gas and Electric owned street lights than City owned street lights. Therefore, at this time due to the energy cost differential between the City's rates for street lights owned as compared to Pacific Gas and Electric's owned street lights make it cost effective to purchase the Pacific Gas and Electric's owned lights.

Present Situation

An analysis of the difference in energy costs for City owned street lights as compared to Pacific Gas and Electric's owned street lights indicates that the City of Stockton would save over $396,000 annually if the City were to purchase the Pacific Gas and Electric's owned lights. As authorized by the City Council, staff has met with Pacific Gas and Electric officials several times over the past six months in an attempt to negotiate a purchase price that is acceptable. The last official price offered by Pacific Gas and Electric for the lights owned by them was $2.6 million. This averages $454.78 per light. An analysis of other systems indicates that the average price per light should be in the range of $250 per light or approximately $200 per light less than Pacific Gas and Electric's offer.

It is in the City's best interest to own all 11,000+ street lights in the City of Stockton. Since the offering price to the City of Stockton by Pacific Gas and Electric is substantially in excess of what the City's appraisal indicates, it is in the City's best interest to initiate condemnation action to acquire...
Mayor and City Council
Page 2

ACQUISITION OF STREET LIGHTS FROM
PACIFIC GAS & ELECTRIC COMPANY (PG&E)

the remaining 5,717 lights that are owned by Pacific Gas and Electric.

On June 4, 1990, the Council by Resolution 90-0346, authorized the City Attorney to contract with the Law Offices of McCracken, Byers & Martin to assist the City of Stockton in the acquisition of street lighting facilities from PG&E. David J. Byers and City staff met with PG&E on June 13, 1990, and confirmed our large disparity on the value of the street light system in Stockton. Mr. Byers, on behalf of the City submitted an official offer of $900,000 to PG&E dated June 21, 1990. PG&E has been notified by the City Clerk of the Hearing to be held on the Resolution of Necessity on July 23, 1990 as soon after 5:30 p.m. as possible.

If the City Council approves the resolution that is up for consideration this evening, staff will immediately place an item on the following week's agenda which will be a resolution approving and authorizing the execution of a municipal lease and other related documents to provide funds for the deposit that will be necessary to take possession of the P.G.& E. owned street lights. The purpose of this is that the City can obtain possession of the street lights; thereby, the savings of $33,000 per month will be realized by the City within 30 days after said deposit is placed with the court.

FINANCIAL SUMMARY

It is anticipated that at current monthly rates the city will start saving $33,000 a month. The savings can provide the source of funds to pay debt service.

RECOMMENDATION

It is recommended the Resolution of Necessity be adopted.

Respectfully submitted,

ALAN M. HARVEY
CITY MANAGER

ANH:ec

AGENDA ITEM 10.20
Page 2 of 2
June 21, 1990

Mr. Ron Girard
Attn: Ken Cooper
Marketing and Customer Services Manager
Stockton Division
4040 West Lane
P. O. Box 930
Stockton, California 95201

Re: Offer To Purchase Street Lights Pursuant To Section 7267.2 Of The California Government Code

Dear Ken:

As you know this office represents the City of Stockton. I enjoyed meeting with you on June 13, 1990 to discuss the City of Stockton's desire to acquire the street light facilities located within its general jurisdiction. The City of Stockton makes the following offer to Pacific Gas & Electric Company ("PG&E"): The City of Stockton will purchase those street light facilities within the City of Stockton previously identified for the sum of Nine Hundred Thousand Dollars ($900,000.00).

According to billings submitted to the City of Stockton those lighting facilities consist of luminaires, lamps, photo cells, brackets, mast arms, and wiring and those poles solely dedicated to supporting the street light facilities. The City of Stockton is not seeking to acquire the distribution poles only the street light fixtures, brackets and mast arms attached to the distribution poles. The price is computed on the capitalization of earnings approved for the subject property through an appraisal developed by R.W. Beck And Associates. Previously the City of Stockton has made a similar offer to PG&E company.
If you have any questions regarding this offer please do not hesitate to call.

Very truly yours,

McCRACKEN, BYERS & MARTIN

[Signature]

DAVID J. BYERS

DJB:jd
cc: Gary Ingraham,
    Assistant City Manager,
    City of Stockton
Guy D. Petzold,
    Deputy City Attorney,
    City of Stockton
July 5, 1990

Mr. Ron Girard  
Attn: Ken Cooper, Marketing and  
          Customer Services Manager  
Stockton Division  
P. O. Box 930  
Stockton CA 95201

NOTICE OF HEARING PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.235

As is required by Section 1245.235 of the California Code of Civil Procedure, the City of Stockton hereby notices Pacific Gas & Electric Company that (1) the City of Stockton on July 23, 1990 at 5:30 p.m., or as soon thereafter as possible, intends to adopt a Resolution of Necessity to initiate eminent domain proceedings regarding certain street light facilities owned by Pacific Gas & Electric Company within the jurisdiction of the City of Stockton; (2) Pacific Gas & Electric Company or a representative has a right to appear at the public hearing and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure to wit: (a) whether the public interest and public necessity require the project; (b) whether the project is located or planned in the manner that will be the most compatible with the greatest public good and the least private injury; (c) whether the property sought to be acquired is necessary for the project; (d) whether the property being taken is for a more necessary public use.

Failure to return a written request to appear and be heard within fifteen (15) days after this notice was mailed will result in waiver of your right to appear and be heard.

FRANCES HONG  
CITY CLERK

FH:cn

cc: City Manager  
City Attorney  
Public Works, Attn: James Escobar
ANNUAL STREET LIGHTING COSTS
PG&E vs CITY OWNED

$1,000
$800
$600
$400
$200
$0

Thousands

PG&E Owned

CITY Owned

Savings

$736

$340

$396

Dollars

January 1990 Rates
DATE: June 14, 1990

TO: FRANCES HONG, City Clerk

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: CONTRACT WITH THE LAW OFFICES OF MCCrackEn, BYERS & MARTin TO ASSIST THE CITY IN STREET LIGHTING ACQUISITION

Enclosed/Attached is a fully executed original of the captioned contract dated June 13, 1990.

x For your files/information.

____ Pursuant to our conversation/your request.

____ Please sign and return to us promptly.

Said contract was authorized by City Council Resolution 90-0346 on June 4, 1990.

R. THOMAS HARRIS
CITY ATTORNEY

By GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP/dmg
Enclosure

cc: City Manager
    Director of Finance
    Director of Public Works

    David J. Byers, Esq.
    McCracken, Byers & Martin
    1301 Shoreway Road, Suite 201
    Belmont, California 94002
AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this 13th day of June, 1990, by and between the CITY OF STOCKTON (hereinafter referred to as "CITY") and the LAW OFFICES OF McCracken, Byers & Martin (hereinafter referred to as "Attorneys").

WITNESS:

WHEREAS, CITY desires to retain the services of ATTORNEYS to assist the City Attorney of the City of Stockton in the acquisition of street lighting facilities; and

WHEREAS, CITY has, pursuant to Council action on June 4, 1990, approved the employment of ATTORNEYS on a private contractual basis as aforesaid;

NOW, THEREFORE, in consideration of these premises and the following terms and conditions, the parties hereto agree as follows:

1. CITY hereby hires and retains ATTORNEYS as counsel to assist the City Attorney in the above, through trial, if necessary. Such legal services shall include, but not be limited to, legal research, drafting legal documents and pleadings, court appearances, attendance at meetings and conferences with CITY staff as necessary.

2. CITY shall pay ATTORNEYS monthly for services performed hereunder at the rate of $125.00 per hour.

3. ATTORNEYS shall submit to CITY, through the City Attorney, monthly invoices setting forth the following:
   a. Date of service;
   b. Item of work performed;
   c. Name of individual performing the work;
   d. Number of hours involved; and
e. Total payment required.

4. The primary contact attorney shall be DAVID J. BYERS, ESQ., who shall be the person primarily responsible for providing the services described herein and for coordination with the City Attorney.

5. ATTORNEYS are and shall be independent contractors, and nothing herein contained shall constitute or make ATTORNEYS employees of the CITY.

6. Upon expiration and termination of this Agreement, ATTORNEYS shall be compensated as set forth herein to the date of such expiration or termination and all files, documents, and exhibits related to this Agreement shall be forthwith deposited with the City Attorney of the City of Stockton.

7. This Agreement, being a personal service agreement, may be terminated by either party upon written notice to the other party. Upon expiration or termination of this Agreement, ATTORNEYS shall be compensated as set forth herein to the date of such expiration or termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date and year first written above.

CITY OF STOCKTON,

a municipal corporation

By: R. THOMAS HARRIS
City Attorney

FRANCES HONG, City Clerk
of the City of Stockton

R. THOMAS HARRIS

By: DAVID J. BYERS

McCRACKEN, BYERS & MARTIN

GUY D. PETZOLD
Deputy City Attorney

David J. Byers

DAVID J. BYERS
PAY TO

R. W. Beck & Associates
2101 Fourth Avenue, Suite 500
Seattle WA 98121-2375

DESCRIPTION:
(BRIEF ONLY)


Invoice No. 50 0038 $4,906.74
Invoice No. 50 0082 $5,093.26

$ 10,000
INVOICE AMOUNT

Attach all invoices, freight bills, shipping tags, etc. and return original and triplicate copies to accounts payable division of the finance department immediately after receipt of invoice.

I hereby certify receipt of the article(s) and/or services as indicated by the attached invoices, or as noted herewith, and that said claim against the city of Stockton is true and the expenditure is necessary for the operation of this department.

Date, April 12, 1990

[Signature]
DEPARTMENT HEAD
AGREEMENT

This Agreement made and entered into this 3rd day of November, 1989, between the CITY OF STOCKTON, a
Municipal Corporation, (hereinafter "CITY") and R. W. BECK AND
ASSOCIATES (hereinafter "CONSULTANT") whose principal place of
business is 2121 Fourth Avenue, Seattle, Washington.

WITNESSETH

WHEREAS, CONSULTANT is qualified and experienced as
a CONSULTANT in matters connected therewith, and has offered
services for the purposes specified in this Agreement; and

WHEREAS, it is necessary and advisable to employ
CONSULTANT for the purpose of assisting City staff in the
preparation of an appraisal suitable for use in a court of law if
the CITY enters into condemnation proceedings against Pacific Gas
and Electric Company for the acquisition of their street light
system.

NOW, THEREFORE, in consideration of these premises and
the following terms and conditions, the parties hereto agree as
follows:

I. BASIC SERVICES OF CONSULTANT:

CONSULTANT shall provide consulting services, as
directed by staff, in accordance with the attached
scope of work (Appendix "A").

II. FEES AND PAYMENTS:

For services rendered, CONSULTANT shall be compensated
at an hourly rate as defined in CONSULTANT'S rate
schedule.

CONSULTANT may bill CITY and be paid for all work
satisfactorily completed hereunder on a monthly basis.
Such billing will clearly state the number of hours
worked by CONSULTANT, and such other supporting
information as may be required by CITY.

In consideration of the faithful performance of this
agreement by CONSULTANT, CITY agrees to pay charge
rates as defined above. CONSULTANT will not exceed the
fee as identified below for work on this project without written authorization from the CITY to perform work over and above that described in Article I. For performing basic services as set forth in Article I, the maximum fee shall not exceed $10,000.

III. EXTRA SERVICES OF CONSULTANT:

All changes must be approved by CITY in writing before any additional fee shall be charged by CONSULTANT.

If CITY makes minor changes in scope, CONSULTANT agrees CITY shall determine the fee due for said services.

Substantial changes in the scope of the project are subject to renegotiation.

IV. MODIFICATION:

The CITY may, in writing, make reasonable changes in the services required to be performed by CONSULTANT under this agreement. Should any such actual changes be made, an equitable adjustment will be made to compensate CONSULTANT for actual additional costs. Any claim by CONSULTANT for adjustments hereunder must be made to CITY in writing no later than thirty (30) days after receipt by CONSULTANT of notice of such changes from CITY. Failure to make a written claim to the CITY within the specified time period will constitute a waiver by the CONSULTANT of any additional compensation for the specific changes. No payment for claims will be made subsequent to final payment on the contract.

V. TERMINATION:

A. CITY may terminate this agreement for any valid reason whatever. Upon notice of termination, CONSULTANT shall be paid for all work satisfactorily completed up to the date of termination, except:

1. CONSULTANT shall not be paid for any anticipated profit.

2. CONSULTANT shall not be paid for any loss of revenue or profit from any source outside the scope of this agreement including, but not limited to, loss of actual or potential contracts for services with other parties.
B. In the event that this agreement is terminated for any reason, CONSULTANT shall:

1. Upon receipt of written notice of such termination immediately cease all services on this project, unless otherwise directed by CITY; and

2. Deliver to CITY all data, reports, summaries, correspondence and other written, printed, or tabulated material pertaining in anyway to this project which CONSULTANT may have accumulated. Such material is to be delivered to CITY within thirty (30) days whether in completed form or in process. CITY shall hold CONSULTANT harmless for any work which is incomplete due to early termination.

C. In the event that this agreement is terminated by CITY for any reason, CITY is hereby expressly permitted to assume this project and complete it by any means, including, but not limited to, any agreement with another party.

D. The rights and remedies of CITY and CONSULTANT under Article V are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this agreement.

VI. ASSIGNMENT AND DELEGATION:

CONSULTANT shall not assign, transfer, convey, pledge or sublet this agreement or any part of it, and CONSULTANT shall delegate no duty under this agreement without the expressed prior written consent of CITY.

VII. EMPLOYMENT POLICIES:

The City of Stockton is an Affirmative Action Employer. CONSULTANT will be required to conform to the provisions contained in the document entitled "Affirmative Action Guidelines and Procedures for Respondents to a City of Stockton Request for Proposals". A copy of this document is on file in the Public Works Department.
VIII. INDEMNIFICATION:

The CONSULTANT shall indemnify, defend and hold harmless the CITY and all officers and employees thereof connected with the work, from all claims, suits or actions of every name, kind and description, brought from or on account of, injuries to or death of any person or damage to property resulting from any intentional or negligent error, omission, or act by the CONSULTANT or his agents during the performance of this agreement.

This provision shall not obligate the consultant to defend or assume financial responsibility for any acts, errors or omissions of the City or any third party.

IX. LIMITATION OF ACTION:

No action shall be maintained by the parties, its successors or assigns against CITY or any claim based upon or arising out of this agreement or out of anything done in connection with this agreement unless such action shall be commenced within six (6) months of the date of final payment of CONSULTANT hereunder.

X. INTEGRATION:

A. This agreement represents the entire integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements between the parties either written or oral.

B. This agreement may be amended only by written instrument signed by both CITY and CONSULTANT.

XI. TIME FOR COMPLETION:

CONSULTANT shall commence immediately upon receipt of Notice to Proceed to complete all work required herein. It is mutually agreed that all work shall be completed within 30 calendar days from date of Notice to Proceed.

XII. ATTORNEY'S FEES:

Should any dispute arise between the parties, their agents, successors or assigns, which results in the filing of legal proceedings to determine the rights and responsibilities of the parties pursuant to this agreement, then the prevailing party in such action shall be entitled to recover its costs, including reasonable attorneys fees.
IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

ATTEST:

FRANCES HONG, City Clerk

CITY OF STOCKTON

ALAN N. HARVEY, City Manager

APPROVED AS TO FORM:

DEPUTY CITY ATTORNEY FOR
R. THOMAS HARRIS, City Attorney

R. W. BECK AND ASSOCIATES

BY:
STREET LIGHT APPRAISAL

FOR

THE CITY OF STOCKTON

SCOPE OF WORK

R. W. Beck and Associates agree to perform the following work:

1. Review inventory documents from Pacific Gas and Electric Company (PG&E).

2. Prepare a document suitable for use in condemnation court providing values for each of the items on the 14 page PG&E inventory under the following methodologies:
   * Reproduction cost new.
   * Reproduction cost new less depreciation.
   * Estimated original cost.
   * Original cost less depreciation.

3. Document shall be presented in the same format used for the Hayfork Valley PUD report.

4. Determine needed inventory adjustments for poles that may be duplicated.

5. Determine suitable deduction for contributed plant.

6. Recommend adjustments to the inventory based on an analysis of the "Detail List" for Street Lights in Stockton.

7. Attend one meeting with City, Consultant and/or Attorney.
March 23, 1990

Mr. Gary Ingraham  
Assistant City Manager  
City of Stockton  
425 North Eldorado Street  
Stockton, California 95202

Dear Gary:

Subject: February Invoice, Street Light Appraisal

Enclosed is our Invoice No. SO-0082 for services through February 1990. Still remaining under this work authorization is a trip to Stockton to meet with your attorney and to discuss our report.

Very truly yours,

R. W. BECK AND ASSOCIATES

Leon D. Spencer  
Special Consultant

LDS: sq  
enclosure
INVOICE

City of Stockton
Public Works Department
425 North El Dorado, Room 317
Stockton, California 95202

Fourth & Blanchard Building
2101 Fourth Avenue, Suite 600
Seattle, Washington 98121-2375
Telephone 206/441-7500

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Project Description: Engineering services rendered in connection with street light appraisal.

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REMITTANCE STUB

(Please Detach Stub and Mail With Payment)

INVOICE NUMBER: SO-0082
INVOICE DATE: February 28, 1990
PROJ. SVCS. AGREEMENT: WS-1811-AA1-BX
AMOUNT OF THIS INVOICE: $5,093.26

Terms: Net 30 Days. Interest Charged on Accounts Due 60 Days After Invoice Date.
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WS-1811-AA1-BX

February 23, 1990

Mr. Gary Ingraham
Assistant City Manager
City of Stockton
425 North Eldorado Street
Stockton, California 95202

Dear Gary:

Subject: January Invoice, Street Light Appraisal

Enclosed is our Invoice No. SO-0038 for services through January 31, 1990. Certain other costs were not referred to this work authorization in time to be included in this invoice and will appear on your February invoice. I estimate these costs at about $4,000 which will bring the total to about $9,000 of the $10,000 authorized. There is still unencumbered an amount sufficient for a one-day trip to Stockton. This trip may be desirable following your selection of an attorney. Possibly Russ Hamm could also be available.

Very truly yours,

R. W. BECK AND ASSOCIATES

[Signature]

LDS: sq
enclosure
INVOICE

City of Stockton
Public Works Department
425 North El Dorado, Room 317
Stockton, California 95202

Fourth & Blanchard Building
2101 Fourth Avenue, Suite 600
Seattle, Washington 98121-2375
Telephone 206/441-7500

Project Description: Engineering services rendered in connection with street light appraisal.

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<td>$ 4,906.74</td>
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R.W. BECK AND ASSOCIATES

Terms: Net 30 Days. Interest Charged on Accounts Due 60 Days After Invoice Date.
March 15, 1990

Mr. Alan N. Harvey, City Manager
City Hall
425 N. El Dorado Street
Stockton, CA  95202

Dear Mr. Harvey:

I understand your city has energy inefficient streetlights which are costing you unnecessary expenses. The California Energy Commission has a $5 million loan fund available to you which can immediately reduce your expenses, since our loan payments are less than the energy savings you will realize.

The program provides loan monies to cities, counties, community colleges, and special districts to convert incandescent and mercury vapor street lamps to the much more efficient low- and high-pressure sodium vapor lamps. Local governments entering our program before 1986 have already paid for their conversions through energy savings and now spend all of these saving dollars on more pressing budget needs.

Although certainly all projects are unique, most conversions cost $100 - $200 per lamp. Paybacks based only on energy savings for incandescent conversions can be less than a year and average about 1 1/2 - 2 years. Mercury vapor conversions generally have paybacks from 2 - 4 years.

The City of Newport Beach, for example, converted 1328 mercury vapor lamps to high-pressure sodium at a cost of $263,500 (as part of the project, they also rewired 337 lamps from series to multiple, which is allowed in our program). Their annual energy savings is $77,000, for a simple payback of less than 3 1/2 years. Redwood City converted 1660 incandescent and mercury vapor lamps to low- and high-pressure sodium lamps at a cost of $332,000. The annual savings is $105,000 for a simple payback of only 3 1/4 years.

I have attached a flyer and an application package which describe our loan program in more detail. Two additional notes, are particularly worth adding. First, our interest rate may be a bit higher than you are accustomed to. Our money, though immediately available and does not require voter approval. Usually, the delay to acquire lower interest money will cost you more in unnecessary energy use and money you will save with a lower interest rate.
Secondly, converting your incandescent lamps to sodium vapor will not only save substantial energy costs, but will also reduce your lamp replacement costs by as much as 75 percent. Since sodium lamps last about 4 years, as compared to the 1-year life of incandescent lamps, your cost for labor can be reduced nearly $40 per year, per lamp! These savings are not included in our payback calculations but are definitely added savings for you.

I am particularly interested in discussing our program with you and answering any questions you might have. Someone on my staff will be calling you within the next two weeks to encourage your participation. With the Energy Commission program and your interest, you can cut significant expenses from your operating budget.

Sincerely,

MICHAEL S. SLOSS, Chief
Energy Efficiency and Local Assistance Division

Enclosure

cc: Treasurer
City Hall
425 N. El Dorado Street
Stockton, CA 95202