

**RESOLUTION NO. \_\_\_\_\_**  
**FEBRUARY 21, 2023**

**A RESOLUTION TO AUTHORIZE AGREEMENTS FOR THE LICENSING AND PURCHASE  
OF STREET LIGHTS**

**WHEREAS**, the Common Council of the City of Hudson previously authorized and directed the Mayor engage with the New York Power Authority's (NYPA) Turn-Key Street Light Project ("the Project") to implement a comprehensive street lighting upgrade that improves existing street lights for reduced energy consumption, improved light quality, and lower long-term costs; and

**WHEREAS**, the City has received and reviewed a project design from NYPA and wishes to proceed with the Project; and

**WHEREAS**, it is necessary for the City of Hudson to enter into agreements with Niagara Mohawk Power Corporation (d.b.a. National Grid) for the purchase and sale of street lights and for the licensing of lighting attachments to proceed with the Project;

**NOW THEREFORE BE IT RESOLVED**, that the City Council authorizes and directs the Mayor to execute both (1) an Agreement for Purchase of and Sale of Street Lights with Niagara Mohawk Power Corporation, appended to this resolution, and (2) a License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures.

\_\_\_\_\_  
Introduced

\_\_\_\_\_  
Approved, Mayor Kamal Johnson

\_\_\_\_\_  
Seconded

\_\_\_\_\_  
Date

## AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS

**THIS AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS** (this “Agreement”) is made as of the last date appearing on the signature page of this Agreement (the “Effective Date”), between **NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (“Seller”), and the City of Hudson, a municipal corporation organized and existing under the laws of the State of New York with its principal place of business at 520 Warren Street, Hudson, New York 12534 (“Buyer”). Buyer and Seller are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

### WITNESSETH:

**WHEREAS**, Seller owns, operates and maintains an electric transmission and distribution system, including certain street lights used to provide lighting service under bill account number 01552-94107 to Buyer within its municipal boundaries under Service Classification (“S.C.”) No. 2 of Seller’s Outdoor Lighting Tariff (defined below);

**WHEREAS**, Buyer desires to purchase the Street Lights (as defined below in Section 1) from Seller as provided in Section F.8 of S.C. No. 2 of Seller’s Outdoor Lighting Tariff (defined below), and Seller is willing to sell the Street Lights to Buyer.

**NOW THEREFORE**, in consideration of the commitments made herein and intending to be legally bound thereby, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings defined throughout this Agreement or as specified below in this Section 1.

“**Agreement**” means this Agreement for Purchase and Sale of Street Lights, together with the exhibits and schedules attached hereto, as the same may be amended from time to time.

“**Attachment Agreement**” means the License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures executed by Buyer and Seller and hereto as Exhibit A.

“**Bill of Sale**” means the Quit Claim Bill of Sale, substantially in the form of Exhibit B hereto, to be executed and delivered by the Parties at the Closing, to evidence the transfer by Seller to Buyer of Seller’s right, title and interest in and to the Street Lights.

“**Breaching Party**” has the meaning set forth in Section 17.1(e).

“**Business Day**” means any day other than Saturday, Sunday, and any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

**“Buyer’s Required Approvals”** means: (i) all required approvals of Buyer’s governing board to authorize Buyer (by an authorized representative) to enter into this Agreement, the Bill of Sale, the Attachment Agreement and the Service Agreement; and (ii) those other approvals, if any, listed on Exhibit C.

**“Closing”** has the meaning set forth in Section 6.1.

**“Closing Date”** has the meaning set forth in Section 6.1.

**“Commercially Reasonable Efforts”** means efforts which are designed to enable the performing Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume any liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

**“Commission”** means the New York State Public Service Commission.

**“Estimated Purchase Price”** has the meanings set forth in Section 6.2.

**“Excluded Assets”** has the meaning set forth in Section 5.

**“Final Purchase Price”** has the meanings set forth in Section 6.2.

**“Joint-Owned Pole”** means a pole in which a person, firm, or corporation shares an ownership interest with the Company.

**“Letter(s) of Credit”** means an irrevocable, unconditional and nontransferable standby Letter of Credit, in the form attached hereto as Appendix S-1, which is issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least: (a) “A-” by Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successors (“S&P”) and “A3” by Moody’s Investor Services Inc. or its successor (“Moody’s”), if such entity is rated by both S&P and Moody’s; or (b) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both.

**“Outside Date”** has the meaning set forth in Section 17.1(b).

**“Permitted Lien”** means: (a) any lien for taxes not yet due or delinquent; (b) any lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000; (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller; (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any governmental authority to regulate any asset, and all matters of public record; and (e) any lien released prior to Closing.

**“Purchase Price”** has the meanings set forth in Section 6.2.

**“Reconfiguration Work”** means that work requested by Buyer and performed by Seller in order

to continue to provide safe and reliable electric service to Buyer after the Street Lights have been acquired by Buyer.

**“Seller’s Electricity Tariff”** means Seller’s P.S.C. No. 220 – Electricity Tariff, as modified and in effect from time to time.

**“Seller’s Outdoor Lighting Tariff”** means Seller’s P.S.C. No. 214 – Outdoor Lighting Tariff, as modified and in effect from time to time.

**“Seller’s Required Approvals”** means: (a) approval of an authorized officer of Seller to sell the Street Lights; (b) pursuant to Section 70 of the New York State Public Service Law, approval of the sale of the Street Lights by operation of law or an order of the Commission approving the sale of the Street Lights pursuant to the terms of this Agreement; and (c) those other approvals, if any, listed on Exhibit D.

**“Separation Work”** means that work required to install electric disconnection equipment and identification labels complying with Seller’s standards associated with the Street Lights and also includes removal of Seller’s existing labeling from such facilities.

**“Service Agreement”** means that service agreement to be executed and delivered by Buyer to Seller at Closing providing for the supply of electricity to be used for such Street Lights under the applicable provisions of Rate Schedule S.C. No. 3 of Seller’s Outdoor Lighting Tariff (in the case of unmetered service) or Seller’s Electricity Tariff (in the case of metered service).

**“Street Lights”** means those certain street lights and related facilities owned solely by Seller and used to provide lighting service to Buyer under bill account number 01552-94107, located within Buyer’s geographical boundaries, used solely for street lighting purposes, and which consist of luminaires, lamps, brackets, associated wiring, convenience outlets, electrical connections and appurtenances, as described in Exhibit E, which description shall be revised under Exhibit E-1 in accordance with Section 2 below, and will not include Excluded Assets.

**“Surety Bond(s)”** means the form attached hereto as Appendix S-2, which shall be considered as security for the performance of all of the Buyer’s contractual obligations contained in this Agreement, issued by a major insurance carrier (“Surety”) with a credit rating of at least: (a) “B+” by A.M. Best & Company; or (b) “A-” by S&P.

**“Transaction Costs”** consist of transfer taxes and recording fees associated with the sale of the Street Lights.

**“Transition Costs”** consist of costs related to the Seller’s internal system inventory updates, billing data changes, and data updates associated with the sale of the Street Lights.

2. **Transfer of Street Lights.** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer, and deliver to Buyer, and Buyer shall purchase, assume, acquire, and receive from Seller, all of Seller’s right, title, and interest in and to the Street Lights.

The Buyer understands and agrees that the list of the Street Lights on Exhibit E (“Preliminary Description of Street Lighting Assets”), provided by the Seller as of the Effective Date, is a preliminary list of Street Lights which might not include all of the Street Lighting facilities that the Buyer is purchasing under this Agreement. The Buyer further understands and agrees that on the Closing Date, the Seller shall deliver to the Buyer a final list of Street Lights which shall be provided as Exhibit E-1 (“Final Closing Description of Street Lighting Assets”) under this Agreement. The Seller agrees to perform such task and deliver Exhibit E-1 to the Buyer on the Closing Date. The Parties agree that the Street Lights listed on Exhibit E-1 will be the final description of the Street Light facilities provided by the Seller under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Buyer maintains sole responsibility for the accuracy and completeness of the Street Lights listed in Exhibit E and Exhibit E-1.

After the Closing Date, the purchase of any street lights and related facilities (“Additional Facilities”) not included in Exhibit E and Exhibit E-1 shall be subject to an additional purchase price calculation. If, at such time, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller such Additional Facilities, Buyer shall pay to Seller an additional purchase price in consideration for the Additional Facilities.

3. **Demarcation of Ownership.** From and after Closing, Buyer shall own the Street Lights as follows:

3.1 The Parties acknowledge and agree that there may not be a physical ownership demarcation point to separate or identify ownership (post-Closing) of Buyer’s Street Lights from Seller’s electric distribution structures or systems. Accordingly, the Parties agree that the point of ownership demarcation shall be deemed to be the existing connection point where the applicable Street Light is energized from the electric distribution system (“Connection Point”). The Seller shall retain ownership of the electric distribution system up to and including the Connection Point. Buyer shall own the street lighting system from the Connection Point to the luminaire inclusive of the applicable Street Light.

3.2 The Buyer shall own Street Lights supplied from overhead conductors from the Connection Point at Seller’s secondary conductor to the street light and including the luminaires, lamps, brackets, and associated wiring, with Seller retaining ownership of the electrical distribution system up to that Connection Point; and

3.3 The Buyer shall own Street Lights supplied from underground conductors from the Connection Point at Seller’s secondary conductor to the underground conductor supplying such street light, including the foundation, standard, luminaires, lamps, brackets, and associated wiring, and conduits in which any underground conductors transferred to Buyer under this Agreement may be located.

3.4 To the extent there is any uncertainty or conflict with respect to the Connection Point, the Seller shall, in its sole discretion, define the Connection Point.

4 **Convenience Outlets.** After the Closing, the Customer shall own convenience outlets located on Street Lights they purchase. Customer's usage of such convenience outlets shall be billed as an unmetered estimate in accordance with the terms of Seller’s Electricity Tariff.

Convenience outlets located on distribution poles, Joint-Owned Poles, or any poles or street lights not purchased by Customer shall continue to be owned by the Company. With regard to such convenience outlets, customer shall continue to pay an annual facility charge pursuant to Seller's Outdoor Lighting Tariff, and its usage of such outlets shall be billed as an unmetered estimate in accordance with the terms of Seller's Electricity Tariff.

5        **Excluded Assets.** Seller is not assigning, conveying, transferring, or delivering to Buyer and Buyer is not purchasing, assuming, acquiring or receiving from Seller any of Seller's right, title, and interest in and to the following, all of which are being retained by Seller following the Closing (collectively, the "Excluded Assets"):

5.1       Any and all of Seller's right, title, and interest in and to any poles, structures, facilities, or facilities attached or appurtenant to, but not comprising, the Street Lights, with the exception of those certain lighting poles identified in Exhibit F, if any;

5.2       Any and all of Seller's right, title, and interest in and to any and all spare parts or spare components relating to the Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.3       Any and all of Seller's right, title, and interest in and to any and all vehicles, facilities, tools, and supplies relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.4       Any and all of Seller's right, title, and interest in and to any and all agreements and contracts with third parties relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.5       Any and all of Seller's right, title, and interest in and to any and all franchise grants, license, permits, and interests in real property pertaining in any way to any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights; and

5.6       Any and all of Seller's right, title, and interest in and to any and all intellectual property rights associated with the street lights, including but not limited to engineering standards, facility information, warranty information, maps and asset records.

6        **Closing and Purchase Price.**

6.1       **Closing.** The closing of the purchase and sale of the Street Lights (the "Closing") shall take place at the offices of Seller at 10:00 a.m. (Eastern Time) on the tenth Business Day after the conditions to Closing set forth in Sections 13 and 14 (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived by the Party entitled to waive such condition, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing. The date of Closing is hereinafter referred to as the "Closing Date." The Closing shall be effective for all purposes as of 12:01 a.m. (Eastern Time) on the Closing Date.

6.2 **Purchase Price.** The total “Estimated Purchase Price” for the Street Lights is THREE HUNDRED EIGHT THOUSAND SEVEN HUNDRED TWENTY Dollars (\$308,720.00). The Estimated Purchase Price consists of the estimated Net Book Value (“NBV”) of the Street Lights of TWO HUNDRED EIGHTY-SEVEN THOUSAND ONE HUNDRED NINETY-SEVEN Dollars (\$287,197.00), plus estimated Transition Costs and Transaction Costs totaling TWENTY-ONE THOUSAND FIVE HUNDRED TWENTY-THREE Dollars (\$21,523.00). The Company will calculate the actual NBV and associated impact on the Transition Costs and Transaction Costs at the date of the Closing and will adjust (up or down) the Estimated Purchase Price to arrive at the “Final Purchase Price.” Seller will provide Buyer written notice of the amount of the Final Purchase Price no less than ten (10) days prior to the Closing Date.

6.3 **Security for Separation Work.** At Closing, Buyer shall provide financial security assurance, in a form acceptable to Seller, for the performance of the Separation Work and Additional Separation Work (as defined in Section 8.1) and for any costs incurred by Seller to repair damages or site alterations to Seller’s facilities caused by Buyer’s employees, contractors or subcontractors in performing the Separation Work and Additional Separation Work, in the amount of THREE HUNDRED TWENTY-SEVEN THOUSAND TWO HUNDRED Dollars (\$327,200.00) pursuant to either a Letter of Credit or a Surety Bond. The form of Letter of Credit is attached hereto as Appendix S-1, and the form of Surety Bond is attached hereto as Appendix S-2. The Parties’ rights and obligations with respect to such security are set out in Section 8.1.

6.4 **Payment of Final Purchase Price and Posting of Security.** The Final Purchase Price shall be payable at Closing in immediately available U.S. funds by wire transfer to the account designated by Seller.

## **7 Condition; Disclaimers; Indemnification.**

7.1 **Condition and Liability.** The Street Lights are being sold, assigned, conveyed, transferred, and delivered to Buyer “as is, where is” without warranties or representations of any kind and subject to all faults of whatever nature, except Seller represents and warrants that to Seller’s knowledge, it has good and marketable title to the Street Lights and that they shall be conveyed to Buyer, at the time of Closing, free and clear of all liens and encumbrances except for Permitted Liens. All liabilities, obligations, and claims in connection with the Street Lights that arise or are incurred after the Closing Date shall not be deemed liabilities or obligations of Seller and shall be the full responsibility of Buyer. As of the Closing Date, Buyer shall assume all responsibility and obligations associated with ownership of the Street Lights, including without limitation any repair, maintenance, replacement and operation responsibilities. Seller will conduct stray voltage testing of the Street Lights in conformance with the requirements of the Commission’s Electric Safety Standards (established in Case 04-M-0159 and any other applicable requirements). In the event Seller identifies a stray voltage condition, Seller will make the condition safe and immediately notify Buyer of its responsibility to take all steps necessary to safeguard, mitigate, and permanently repair the stray-voltage condition. Buyer shall indemnify, defend, and hold Seller, its affiliates, and their respective, officers, directors, employees, representatives, and contractors, harmless for all injuries, damages, losses, or claims resulting from the failure of Buyer, or any of its agents, employees, or contractors, to exercise reasonable care in permanently repairing such stray-voltage condition. Buyer will report to Seller when it has completed the permanent repairs.

**7.2 Warranty Disclaimer.** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT SELLER SHALL IN NO WAY BE DEEMED OR HELD TO BE OBLIGATED, LIABLE, OR ACCOUNTABLE UPON OR UNDER ANY GUARANTEES OR WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE STREET LIGHTS, THEIR DESIGN, MANUFACTURE, CONSTRUCTION, FABRICATION, CONDITION OR PERFORMANCE, INCLUDING IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH ANY LAWS OR STANDARDS, INCLUDING THE NATIONAL ELECTRIC SAFETY CODE ("NESC"), THE NATIONAL ELECTRICAL CODE ("NEC"), THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, "THE ELECTRIC POWER GENERATION, TRANSMISSION, AND DISTRIBUTION" STANDARD, THE OCCUPATIONAL SAFETY AND HEALTH ACT AND ANY RULES OR REGULATIONS THEREUNDER, WHETHER OR NOT SELLER KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

**7.3 Liability Disclaimer.** FROM AND AFTER THE CLOSING DATE, THE SELLER, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS SHALL NOT BE LIABLE TO BUYER OR ITS OFFICERS, OFFICIALS, EMPLOYEES, REPRESENTATIVES, OR CONTRACTORS FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL PUNITIVE, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CONDITION, DESIGN, ENGINEERING, INSTALLATION, MAINTENANCE, CONSTRUCTION, LOCATION, OPERATION OF, OR FAILURE OF OPERATION OF, THE STREET LIGHTS, UNDER ANY THEORY OF LAW THAT IS NOW OR MAY IN THE FUTURE BE IN EFFECT, INCLUDING WITHOUT LIMITATION: CONTRACT, TORT, N.Y. GEN. BUS. LAW ARTICLE 22A, STRICT LIABILITY, OR NEGLIGENCE. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IF THE BUYER'S LIABILITY IN CONNECTION WITH THIS AGREEMENT IS LIMITED OR CAPPED PURSUANT TO ANY APPLICABLE STATUTE OR REGULATION, THEN THE SELLER HERETO SHALL BE ENTITLED TO ELECT AN IDENTICAL LIABILITY LIMITATION AND/OR CAP AS IF SUCH STATUTE OR REGULATION WERE APPLICABLE TO THE SELLER.

**7.4 Indemnification.** The Buyer agrees that from and after the Closing Date, to the extent permitted by law and to the full extent of the Buyer's insurance coverage, it shall defend, pay, protect, indemnify, and save harmless the Seller, its direct and indirect parent companies, subsidiaries and affiliates against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys' fees), costs, and expenses arising out of or in connection with this Agreement and/or the ownership, maintenance, and operation or the failure to maintain or operate the Street Lights resulting from any act, failure, or omission on



the part of the Buyer or any of its agents, employees, or contractors. The Seller, and not the Buyer, shall remain responsible for claims in connection with the Street Lights that accrued prior to the Closing Date, including costs and damages resulting from pending claims in litigation relating to the Street Lights, if any, to the extent such claims arose from events occurring prior to the Closing Date.

7.5 **Operability of the Street Lights.** Seller has maintained and currently maintains, the operability of the Street Lights in a manner consistent with Seller's Outdoor Lighting Tariff. Until Closing, Seller shall continue its regular program of operating and maintaining the Street Lights.

7.6 **Survival.** The obligations set forth in this Section 7 shall survive the termination or expiration of this Agreement.

## 8 **Separation Work; Reconfiguration Work.**

### 8.1 **Separation Work.**

(a) Buyer elects to perform all of the Separation Work and shall perform all such Separation Work. Buyer further agrees that it shall provide Seller with financial security assurance, as set forth in Section 6.3 above, in the form of a Letter of Credit or Surety Bond (the choice of which is in Buyer's sole discretion) and shall cause such Separation Work to be completed within twenty-four (24) months of the Closing or such other period as Buyer and Seller shall agree in writing. Seller agrees to work in good faith, at Buyer's request, to timely provide the information necessary to help Buyer perform such Separation Work. If Buyer further requests Geographical Information System ("GIS") data or maps of the Street Lights, Seller will work in good faith, at Buyer's sole cost, to reasonably develop and provide such information.

(b) In the case that a Letter of Credit has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration of the Letter of Credit, the credit rating of the bank issuing any Letter of Credit falls below the level set forth in the definition of Letter of Credit above, or (ii) the bank repudiates its obligations under, or fails to honor or pay against, the Letter of Credit before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement (a "Substitute Letter of Credit") within two (2) weeks after the occurrence of such event. If the Letter of Credit is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may drawdown on the entire Letter of Credit.

(c) In the case that a Surety Bond has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration date of the Surety Bond, the credit rating of the Surety issuing any Surety Bond falls below the level set forth in the definition of Surety Bond above, or (ii) the Surety repudiates its obligations under, or fails to honor or pay against, the Surety Bond before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Surety Bonds from a Surety meeting the credit rating level set

forth in this Agreement (a “Substitute Surety Bond”) within five (5) business days after the occurrence of such event. If the Surety Bond is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. If the Surety is declared bankrupt or becomes insolvent, or if its right to do business is terminated, or if its status for any other reason is rendered inadequate for the Buyer to meet its obligations hereunder, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement within fifteen (15) days after the occurrence of such event. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may make a claim against the entire Surety Bond. To the extent Seller makes a claim against the Surety Bond for any performance obligation under this Agreement and in the event the Surety does not honor it, either in whole or in part (the “Rejected Claim”), then Buyer understands and agrees that Buyer shall remain financially responsible for such Rejected Claim. In addition, Buyer’s right to reduce the Surety Bond amount pursuant to this Agreement shall be suspended until Buyer satisfies the Rejected Claim.

(d) To the extent that the Separation Work is performed by Buyer or Buyer’s contractor, and is not performed by Seller, Buyer represents and warrants to Seller that any personnel that perform work on the Street Lights will be qualified by complying with established regulations and standards associated with the work to be conducted. To identify requirements related to safety or the construction, repair, or maintenance of the street lighting system, Buyer should consult among other documentation, the Occupational Health and Safety Administration (“OSHA”) requirements, including but not limited to OSHA 1910.269, “The Electric Power Generation, Transmission, and Distribution” standard, the NEC, the NESC, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, and requirements by the New York State Department of Transportation. In addition to that which is provided in Section 7.4, Buyer shall indemnify, defend, and hold harmless Seller from any injury, damage, loss or claims resulting from any breach by Buyer of this representation and warranty.

(e) Within thirty (30) days of Buyer’s completion of the Separation Work, Buyer shall provide written notice to Seller that such Separation Work has been fully performed in accordance with this Agreement. Upon such notice from Buyer, Seller may perform any necessary inspections, at Seller’s cost, to determine that all Separation Work has been completed. If such inspections reveal that, in Seller’s sole and reasonable discretion, the required Separation Work has not been performed or adequately performed, Seller shall: (i) notify Buyer of the need for additional Separation Work (the “Additional Separation Work”); and (ii) allow Buyer until twenty-four (24) months after Closing to perform or cause to be performed by a third party the necessary Additional Separation Work. Upon completion of the Additional Separation Work, Buyer shall provide written notice to Seller that such Additional Separation Work is complete.

(f) If Buyer has not completed all Separation Work and Additional Separation Work, within twenty-four (24) months of the Closing in accordance with this Section 8.1, Seller may at its option elect to notify Buyer of its intention to perform such work on Buyer’s behalf. Seller shall provide such notice within thirty (30) days of the end of the twenty-four (24) month period set forth above. In such event, upon completion of such work by Seller, Seller shall determine its actual costs

of performing such work, inclusive of all applicable overheads and adders, and shall invoice Buyer for that amount. If Buyer fails to pay any invoice issued by Seller for the cost of performing such work within thirty (30) days of the date of such invoice, Seller may draw on the financial security amount provided by Buyer for such purposes under Section 6.3 of this Agreement. In the event that the financial security amount is in excess of Seller's invoice for the Separation Work, Seller shall release the financial security amount in excess of such amount. In the event that the financial security amount is insufficient to satisfy Seller's invoice for the Separation Work, Seller may, at its option, include all or any part of the remaining invoice balance for the Separation Work in Seller's bills or invoices to Buyer for street lighting electric service. Notwithstanding the foregoing, Seller shall release the financial security assurance provided by Buyer for the Separation Work within ninety (90) days of Seller's reasonable determination that all necessary Separation Work and Additional Separation Work has been adequately completed by Buyer in accordance with this Agreement; or (b) if applicable, Buyer's full payment of any invoices for Seller's performance of the Separation Work.

(g) Nothing in this Agreement shall be construed to require Seller to perform any Separation Work or Additional Separation Work beyond that which is expressly agreed to herein, to perform any other work on facilities owned by Seller at the request of Buyer, or to maintain, repair or replace any equipment owned by Buyer.

8.2 **Reconfiguration Work.** Buyer elects not to have Seller perform any Reconfiguration Work, and Seller shall not perform any such Reconfiguration Work.

## 9 **Taxes and Assessments.**

9.1 Real property taxes and assessments and any other applicable fees, taxes and charges assessed or imposed on Seller, by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lights, will be prorated and adjusted as of 11:59 p.m. of the day before the Closing Date, with Seller bearing the expense of the item applicable to the period before the Closing Date and Buyer bearing the expense of the item applicable to the period on or after the Closing Date. In consideration of Seller's agreement hereunder, Buyer agrees that it shall exercise Commercially Reasonable Efforts to obtain, and cooperate with Seller in obtaining, a reduction from New York State, prior to the next tax status date, in the assessed valuation of its real property facilities located within the Buyer's municipal boundaries that accurately reflects the removal of the Street Lights from the real property owned by Seller within the Buyer's municipal boundaries.

9.2 All transfer and sales taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Buyer. Buyer shall prepare and file in a timely manner any and all tax returns or other documentation relating to such taxes; provided that, to the extent required by applicable law, Seller will join in the execution of any such tax returns or other documentation relating to any such taxes. Buyer shall provide to Seller copies of each such tax return at least thirty (30) days prior to the date such tax return is required to be filed.

10 **Bill of Sale and Risk of Loss.** The sale, assignment, conveyance, transfer, and delivery of the Street Lights will be effected by the Bill of Sale. On the Closing Date, Seller shall deliver to Buyer the Bill of Sale, fully executed and acknowledged and sealed and, simultaneously with such

delivery, Seller shall take all such steps as may be necessary to put Buyer in actual possession of the Street Lights as and where presently located. Seller shall bear the risk of loss of and damage to the Street Lights during the period from the Effective Date up to but not including the Closing Date, and Buyer shall bear the risk of loss of and damage to the Street Light from and after the Closing Date.

11 **Representations of Seller.** Seller represents and warrants to Buyer that as of the Closing Date:

11.1 **Organization and Good Standing.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted.

11.2 **Absence of Conflicts.** Subject to obtaining Seller's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby, nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Seller's Certificate of Incorporation or any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Seller, which has not already been obtained.

11.3 **Authorization.** Subject to obtaining Seller's Required Approvals, Seller has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary corporate action; and this Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Within 30 days of the execution of this Agreement, Buyer agrees to provide to Seller its resolutions of the governing board for Buyer certified by the Secretary, Assistant Secretary, or other officer of Buyer authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

12 **Representations of Buyer.** Buyer represents and warrants to Seller that as of the Closing Date:

12.1 **Organization and Good Standing.** Buyer is a municipality duly constituted, authorized and validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted

12.2 **Absence of Conflicts.** Subject to obtaining Buyer's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby,

nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Buyer's organizational documents or any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Buyer, which has not already been obtained.

12.3 **Authority.** Subject to obtaining Buyer's Required Approvals, Buyer has all requisite municipal power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary municipal action; and this Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

12.4 **Availability of Funds.** Buyer has sufficient funds available to it to enable Buyer to pay the Final Purchase Price to Seller at the Closing.

13 **Conditions Precedent to Buyer's Obligations.** All obligations of Buyer under this Agreement are subject to the fulfillment at or before the Closing of each of the following conditions:

13.1 **Seller's Representations and Warranties.** The representations and warranties made by Seller in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing Date; provided that Seller shall have no liability to Buyer for any such representation not being materially true and correct as of the Closing Date due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

13.2 **Seller's Performance.** Seller shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

13.3 **Buyer's Required Approvals.** On or before the Closing Date, Buyer shall have obtained Buyer's Required Approvals, and they shall be in full force and effect.

13.4 **Seller's Deliverables.** On the Closing Date, Seller shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Seller;
- (b) a counterpart of the Attachment Agreement duly executed by Seller; and

- (c) a counterpart of the Service Agreement duly executed by Seller.

14 **Conditions Precedent to the Seller's Obligations.** All obligations of Seller under this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions:

14.1 **Buyer's Representations and Warranties.** The representations and warranties made by Buyer in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing; provided that Buyer shall have no liability to Seller for any such representation not being materially true and correct as of the Closing due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

14.2 **Buyer's Performance.** Buyer shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Buyer at or before the Closing.

14.3 **Seller's Required Approvals.** On or before the Closing Date, Seller shall have obtained Seller's Required Approvals and they shall be in full force and effect.

14.4 **Buyer's Deliverables.** On the Closing Date, Buyer shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Buyer;
- (b) a counterpart of the Attachment Agreement duly executed by Buyer;
- (c) a counterpart of the Application for Service and Service Agreement duly executed by Buyer; and
- (d) the financial security assurance as outlined in Section 6.3.

15 **Expenses.** Except to the extent expressly provided to the contrary in this Agreement, and whether or not the transactions contemplated herein are consummated, all costs and expenses incurred by a Party in connection with the negotiation, execution, and consummation of the transactions contemplated hereby, including attorneys' fees and the cost of filing for and prosecuting applications for Seller's Required Approvals and Buyer's Required Approvals, shall in all instances be borne by the Party incurring such costs and expenses.

16 **Further Assurances.** Subject to the terms and conditions of this Agreement, at either Party's request and without further consideration, the other Party shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting Party may reasonably request in order to consummate the transactions contemplated by this Agreement; provided that the other Party shall not be obligated to execute or deliver any instruments, provide any materials or information, or take any actions that modify the rights, remedies, obligations, or liabilities of such other Party pursuant to this Agreement or applicable law.

17     **Termination.**

17.1   **Termination Prior to Closing.**

(a)    This Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.

(b)    This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if: (i) any governmental authority of competent jurisdiction (other than the Buyer) issues an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree is final and non-appealable; or (ii) any statute, rule, order or regulation is enacted or issued by any governmental authority which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the Closing contemplated by this Agreement has not occurred on or before one year after the Effective Date (the "Outside Date"); provided that the right to terminate this Agreement under this Section 17.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date.

(c)    This Agreement may be terminated at any time prior to the Closing by Buyer upon written notice to Seller if any of Buyer's Required Approvals shall have been denied.

(d)    This Agreement may be terminated at any time prior to the Closing by Seller upon written notice to Buyer if any of Seller's Required Approvals shall have been denied.

(e)    This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if the other Party (the "Breaching Party") has materially breached or violated a representation, warranty, covenant or agreement hereunder so as to cause the failure of a condition to the Closing set forth in Section 13 or Section 14, as applicable, and such breach (other than a breach of Buyer's obligation to pay the Final Purchase Price in accordance with the terms of Section 6, for which no cure period shall be allowed) has not been cured by the earlier of thirty (30) days following written notice thereof or the Outside Date, provided that if such violation or breach is not capable of being cured within such thirty (30) day period and such thirty (30) day period shall have ended before the Outside Date, the Breaching Party shall have an additional period to cure the breach that expires on the earlier of thirty (30) days thereafter or the Outside Date.

17.2   **Remedies Upon Termination Prior To Closing.**

(a)    If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 17.1(a), (b), (c), or (d) hereof, neither Party shall have any liability to the other Party arising from this Agreement.

(b)    If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 16.1(e) hereof, such Party may pursue any remedies against the Breaching Party available under this Agreement or applicable law, subject to the provisions of Sections 13 and 14 and subject to the limitation of liability set forth in Section 7 hereof.

18     **Mutual Releases.**

18.1     In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of such which is hereby acknowledged, Buyer for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives and contractors of all of them (“Buyer Releasors”), shall and hereby does release, remise, acquit, and forever discharge Seller, its successors, assigns, and affiliates, and the officers, directors, employees, representatives, agents, and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Buyer Releasors now have or hereafter can, shall, or may have arising in any way out of, or with respect to, any and all street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.2     In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives, and contractors of all of them (“Seller Releasors”), shall and hereby does release, remise, acquit and forever discharge Buyer, its successors, assigns, and affiliates, and the officers, directors, employees, representatives agents and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Seller Releasors now have or hereafter can, shall, or may have arising in any way out of, or with respect to, street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.3     Each Party agrees not to take a position in any proceedings before the Commission or any court in these matters contrary to the agreements set forth in this Section 18, and agrees not to assist another participant in taking such a contrary position.

19     **Miscellaneous.**

19.1     **Entire Agreement.** Seller and Buyer agree that this Agreement (together with its exhibits) constitutes the entire agreement between the Parties.

19.2     **Notices, Etc.** All notices, requests, demands, and other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered, when received by mailing, by certified mail, postage prepaid, return receipt requested, when delivered by a reputable overnight courier, or when sent by facsimile with electronic confirmation of receipt, to:

Buyer:     City of Hudson  
Attn:  
Address:



Seller: Niagara Mohawk Power Corporation d/b/a National Grid  
300 Erie Boulevard West  
Syracuse, New York 13202  
Attn: Outdoor Lighting Manager

or to such other address as shall be subsequently designated by notice to the Parties.

19.3 **Counterparts; Facsimile and Electronic Copies.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

19.4 **Severability.** If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

19.5 **Survival.** The terms and provisions of this Agreement, to the extent necessary or contemplated, shall survive the Closing. In particular, but not by way of limitation, all limitations on liability and indemnities contained in Section 7 and Buyer's obligation to reduce Seller's real property assessment shall survive the termination or expiration of this Agreement.

19.6 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect or limit in any way the meaning or interpretation of this Agreement.

19.7 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter jurisdiction of the courts of the State of New York for the purpose of interpretation and enforcement of this Agreement. Venue in any action or proceeding shall be in the State of New York.

19.8 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

19.9 **Amendment.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by authorized representatives of each Party.

19.10 **No Third-Party Beneficiaries.** Except for the provisions of Section 7 (which are intended to be for the benefit of the persons identified therein), the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

19.11 **Assignment; Binding Effect.** This Agreement and the rights and obligations

set forth herein shall not be assigned by either Party without the written agreement of both Parties; provided, however, that Seller shall be permitted to assign this Agreement to any of its affiliates without the written agreement of Buyer.

19.12 **Remedies Under Seller's Tariffs.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of Seller's Outdoor Lighting Tariff (in the case of unmetered service) or the Seller's Electricity Tariff (in the case of metered service) and, accordingly, that Seller and Buyer expressly reserve all of their rights and remedies under the tariffs, including Seller's right to terminate electric service to Buyer under such tariffs in conformance with Section 14.3 of the Commission's Rules and Regulations, 16 N.Y.C.R.R. § 13.3, in the event of the Buyer's failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under such tariffs or the Commission's Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions of this Agreement and the provisions of the tariffs, the applicable provisions of such tariffs shall apply.

19.13 **Conflicts.** In the event of any conflict between the terms of this Agreement, the Service Agreement, and the Attachment Agreement, the agreements shall prevail in the following order: (i) the Service Agreement; (ii) the Attachment Agreement, and (iii) this Agreement.

19.14 **Supersedes Previous Agreements.** This Agreement revokes and supersedes all prior or contemporaneous agreements (whether written or oral), negotiations, commitments, and writings that pertain to the subject matter hereof. All such agreements, negotiations, commitments, and writings will be of no further force or effect, and the parties to any such other agreement, negotiation, commitment, or writing will have no further rights or obligations thereunder.

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties' duly authorized representatives have executed this Agreement as of the Effective Date.

**NIAGARA MOHAWK POWER  
CORPORATION**  
"Seller"

**CITY OF HUDSON**  
"Buyer"

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**ATTACHMENT AGREEMENT**

## EXHIBIT B

### FORM OF QUIT CLAIM BILL OF SALE

Reference is made to that certain Agreement for Purchase and Sale of Street Lights dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the [BUYER] and NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “Transaction Agreement”). Pursuant to the Transaction Agreement, the undersigned, NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “Seller”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, and transfers, all of its right, title, and interest in and to the assets described on Exhibit A attached hereto and incorporated herein by reference and made a part hereof (collectively, “Assets”) to the [\_\_\_\_BUYER\_\_\_\_], a municipal corporation organized and existing under the laws of the state of New York having its principal office and place of business located at [\_\_\_\_ADDRESS\_\_\_\_] (the “Buyer”).

It is the intent of the Seller and Buyer that this instrument transfers all of Seller’s right, title, and interest in and to the Assets. Seller hereby represents to Buyer that Seller has the right to transfer all of Seller’s right, title, and interest in and to the Assets.

Seller hereby covenants and agrees for the benefit of Buyer that Seller will defend, at Seller’s sole cost and expense, the right, title, and interest of Buyer in and to the Assets against the lawful claims and demands of all persons.

Buyer acknowledges that it has examined the Assets as fully as desired and Buyer waives and disclaims any right to seek recovery from Seller based on the current condition of the Assets. BUYER AGREES THAT ALL OF THE ASSETS ARE SOLD “AS IS” AND “WHERE IS” AND WITHOUT ANY ORAL, STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, USE AND WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE). SELLER SPECIFICALLY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND GUARANTEES. Buyer shall take title to the Assets upon execution of this document, and Buyer assumes any and all liability of any kind for claims or damages in connection with the Assets arising from acts, omissions, or events occurring after the date hereof. Buyer agrees to take the Assets with knowledge that they have been used for a period of time by Seller in its business. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Buyer agrees to defend with counsel satisfactory to Seller and to pay, protect, indemnify, defend, release and save harmless Seller and its parents and affiliates and their successors and assigns and any of the officers, directors, employees, and shareholders of any of them, from and against, any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all attorneys’ fees), causes of action, suits, claims, damages, obligations, demands or judgments of any nature in connection with the Assets to the extent arising from acts, omissions, or events occurring after the Closing (hereinafter referred to as “Claims”) including, without limitation, all Claims

brought by third parties for personal injury and property damage, economic damage, or environmental damage or harm (including, without limitation, for investigation, response, removal, clean-up, and/or remediation). The Seller, and not the Buyer, shall remain responsible for claims, other than Buyer's claims, in connection with the Assets that accrued prior to the Closing, including costs and damages resulting from pending claims in litigation relating to the Assets, if any, to the extent such claims arose from events occurring prior to the Closing. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

In no event, whether as a result of breach of contract, tort (including negligence and strict liability), or otherwise shall Seller be liable for any or all special, indirect, incidental, penal, punitive or consequential damages of any nature in connection with, or arising from, the transactions contemplated by this Bill of Sale, including, without limitation, delays, lost profits, business interruptions, loss of use, lost business opportunities, loss of revenue, losses and other damages by reason of facility shutdown, equipment damage, cost of replacement power or substitute or temporary facilities or services, cost of capital, loss of goodwill, and claims of suppliers and customers, whether or not: (i) such damages were reasonably foreseeable, or (ii) Seller was advised or aware that such damages might be incurred. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any third party any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and Seller and their respective successors and assigns.

This instrument and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

To the extent that any provision of this instrument shall be held to be invalid, illegal or unenforceable, it shall be modified so as to give as much effect to the original intent of such provision as is consistent with applicable law and without affecting the validity, legality or enforceability of the remaining provisions of this instrument. Each party represents and warrants to the other that the signatory identified beneath its name below has full authority to execute this instrument on its behalf.

This instrument shall be governed by and construed in accordance with the laws of the state of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws). Venue in any action with respect to this instrument shall be in the state of New York; the parties agree to submit to the personal jurisdiction of courts in the state of New York with respect to any such actions.

This instrument may be executed in multiple counterparts, each of which shall be considered an original.

*[Signatures are on the following page.]*

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties' duly authorized representatives have executed this Quit Claim Bill of Sale as of the dates written below.

**NIAGARA MOHAWK POWER CORPORATION**

Seller

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

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

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

Date: \_\_\_\_\_

**CITY OF HUDSON**

Buyer

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

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

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

Date: \_\_\_\_\_

**Exhibit A**  
**to**  
**FORM OF QUIT CLAIM BILL OF SALE**  
**FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS**

**EXHIBIT C**  
**BUYER'S APPROVALS**



**EXHIBIT D**  
**SELLER'S APPROVALS**

**EXHIBIT E**

**PRELIMINARY DESCRIPTION OF STREET LIGHTING ASSETS**

**STREET LIGHT INVENTORY**

**EXHIBIT E-1**

**FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS**

**STREET LIGHT INVENTORY**

**EXHIBIT F**  
**EXCLUDED LIGHTING POLES**

N/A

**Appendix S-1**

**SPECIMEN LETTER OF CREDIT**

\_\_\_\_\_ Bank  
\_\_\_\_\_  
(address)

**IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE: \_\_\_\_\_  
AMOUNT U.S. \$[\_\_\_\_\_] ]  
EFFECTIVE DATE: \_\_\_\_\_

Our No. \_\_\_\_\_

**Beneficiary:**

**Niagara Mohawk Power Corporation**  
**d/b/a National Grid**  
300 Erie Boulevard West, D-1  
Syracuse, NY 13202

Attn:  
Commercial Credit & Collections Manager

**Applicant:**

**[Buyer]**  
[ADDRESS]  
[ADDRESS]  
City/Town, NY [ZIP]

At the request of:  
\_\_\_\_\_

**Reference:** This Letter of Credit supports the “Agreement for Purchase and Sale of Street Lights by and between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer],” by and between Applicant and Beneficiary dated \_\_\_\_\_.

\_\_\_\_\_  
LADIES AND GENTLEMEN:

We hereby establish this irrevocable, and unconditional, except as stated herein, Letter of Credit Number \_\_\_\_\_(this “Letter of Credit”), by order of, for the account of, and on behalf of the [Buyer] (the “Applicant”) in favor of **Niagara Mohawk Power Corporation d/b/a National Grid** (the “Beneficiary”) for drawings, in one or more drafts, up to an aggregate amount not exceeding U.S. \$[\_\_\_\_\_] effective immediately. The term “Beneficiary” includes any successor of the named Beneficiary.

This Letter of Credit cannot be amended, modified or revoked without the prior written consent of both the Bank and the Beneficiary. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless an officer of the Beneficiary shall have signed a written waiver expressly referencing the right to be waived. No such waiver shall be effective as to any transaction that occurs subsequent to the date of the waiver, or with respect to any continuance of a breach after the waiver.

We hereby undertake to promptly honor your draft(s) drawn on us, indicating our Letter of Credit number \_\_\_\_\_, for all or any part of this Letter of Credit. This Letter of Credit is issued, presentable and payable and we guaranty to the drawers, endorsers, and bone fide holders of this Letter of Credit, that drafts under and in compliance with the terms of this Letter of Credit will be honored. This Letter of Credit may not be transferred or assigned by us.

Partial drawings are permitted.

Subject to the express terms and conditions herein, funds under this Letter of Credit are available to you by presentation at our offices located at [ ] of Beneficiary's drawing certificate issued substantially in the form of Annex 1 attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary. Presentation of any drawing certificate under this Letter of Credit may be made in person to us or may be sent to us by overnight courier or by facsimile transmission to facsimile telephone number [ ].

All commissions and charges will be borne by the Applicant.

If documents, in compliance with the terms of this Letter of Credit, are received before 10:00 am (Eastern Time) on a Banking Day (as such term is defined in the uniform customs defined below), payment will be effected on or before 5:00 pm (Eastern Time) on the next Banking Day. If documents, in compliance with the terms of this Letter of Credit are received after 10:00 am on a Banking Day, payment will be effected on or before 5:00 pm on the second Banking Day following such date of receipt.

Presentation of document(s) that are not in compliance with the applicable anti-boycott, anti-money laundering, anti-terrorism, anti-drug trafficking, export denial or economic sanctions laws, regulations or orders (collectively "the Regulations") is not acceptable. Applicable laws vary depending on the transaction and may include United Nations, United States and/or local laws.

In the event that a drawing certificate fails to comply with the terms of this Letter of Credit including the regulations, we shall provide the Beneficiary prompt notice thereof stating the reasons that the certificate was determined to be non-compliant and shall upon Beneficiary's instructions hold any non-conforming drawing certificate and other related documents at Beneficiary's disposal or return any non-conforming drawing certificate and other related documents to the Beneficiary by delivery in person or facsimile transmission (with originals thereof sent by overnight courier). Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiary may attempt to correct such non-conforming drawing certificate in accordance with the terms of this Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. This Letter of Credit does not incorporate, and shall not be deemed modified or amended by reference to any document, instrument or agreement (a) that is referred to herein (except for the Uniform Customs, as defined below), or (b) in which this Letter of Credit is referred to or to which this Letter of Credit relates.

Our obligation under this Letter of Credit shall be our individual obligation and is in no way contingent upon the reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

This Letter of Credit expires with our close of business on three hundred sixty four (364) days from the effective date; however, it is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for 364 days from the present or any future expiration date hereof, unless at least sixty (60) days before any such expiration date we notify you by registered mail / courier addressed to the address noted above, that we elect not to extend this Letter of Credit for such additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 revision) International Chamber of Commerce, Publication No. 600 (the "Uniform Customs"), provided, however, that: (a) we specifically agree that a "reasonable time" within the meaning of Article 14(b) of the Uniform Customs shall not exceed three (3) Banking Days following the day of receipt of the relevant documents, and (b) if this Letter of Credit expires during the Interruption of Business as described in Article

36 of the Uniform Customs then the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the resumption of business and we hereby specifically agree to effect payment if the Letter of Credit is drawn against within thirty (30) days after the resumption of business.

Sincerely yours,

[\_\_\_\_\_bank name\_\_\_\_\_]

By: [insert name and title of authorized bank representative]

Authorized signature of Bank representative

---

**ANNEX 1 TO  
IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_  
ISSUED BY \_\_\_\_\_ [BANK NAME]**

DATE: \_\_\_\_\_

[BANK NAME]  
[ATTENTION]  
[BANK ADDRESS1]  
[BANK ADDRESS2]

APPLICANT: [BUYER]

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the "Beneficiary"), hereby certifies to \_\_\_\_\_ (the "Bank"), with reference to irrevocable Letter of Credit no. \_\_\_\_\_ dated \_\_\_\_\_ (the "Letter of Credit"), issued by the Bank on behalf of the Applicant and in favor of the Beneficiary, as follows, as of the date hereof:

1. Beneficiary is making a drawing under the Letter of Credit in the amount of \$[\_\_\_\_\_] because [check applicable provision]:

[\_\_\_\_\_] (A) Applicant has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Beneficiary and Applicant ("the [Buyer]"), dated \_\_\_\_\_.

[\_\_\_\_\_] (B) [Bank name]'s has failed to maintain a corporate long term debt rating of at least "A-" from Standard & Poor's or "A3" from Moody's Investors Service and Beneficiary has made written demand on Applicant to deliver a replacement Letter of Credit issued by a third party bank satisfying the requirements of the Beneficiary, and Applicant has failed to deliver such replacement Letter of Credit to Beneficiary prior to the close of business on the tenth (10<sup>th</sup>) day following such written demand.

[\_\_\_\_\_] (C) the Beneficiary has received notice from the Bank of its intention to cancel this Letter of Credit before its normal expiration date and Applicant has failed, prior to the close of business on \_\_\_\_\_ [insert date which is not more than thirty (30) days before the present expiration date], to deliver to Beneficiary one or more replacement Letter of Credits satisfying the requirements of the agreement titled "Agreement for Purchase and Sale of Street Lights between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer]," dated \_\_\_\_\_.

[\_\_\_\_\_] (D) Applicant has failed to reimburse Beneficiary for any costs incurred by Beneficiary to repair damages or site alterations to Beneficiary's facilities caused by Applicant's employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Applicant and Beneficiary dated \_\_\_\_\_.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. dollars \_\_\_\_\_ and \_\_\_\_/100ths (U.S. \$\_\_\_\_\_).

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

In witness whereof, this certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting officer as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary: **Niagara Mohawk Power Corporation**

By: \_\_\_\_\_(signature)

Name: \_\_\_\_\_(print name)

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

## Appendix S-2

### Performance (Surety) Bond

Bond No. \_\_\_\_\_

WITNESSETH:

The [Buyer], having an address at [ADDRESS], and [Surety Provider], having an address at \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and being duly authorized to transact the business of indemnity and suretyship in this State of New York, as **Surety**, do hereby acknowledge our indebtedness to, and are jointly and severally bound unto Niagara Mohawk Power Corporation d/b/a National Grid, as **Obligee**, in the aggregate sum of \$[\_\_\_\_\_] (the “*Maximum Obligation*”) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors, assigns or other legal representatives, jointly and severally.

The condition of this obligation is such, that:

WHEREAS, the Principal has entered into an agreement called “AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID AND THE [BUYER],” by and between Principal and Obligee dated \_\_\_\_\_, the “*Agreement*”); and

WHEREAS, as a condition precedent to the commencement and/or continuation of the Agreement, the Principal agrees to furnish Obligee with this surety bond, issued by the Surety in the amount above mentioned for the purpose of establishing credit and securing their performance obligations under the Agreement; and

NOW, THEREFORE, if Principal shall timely perform or cause to be performed any and all of its contractual obligations under the Agreement that may at any time be due and owing to the Obligee from Principal, then this obligation shall be null and void, otherwise it shall remain in full force and effect as a continuing obligation and shall not be extinguished. Should the Principal fail to perform or cause to be performed all obligations that may at any time be due and owing to the Obligee by the Principal in connection with the Agreement, then the Surety holds itself bound hereunder for the payment of all such amounts, and such amounts shall become immediately due from the Surety upon demand by the Obligee. Any liability which accrues while this bond is in force and is in effect shall remain and shall not be extinguished, regardless of the cancellation or termination of this bond, as set forth herein. Partial payment(s) shall not be deemed to extinguish this bond.

Surety hereby waives all defenses with respect to (i) notice of default of performance, (ii) notice of amounts owed by Principal to the Obligee, (iii) demand and diligence, (iv) notice of any extension of time granted by the Obligee to Principal, (v) any forbearance by the Obligee in favor of Principal, and (vi) any errors or inaccuracies with respect to the current formal corporate name of Principal as appearing on any documents established by Obligee in connection with the Agreement. Surety further waives any right to require that the Obligee institute suit against Principal for any amount owed or obligation to be performed by Principal to or for the benefit of the Obligee in connection the Agreement, it being the intent of this bond, and Surety hereby agrees, that if Principal fails or refuses to pay any such amount or perform any obligation due and owing to the Obligee under the Agreement, Surety shall pay such amount to the Obligee upon demand by the Obligee.

Amounts paid by Surety to the Obligees hereunder shall be credited against Surety's Maximum Obligation but shall not otherwise affect Surety's obligations under this bond. Principal and Surety agree that, subject to the Maximum Obligation, in any suit successfully prosecuted on this bond by the Obligees, the Obligees shall be entitled to recover, in addition to any other amount recovered by the Obligees, the reasonable attorneys' fees incurred by the Obligees in prosecuting said suit. Principal and Surety further agree that the Obligees does not, whether by accepting this bond or accepting any payment from Surety under this bond, waive its right to discontinue, in whole or in part and without prior notice, the Agreement in the event Principal fails or refuses to pay any amount and/or perform any obligation owed by Principal to the Obligees in connection with the Agreement, provided, however, the Obligees shall be under no duty to exercise such rights.

This bond is subject to the following additional terms, limitations and conditions:

1. The term of this bond shall commence [\_\_\_\_\_] and shall be continuous.
2. The Surety shall have the right to terminate its liability hereunder, but only as to amounts owed by Principal as a result of nonperformance as required under the Agreement after the effective date of such termination, at any time by giving notice in writing by registered mail to the Obligees and the Principal and stating therein the effective date of such termination which date shall not be less than thirty (30) days after receipt of said notice by the Obligees. Such notice shall not limit or terminate this bond in respect to any liability for acts, omissions, or indebtedness occurring or arising prior to the effective date of such termination by the Surety. Written notice must be by certified letter, return receipt requested, and mailed to the Obligees at Niagara Mohawk Power Corporation d/b/a National Grid, 300 Erie Boulevard West, D-1, Syracuse, NY 13202 (Attn: Commercial Credit and Collections Dept.), and to Principal at the [BUYER], [ADDRESS].
3. It is understood and agreed between the Principal and the Obligees that, upon receipt of Surety's thirty-day written notice of cancellation as provided above, the Obligees may demand from the Principal a replacement surety bond, in the amount corresponding to the existing amount of this Surety Bond at the time of such cancellation notice, by written notice to Principal and Principal shall deliver the replacement Surety Bond to the Obligees at least ten (10) days prior to the effective date of termination or expiration of this bond. In the event that a replacement Surety Bond is not provided in compliance with this paragraph, the Obligees shall have the right, but not the obligation, to pursue all legal rights afforded to Obligees under the Agreement, either in whole or in part and without prior notice.
4. No proceeding in law or in equity may be brought under this bond unless the same shall be commenced and process served prior to the expiration of one (1) year from the effective date of cancellation of this bond.
5. Obligees may make a claim on this bond by mailing the completed and signed Annex 1, along with a copy of this bond, to the following address of Surety: [ADDRESS] .
6. It is understood and agreed that any person(s) having a claim under the conditions of this bond may initiate suit in any court of competent jurisdiction upon this bond.
7. Surety agrees that no change, extension of time, alteration or addition to the Agreement shall in any way affect the obligation of this bond and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further agrees that any changes in, to, or under any contractual documents relating to the Agreement, and any compliance or non-compliance with formalities connected with such documents or changes, shall not affect Surety's obligation under this bond, and it does hereby waive notice of any such changes, compliance or non-compliance.

8. In this bond, (i) words denoting the singular include the plural and vice versa, and (ii) words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of similar import shall, unless the context requires otherwise, refer to this bond as a whole and not to any particular article, section, subsection, paragraph or clause hereof.

9. In no event shall the Surety’s obligation exceed the Maximum Obligation.

**IN WITNESS WHEREOF**, the Principal and Surety have executed and delivered this bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal) \_\_\_\_\_, as Principal

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

(Seal) \_\_\_\_\_, as Surety

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

### Annex 1

1. This Annex 1 shall be considered part of the following Performance (Surety) Bond (the "Surety Bond").

Bond # \_\_\_\_\_

Surety: \_\_\_\_\_ [Surety Provider] \_\_\_\_\_

Obligee: Niagara Mohawk Power Corporation d/b/a National Grid

Principal: [BUYER]

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Surety Bond.

DATE: \_\_\_\_\_

[Surety Name] \_\_\_\_\_

[Attention] \_\_\_\_\_

[SuretyAddress1] \_\_\_\_\_

[Surety address2] \_\_\_\_\_

Principal: [BUYER]

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the "Obligee"), hereby certifies to

\_\_\_\_\_ (the "Surety"), with reference to Surety Bond No.

\_\_\_\_\_ dated \_\_\_\_\_ (the "Surety Bond"), issued by the Surety on behalf of the Principal and in favor of the Obligee, as follows, as of the date hereof:

1. Obligee is making a claim under the Surety Bond in the amount of \$\_\_\_\_\_ because [check applicable provision]:

[\_\_\_\_\_] (A) Principal has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Obligee and Principal dated \_\_\_\_\_

[\_\_\_\_\_] (B) Surety has failed to maintain a corporate long term debt rating of at least "A-" from Standard & Poor's or a "B+" rating from A.M. Best and Company and Obligee has made written demand on Principal to deliver a replacement Surety Bond issued by another Surety satisfying the requirements of the Obligee, and Principal has failed to deliver such replacement Surety Bond to Obligee prior to the close of business on the tenth (10<sup>th</sup>) day following such written demand.

[\_\_\_\_\_] (C) the Obligee has received notice from the Surety of its intention to cancel this Surety Bond before its normal expiration date and Principal has failed, prior to the close of business on \_\_\_\_\_ [insert date which is not more than thirty (30) days before the present Expiration Date], to deliver to Obligee one or more replacement Surety Bonds satisfying the requirements of the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated \_\_\_\_\_.

[\_\_\_\_\_] (D) Principal has failed to reimburse Obligee for any costs incurred by Obligee to repair damages or site alterations to Obligee's facilities caused by Principal's employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated \_\_\_\_\_.

2. Based upon the foregoing, the Obligee hereby makes a claim under the Surety Bond for payment of U.S Dollars \_\_\_\_\_ and \_\_\_\_/100ths (U.S. \$\_\_\_\_\_).

3. To the extent possible, funds paid pursuant to the provisions of the Surety Bond shall be wire transferred to the Obligee in accordance with the following instructions:

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IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Obligee by its duly elected and acting Officer as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Obligee: **Niagara Mohawk Power Corporation**

\_\_\_\_\_(signature)

Name: \_\_\_\_\_(print name)

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



LICENSE AGREEMENT  
FOR  
CUSTOMER-OWNED  
STREET AND AREA LIGHTING  
ATTACHMENTS  
TO  
UTILITY POLES AND STRUCTURES

BETWEEN

Niagara Mohawk Power Corporation  
d/b/a National Grid  
(COMPANY)

AND

The City of Hudson,  
New York  
(CUSTOMER)

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**THIS LICENSE AGREEMENT** (“Agreement”), is made as of the last date appearing on the signature page of this Agreement (the “Effective Date”), by and between **NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID**, a corporation organized and existing under the laws of New York, having an office at 300 Erie Boulevard West, Syracuse, New York, 13202, (the “Company”) and the City of Hudson, a municipal corporation organized and existing under the laws of New York, having its principal office at 520 Warren Street, Hudson, NY 12534, (the “Customer”). The Company and the Customer are collectively referred to herein as the “Parties” and individually as a “Party.”

**WITNESSETH**

**WHEREAS**, the Customer currently receives street lighting service from the Company within its municipal boundaries under Service Classification (“S.C.”) No. 2 of the Lighting Tariff (defined below) and owns, operates and maintains and/or intends to install, own, operate and maintain, certain Equipment (defined below) to provide street and area lighting within the Customer’s municipal boundaries and to thereafter receive the electricity required to power the Customer’s street lights from the Company; and

**WHEREAS**, that certain Equipment (defined below) that the Customer has purchased from the Company, has previously installed, and/or intends to purchase and/or install, that is or will be attached to Facilities (defined below) owned in whole or in part by the Company; and

**WHEREAS**, as part of any Purchase and Sale Agreement (defined below) with the Company for that certain Equipment, Customer has agreed to perform or to pay the Company to perform any Separation Work (defined below) required to install a Disconnect Device (defined below) between each street light purchased from the Company or thereafter installed and the Company’s distribution system and to install Identification Labels (defined below) at each such location within twenty-four (24) months of the Effective Date of this Agreement or the closing of a sale transaction pursuant to a Purchase and Sale Agreement including satisfaction of all closing conditions set forth in the Purchase and Sale Agreement (“Closing”), whichever is earlier; and

**WHEREAS**, the Customer and the Company also desire to establish a process to govern the modification of the Customer's existing Equipment and the installation by the Customer of any such additional Equipment on the Facilities within the Customer's municipal boundaries as the Customer may require from time to time for street lighting and related purposes; and

**WHEREAS**, the Company and the Customer understand that this Agreement does not cover any Supplemental Attachments (defined below), and that the placement of any Supplemental Attachments will require and be subject to a separate agreement between the Company and the Customer; and

**WHEREAS**, the Company is willing to permit, to the extent it may lawfully do so, the continued existence and new attachment of the Equipment on the Facilities within the Customer's municipal boundaries pursuant to the terms and conditions established in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby agree as follows:

## **1. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, the following terms shall have the following meaning:

1.1. **"Attachment"** means any luminaire, supporting bracket, hardware, apparatus, assembly, structure, wire, conductor, cable or other circuitry and/or other lighting components, including the applicable Lighting Control, owned by Customer, existing or proposed to be installed on a Pole and/or connected to the Company's overhead or aerial distribution system or connected or proposed to be connected to the Company's underground distribution systems, for the sole purpose of providing street and/or area lighting within the Customer's municipal boundaries.

1.2. **"Authorized Attachment"** means any Equipment attached to the Company's Facilities within the Customer's municipal boundaries on or after the Effective

Date of this Agreement for which a License or a Preliminary License has been granted under this Agreement and remains in effect.

1.3. **“Conduit”** means a Structure containing one or more Ducts.

1.4. **“Connection Point”** means the point at which any Attachment receives electric power from the Company’s distribution system for the sole purpose of street and/or area lighting and shall also serve as the point of ownership demarcation.

1.5. **“Costs”** means all direct and indirect costs incurred by the Company pursuant to this Agreement, inclusive of all applicable adders and overheads in effect from time to time, and including, but not limited to, any federal, state or local taxes incurred on the Company’s receipt of amounts from Customer, on a grossed-up basis.

1.6. **“Disconnect Device”** means a Company-approved, physical disconnection assembly or apparatus that will function as a means to disengage electrical services between the Company’s electrical system and any Equipment, and may include an “in-line fuse” assembly or other form of dual pole disconnection device that may also provide a level of electrical system protection.

1.7. **“Duct”** means a single enclosed raceway or pipe in which wires or cables are or may be enclosed.

1.8. **“Electric Tariff”** means National Grid’s P.S.C. No. 220 – Electricity, Schedule for Electric Service, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.9. **“Electrical Space”** means the portion of the space on each Company or Joint Owned Pole between the top of such Pole and the point at which the lowest electrical conductor attaches to such Pole. This space is also known as the “supply space,” as defined in the National Electric Safety Code (“NESC”).

1.10. **“Equipment”** shall include all Customer-owned structural or electrical components, devices, assemblies or apparatus including the Lighting Control used or proposed to be used by the Customer to provide outdoor illumination of streets or areas, including all associated support infrastructure and electrical circuitry. Supplemental Attachments are not Equipment.

1.11. **“Facility”** or **“Facilities”** shall include all Structures, Poles, wires and other components, equipment, assemblies, apparatus or infrastructure owned by the Company in

whole or in part and used or proposed to be used by the Company to support any of the Equipment and / or to provide electric service and / or street lighting service.

1.12. **“Field Survey”** means the Company’s on-site audit and/or office asset/mapping record review of each Facility upon which the Customer proposes to:

- (i) Make a new Authorized Attachment(s);
- (ii) Relocate an existing Authorized Attachment(s); or
- (iii) Materially Change an existing Authorized Attachment.

1.13. **“Identification Labels”** means markings, tags, decals, signage or other displays that indicate ownership, location or asset reference and functional attributes of the Equipment.

1.14. **“Joint Owner”** means a person, firm, or corporation sharing an ownership interest in a Pole, Structure and/or related ancillary equipment with the Company. “Joint Owned” Poles, Structures, and/or related ancillary equipment are those in which Joint Owners share such ownership interest with the Company.

1.15. **“Joint User”** means any other utility, which shall now or hereafter have established the right to use specific Poles and/or Structures. The term “Joint User” shall not include Customer.

1.16. **“License”** means a revocable, nonexclusive license for the installation, maintenance and operation of the Customer’s Authorized Attachments subject to the provisions of this Agreement.

1.17. **“Lighting Control”** means the required ancillary device that, when connected to the individual luminaire or integral electric lighting circuitry associated with a designated group of luminaires, provides the minimal on/off operation of the luminaire(s) and may incorporate enhanced functionality (including but not limited to scheduled operation, varied illumination output and managed energy consumption as may be provided from a static, manufacturer preset or field adjustable control device or an NLC Node), but does not include any other Equipment and/or any other NLC System components, assemblies or apparatus used to facilitate the networked operation, communication, metering or other functional attributes.

1.18. **“Lighting Tariff”** means National Grid’s P.S.C. No. 214 – Street, Highway, Roadway, and Other Outdoor Lighting, Schedule for Electric Service, including

portions of the Electric Tariff incorporated therein by reference, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.19. **“Make-Ready Work”** means the work to be performed by or on behalf of the Customer, the Company, a Joint User or Other Customer, as applicable, in order to safely accommodate a new Authorized Attachment or a Material Change to an Authorized Attachment.

1.20. **“Material Change”** or **“Materially Change,”** means any alteration, modification, or replacement made to any Authorized Attachment that, in the Company’s sole judgment, would change the characteristics, licensed specifications, safety, mode of operation or maintenance, physical attributes, or use of the Facilities by the Company or Other Customers, or that would change the attributes of any such Facility related to engineering, billing or financial reporting. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind light-emitting diode (“LED”) luminaire, including the specified luminaire control, with similar physical and operational characteristics in the same location and orientation as the existing luminaire and the continued use of the existing luminaire support infrastructure, nor the initial installation of a Disconnect Device within twenty-four (24) months after Closing, as set forth in the Purchase and Sale Agreement, will be considered a Material Change except as required to facilitate accurate billing and inventory records.

1.21. **“Network Lighting Control Node”** or **“NLC Node”** means a communication-enabled photoelectric control device connected directly (affixed) or indirectly (non-affixed) to a luminaire as a component of the Equipment for the primary purpose of a Lighting Control to operate the designated luminaire and having secondary, generally recognized functional capabilities of energy consumption measurement, Equipment diagnostic monitoring, electrical surge protection, global positioning system location coordinate referencing, and having the additive incremental weight and maximum power consumption (watts) as defined in the latest version of the product manufacturer’s technical specification literature provided to the Company by the Customer for use in any required engineering analysis and/or determination of billing parameters per the Company’s Lighting Tariff. The NLC Node, and specifically the energy consumption

measurement integrated circuit or meter chip, will not be used for energy consumption billing until such time as meter chip testing standards are available, applicable regulatory metering guidelines and tariff applications are approved, the Company's information systems are compatible with the inventory, qualification testing and monthly billing requirements, and the Customer's NLC Nodes and NLC System are compliant with all regulatory requirements.

1.22. **“Network Lighting Control (“NLC”) System”** means any individual or combination of components, equipment, assemblies, devices and apparatuses, including, but not limited to, NLC Nodes, backhauls, gateways, receivers, transmitters, repeaters, and antennas to facilitate the networked operation of the wireless and/or wired communication of the Lighting Controls, attached to Equipment and including any associated information system management software.

1.23. **“OSHA”** means the Occupational Safety and Health Act, latest rule revisions as administered by the Occupational Safety and Health Administration within the U.S. Department of Labor.

1.24. **“Other Customer”** means any entity, other than the Customer, to whom the Company has extended or hereafter shall extend the privilege of attaching Equipment of any kind to the Facilities.

1.25. **“Pole”** means any vertically oriented utility structure constructed of treated wood, metal, composites or concrete used to support electrical conductors and other utility equipment necessary to facilitate the operation of the Company's electric distribution.

1.26. **“Purchase and Sale Agreement”** means any agreement(s) between the Customer and the Company providing for the purchase by the Customer of part or all of the Equipment, including street lights, located within the Customer's municipal boundaries and owned and operated by the Company prior to the execution of the Purchase and Sale Agreement and Closing of the transaction as provided therein.

1.27. **“Preliminary License”** means the limited license authorizing Customer to maintain Equipment purchased from the Company under the Purchase and Sale Agreement without change or modification as provided in Section 2.1 of this Agreement pending completion of the Separation Work.

1.28. **“PSC”** means the New York State Public Service Commission.

1.29. **“Qualified Electrical Worker”** means any worker, electrical worker, contractor or other designated individual electrically qualified to accommodate the environment within which Customer’s Equipment shall exist, in compliance with established standards associated with work in close proximity to electrical equipment and having successfully achieved a specified minimum level of training and/or experience including, but not limited to, all applicable federal, state, and local work rules and Company work rules, including compliance with OSHA 1910.269.

1.30. **“Removal Rights”** shall refer to the Company’s right pursuant to Article 6 of this Agreement or applicable laws to request or perform the removal of Unauthorized Attachments.

1.31. **“Separation Work”** means that work required to install Disconnect Devices and Identification Labels complying with the Company’s requirements on all of the Equipment purchased by the Customer under the Purchase and Sale Agreement, and includes removal of all existing Company labeling from such Equipment.

1.32. **“Structures”** includes, but is not limited to, the Ducts, Conduits, vaults, manholes, handholes, foundations, standards and other utility equipment or infrastructure necessary to facilitate the operation of an underground electric distribution system or underground sourced street and/or area light(s) owned by the Company.

1.33. **“Supplemental Attachment”** means any Customer-owned, Customer-leased or other third-party wired, wireless or self-energized hardware, equipment, assembly, apparatus, or device, including all support infrastructure and associated wiring, cabling and circuitry, that is physically affixed and/or electrically connected to the Equipment, and used for a purpose other than the primary operational function of luminaires to provide outdoor illumination. Supplemental Attachments are outside the scope of this Agreement, and must be authorized under a separate Supplemental Attachment Agreement.

1.34. **“Unauthorized Attachment”** means any Equipment attached to the Company’s Facilities other than an Authorized Attachment.

## 2. **SCOPE OF AGREEMENT**

2.1. **Preliminary License.** The Company hereby grants Customer a Preliminary License, effective as of the Closing as set forth in the Purchase and Sale Agreement dated September, 9 2022, for the attachment to the Facilities of any and all Equipment sold by the Company to Customer in the Purchase and Sale Agreement as shown in APPENDIX II, Forms A-1 and A-2 hereto. The Preliminary License shall be limited to an initial term of twenty-four (24) months and shall only authorize Customer to maintain such existing Equipment, with no modification or change whatsoever, in its existing locations on the Company's Facilities. This Preliminary License shall terminate with respect to each individual Attachment upon completion of the Separation Work for that Attachment, at which point such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Provided, however, that for any Equipment as to which the Separation Work is not completed within such twenty-four (24) month period and for which the Company is therefore required to perform the Separation Work on the Customer's behalf under the terms of the Purchase and Sale Agreement, the Preliminary License shall be extended until the Company completes such Separation Work, at which time such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Upon the termination or expiration of the Preliminary License, the term of any License hereunder shall be determined in accordance with Section 15 of this Agreement.

2.2. **Use of NLC Nodes or NLC System; Supplemental Attachments.** The Customer agrees that if at any time it installs or utilizes an NLC System (as defined herein), only the NLC Node used for the primary operational function of the luminaire(s) (as further addressed in the Lighting Tariff) will be considered Equipment as defined and covered by this Agreement. All other NLC System equipment components or assemblies ("Additional NLC Equipment") will be considered Supplemental Attachments that will require execution of a separate Supplemental Attachment Agreement. Customer agrees not to install any Supplemental Attachments, including Additional NLC Equipment, until it has executed a Supplemental Attachment Agreement with the Company.



2.3. **Additional Equipment.** Any Equipment that is not listed in the Purchase and Sale Agreement and that is found within three (3) months following the Effective Date of this Agreement to be attached to the Company's Facilities within any area inside Customer's municipal boundaries and determined to have been owned by the Company as of the Effective Date will be considered to have existed prior to the date of this Agreement and to have been inadvertently omitted from the Purchase and Sale Agreement. If Customer purchases such additional Equipment in accordance with the Purchase and Sale Agreement, the Company shall grant Customer a Preliminary License for such Equipment, provided Customer agrees within thirty (30) days of notice to or by the Company of the discovery of such Equipment to perform any Separation Work required for such Equipment within the twenty-four (24) month period for such work established in the Purchase and Sale Agreement. If Customer does not agree to perform the Separation Work for such Equipment within such thirty (30) day period, such Equipment shall be de-energized and may be removed by the Company at the Customer's expense.

2.4. **Purpose of Licenses; Approval of Attachments and Changes.** Any Licenses granted by the Company to the Customer under this Agreement authorize the Customer to maintain its Equipment on the Company's Facilities for street lighting purposes only, subject to the provisions of this Agreement. The Company also agrees to grant Customer Licenses for such additional Authorized Attachments and for such Material Changes to Customer's existing Authorized Attachments as the Customer may request in accordance with the provisions provided in Article 4 of this Agreement. Any change to an Authorized Attachment not approved in advance by the Company as provided in Article 4 of this Agreement shall cause such Attachment to become an Unauthorized Attachment subject to the Company's Removal Rights in accordance with the provisions of Article 6 of this Agreement.

2.5. **Report of Equipment.** To assist the Company in maintaining its billing records, Customer shall provide the Company with a report of all Equipment in service as of December 31 of each calendar year during the term of this Agreement, in a form approved by the Company. This report shall be provided within thirty (30) days following the end of each calendar year and shall be provided in the form contained in the Company's

Application for Street and Area Lighting Attachment License, attached hereto as APPENDIX II, Forms A-1 and A-2, or in such other form as the Company may direct.

2.6. **Field Audits.** The Company may perform random field audits of the Customer's Equipment to determine the accuracy of any report provided by the Customer. To the extent there are any differences between either the Equipment identified in any Customer report or the Equipment listed in the Company's records and the Equipment identified by the Company after any such field audit that cannot be reconciled by the Company, the Company shall provide the Customer with written notice thereof. Within thirty (30) days of receipt of such notice, Customer shall either:

- (i) Provide the Company with written notice that it has removed such Equipment from the Facilities; or
- (ii) Submit a written request for the approval of such Equipment as a new Authorized Attachment pursuant to Article 4 of this Agreement.

If Customer fails to remove such Equipment or request approval of the Equipment as a new Authorized Attachment within such thirty (30) day period, such Equipment shall be deemed an Unauthorized Attachment subject to the provisions of Articles 5 and 6 of this Agreement.

2.7. **No Requirement to Construct, Retain, or Maintain.** Nothing contained in this Agreement shall be construed to compel the Company to construct, retain, extend, place or maintain any Facilities not needed for the Company's own service requirements. This Section is not intended to limit the obligation of the Company to provide electric distribution service to Authorized Attachments pursuant to the Lighting Tariff. In the event the Company and Joint Users / Other Customers no longer require the use of a Pole or Structure, the Company will notify the Customer and the Customer shall have the option to purchase the Pole or Structure at a price to be determined by the Company. If Customer fails to advise the Company of its intent to exercise such option within thirty (30) days of receipt of notice thereof from the Company, the License for use of that Pole or Structure shall terminate and the Company shall be free to remove the Pole or Structure with no further obligation to the Customer under this Agreement.

2.8. **No Limitation on Company's Agreements.** Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the

Company with respect to any agreement(s) or arrangement(s) that the Company has heretofore entered into or may in the future enter into with any Joint Owner(s), Joint User(s) or Other Customers not party to this Agreement regarding use of the Facilities covered by this Agreement. The rights of Customer shall at all times be subject to any such existing and future agreement(s) or arrangement(s) between the Company and any Joint Owner(s), Joint User(s) or Other Customers. Nothing contained in this Agreement shall be construed to grant, and the Company makes no representations or warranties with respect to, and is not purporting to provide, Customer with any attachment rights, licenses or consents for or in connection with the attachment of Equipment to the facilities of any Joint Owner(s), Joint User(s) or other third parties. Customer is solely responsible to obtain all approvals, licenses, attachment rights or other consents required for the attachment of the Equipment to the facilities of any such Joint Owner(s), Joint User(s) or other third parties.

2.9. **Separate Agreement for Supplemental Attachments Required.** Nothing contained in this Agreement shall be construed to grant any rights to Customer to include or install any Supplemental Attachments and/or any wired or wireless hardware, equipment, apparatus, device, antennae, or signage used for any purpose other than illumination directly on the Facilities. To the extent the Customer desires to install any such equipment directly on the Facilities, a separate agreement with the Company shall be required.

2.10. **Ownership Rights.** No use, however extended, of the Facilities and no payment of any fees or charges by Customer pursuant to this Agreement shall create or vest in Customer any ownership or property rights in such Facilities. Customer's rights herein shall be and remain a license. Neither this Agreement nor any License granted hereunder shall constitute an assignment of any of the Company's rights to use the public or private property at the location of any of the Facilities.

### **3. REQUIREMENTS APPLICABLE TO ALL AUTHORIZED ATTACHMENTS**

#### **3.1. Compliance with Applicable Regulations, Codes and Standards.**

3.1.1. **Safety Requirements.** Customer shall, at its own expense and in accordance with the terms and conditions set forth in this Agreement, install, maintain and operate all Authorized Attachments in a safe condition and in a manner that does not:

- (a) Interfere with the Company's operation of its electric distribution system;
- (b) Conflict with the use of the Facilities by the Company or by any other authorized user thereof; or
- (c) Electrically interfere with the Facilities or any equipment attached thereon or therein.

3.1.2. **Compliance with Standards.** Customer shall install, maintain and operate all Authorized Attachments in compliance with all applicable federal, state and local laws, regulations, codes and the Company's policies, practices and standards, as amended and in effect from time to time, and in accordance with the applicable requirements and specifications of the most recent editions of National Grid's engineering standards, as may be amended from time to time; the National Electrical Code ("NEC"); the National Electrical Safety Code ("NESC"); the Occupational Health and Safety Administration ("OSHA") rules and regulations, including but not limited to OSHA 1910.269; Section 70-a(5) of the New York Public Service Law; "The Electric Power Generation, Transmission, and Distribution" standard, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, requirements by the New York State Department of Transportation, and any governing authority having jurisdiction over the subject matter of this Agreement, as each may be amended from time to time.

3.1.3. **Clearance.** Customer shall ensure that clearances between each of the Authorized Attachments and all communications, electric distribution system and street lighting Facilities are fully in compliance with all applicable codes, standards and Company requirements, all as amended and in effect from time to time, to allow for proper maintenance, repair and reconfiguration of electric distribution system, street lighting and communications cables.

3.1.4. **Notification of Unsafe Conditions.** Customer and its agents, contractors, servants, representatives, and/or employees shall by test or observation determine that the Facilities are safe to perform work thereon. If the integrity of any Facility is in question or is marked by Company as unsafe, the Customer shall immediately confirm said condition with Company via phone and email and refrain from working on

the Facility.

3.1.5. **Notice of Planned Work.** The Customer agrees to provide Company with at least forty-eight (48) hours' notice via phone and email to the person named in Section 18 of this Agreement (Notices) of when it intends to perform any work with regard to the Authorized Attachments, in order to ensure that such work will not interfere with any Company maintenance, inspection, or operation work. Such notice shall include an estimate of the time the Customer will require to perform the work. The Customer understands and agrees that Company maintenance, inspection, or operation work takes precedence over the Customer's work with regard to the Authorized Attachments, and if a conflict exists, the Customer agrees to coordinate with Company to reschedule its work with regard to the Authorized Attachments.

3.1.6. **Compliance with Tariffs and Policies.** Customer shall ensure that the Authorized Attachments conform to applicable requirements of the Lighting Tariff and Electric Tariff and applicable Company policies. All lighting or illumination sources (*i.e.*, lamps and luminaires) shall comply with the energy consumption schedules and defined hours of operation as set forth in the Lighting Tariff.

3.1.7. **Make-Ready Work.** Subject to Section 4.3.4 of this Agreement, Customer shall have no obligation to perform Make-Ready Work related to the pre-existing conditions of Authorized Attachments or Facilities at a location as of the Effective Date unless and until such time as Customer makes a Material Change that affects that location.

3.1.8. **Company's Obligations.** Except as set forth in Article 6, the Company shall have no obligation to, and shall not perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment on the Facilities unless: (i) Customer has provided specific written authorization for the Company to do so and the Company is able to perform such work in compliance with all applicable PSC rules and requirements, including without limitation Rule V.F.4 of the General Information Section of the Lighting Tariff governing "Relocation of Existing Facilities;" or (ii) there is a safety-related emergency that the Company must address with respect to such Equipment or a Facility to which such Equipment is attached. If the Company does perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment,

Customer shall reimburse the Company for all Costs incurred in connection with such work in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing “Relocation of Existing Facilities.”

3.1.9. **Removed Materials.** Any materials removed by Customer, or removed by the Company on Customer’s behalf, as part of or from within any Facilities shall be managed, tested, treated, transported, stored and disposed of by the Company in accordance with applicable rules, regulations or statutes and Customer shall reimburse the Company for all Costs incurred in connection therewith.

3.1.10. **Identification Labels.** Customer shall maintain applicable National Electric Manufacturers Association (“NEMA”) or other industry standard Identification Labels upon each luminaire, in a clear and legible condition, to identify the type of light source and associated wattage or lumen output.

3.2. **Personnel Authorized to Perform Work on The Company’s Facilities.**

3.2.1. **Qualified Electrical Workers.** Customer represents and warrants that any personnel that perform work on the Equipment in the Electric Space on the Company’s Poles or within the Company’s Structures shall at all times be Qualified Electrical Workers. Customer shall indemnify, defend and hold the Company harmless from any injury, damage, loss or claims resulting from any breach by Customer of this representation and warranty. Except where such work is performed by the Company, Customer is required to execute the “Acknowledgment For The Use of Qualified Electrical Worker” form (APPENDIX III) to affirm that any person(s) under contract with and/or the direction of the Customer, including Customer’s agents, who perform the installation, maintenance, and/or removal of Attachments in the Electric Space on the Company’s Poles or on or within Structures are qualified to perform such work in accordance with the requirements of this Agreement and have completed any required training for such work.

3.2.2. **Requirements If Workers Not Qualified Electrical Workers.** In the event Customer or its agents are unable to confirm the current status of their workers as Qualified Electrical Workers, before performing any work on the Equipment, Customer shall be required to: (i) notify the Company of its inability to confirm such status of its or its agents’ workers as Qualified Electrical Workers and to determine the appropriate electrical clearance distances for such work; (ii) only perform work on Equipment in a de-

energized condition; and (iii) perform such work in full compliance with all applicable requirements of the NEC, including without limitation any electrical clearance requirements established therein. If a Disconnect Device is not installed for such Equipment, the Customer or its agent must schedule a disconnect service request with the Company prior to performing any work on such Equipment. Following the completion of the work, the Customer or its agent must schedule a connection service request with the Company to re-energize such Equipment. The Customer will be assessed a Lighting Service Charge for each service work order occurrence as stated in the Lighting Tariff.

3.2.3. **No Access to Enclosed and Underground Structures.** Customer and its agents are prohibited from, have no authority to, and shall not permit or cause any third party to, access or ingress any of the Company's enclosed or underground primary or secondary electric distribution system Structures, including, but not limited to, manholes, handholes, vaults, transformers, and switchgears, unless such access or ingress is under the direct supervision of the Company.

3.2.4. **Company Assistance in Enclosed and Underground Structures.** If and to the extent the Customer or its agent needs access or ingress to any of the Company's underground electric distribution system infrastructure, the Customer or its agent shall contact the Company and the Company shall respond to such request, provide required support, and/or perform the necessary work as requested following its normal work order scheduling protocol, provided that the Company determines, in its sole discretion, that such connection / disconnection or other requested work is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.5. **No Connections/Disconnections.** Customer and its agents shall not perform or make any connections (permanent or temporary) to, disconnections from, or in any way handle, tamper or interfere with, or otherwise disrupt, the Company's electric distribution system or assets, in whole or in part, nor shall the Customer permit or cause any third party (including without limitation, Customer's agent) to do so. The Company shall be the sole party with authority to perform or make any and all (permanent and temporary) connections to or disconnections from the Company's electric distribution system or other assets. If and to the extent the Customer or its agent has a need for a

connection or disconnection associated with the Company's electric distribution system or assets, the Customer or its agent shall contact the Company by making a connection / disconnection request through normal customer contact channels and the Company shall make the necessary connection / disconnection, provided that the Company determines, in its sole discretion, that such connection is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.6. **Customer Responsibility for Costs.** The Customer agrees to compensate the Company for all Costs incurred by the Company in connection with work performed by the Company associated with each Attachment consistent with the charges or fees as set forth in this Agreement and/or as defined in the applicable provisions of the Lighting Tariff.

3.3. **Maintenance of Authorized Attachments.**

3.3.1. **Cable Locating; One Call System.** Customer shall be responsible for its own underground cable locating and for participation in the "One Call System(s)" providing one-call notifications within the Customer's operating service area. The One Call System is an independent association which, in compliance with federal, state and local requirements, facilitates the location identification of underground utility infrastructure through a notification / communication process between excavators and underground facility owners. The contact information for the One Call System responsible for a specific geographic area within the United States can be obtained by calling 811 nationally. As of the Effective Date, Dig Safely New York, Inc. is this association.

3.3.2. **NJUNS.** Customer shall participate, at its sole expense, in any forum, group or organization and utilize any designated common information management system established to facilitate communications, priority, schedule, and any other functions necessary to manage, locate or identify the attachment assets and actions of all customers and other facility owner(s) which are in conjunction with or may have an impact upon an Attachment. As of the Effective Date, the National Joint Utilities Notification System (NJUNS), is this organization.

3.3.3. **Access to Company Structures.** Customer may (or may expressly authorize the Company, its employees or agents to) access or enter the Company's Structures for the purpose of asset verification, inventory, inspection and/or other



engineering or asset management functions provided the Customer provides sufficient advance notice to the Company to accommodate all aspects of scheduling. A representative of the Company shall be present at all such times, for which Customer shall pay the Company the applicable fee or charge specified in the Lighting Tariff unless, in the sole discretion of the Company, the scope of such support service is in excess of the defined fee or charge scope, in which instance the Customer will pay all fully loaded costs for such support service. All personnel entering any Company Structure are to be properly qualified and outfitted with personal protective equipment (PPE) for the physical, environmental and electrical conditions to be encountered. Where Customer or its agent has been granted access as provided above, the Company may halt such activities if they threaten the safety of any individuals or property or the integrity or reliability of the Company's electric distribution system.

3.3.4. **Tree Trimming.** All tree trimming required to accommodate prospective maintenance and operation of Authorized Attachments, including but not limited to the functional performance, lumen output or illumination orientation, shall be performed by Customer or Customer's qualified contractor provided appropriate approvals have been granted by the owner(s) of the tree(s) and all governing authorities. The portion of the tree(s) to be impacted by trimming shall only be within a radial distance of three (3) feet of the luminaire extending below a horizontal plane established from the highest vertical point of the luminaire unless such area is within specified clearance distances of the electric distribution or transmission system as designated by the Company and/or other governing authorities.

3.4. **Inspection and Remediation of Authorized Attachments.**

3.4.1. **Right to Inspect.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment, at any time, without notice to Customer, at the Company's own expense.

3.4.2. **Right to Recover Costs of Inspection.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment and to recover its Costs in connection therewith from Customer, if the inspection performed pursuant to Section 3.4.1 of this Agreement reveals any of the following:

- (a) Unauthorized Attachments;

- (b) Material discrepancy in type, style or size of installed Attachment as compared with the Company's records;
- (c) Any situation creating a safety-related emergency or any condition that prevents safe access to or operation of any facilities or equipment installed on Pole(s) and/or Structures; or
- (d) Equipment that have been installed in violation of the provisions of this Agreement.

3.4.3. **Other Charges; No Ratification or Waiver.** Any charges imposed by the Company for such inspections shall be in addition to any other sums due and payable by Customer under this Agreement. No act or failure to act by the Company with regard to the charge or any unlicensed use by Customer shall be deemed ratification or the authorization of the unlicensed use. If any License should subsequently be issued, the License shall not operate retroactively or constitute a waiver by the Company of any of its rights or privileges under this Agreement or otherwise.

3.4.4. **Equipment Not in Compliance.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement, the Company may provide Customer with notice thereof, whereupon Customer shall bring such Equipment into compliance with the requirements of this Agreement within fifteen (15) days or such additional time as agreed to by the Company in writing (the "Notice Period"). If Customer fails to bring its Equipment into compliance with the requirements of this Agreement with such Notice Period, the Company shall provide Customer with a Final Notice of Termination of Service with respect to the Attachment that includes such Equipment in accordance with Section 13.3(b) of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3(b), and shall exercise its right to discontinue service to such Equipment in accordance with the provisions thereof.

3.4.5. **Hazardous Conditions.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement and the existing physical and/or operational conditions of such Equipment creates an emergency or has the potential to cause an imminent hazard and/or immediate danger to the safety of Company employees, contractors, other persons or property, or interfere with the performance of the Company's service obligations, the Company shall have the right to disconnect or remove such Equipment from the Facilities without notice to the Customer

in accordance with Section 13.13 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.13, and to recover all Costs incurred in connection therewith from Customer under this Agreement. After disconnection and/or removal, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.6. **Emergency Situations**. In the event of an emergency, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.7. **No Obligation with Regard to Removed Equipment**. In the event Company removes and/or disconnects Customer Equipment following a hazardous condition or emergency situation pursuant to Sections 3.4.5 or 3.4.6 above, Company shall not be responsible for disposal, delivery, or safekeeping of the Customer's Equipment (including but not limited to the control device or ancillary attachment) or replacement of same, nor shall Company be liable if any such Equipment is damaged, missing, or destroyed. The Customer shall be responsible for the proper disposal and any associated restoration caused by the removal of its Equipment and all appropriate actions required to replace such Equipment including the performance of all separation work (fuse and labeling) following such event.

3.4.8. **Customer Obligation to Remedy**. The Customer shall, at its sole cost and expense, remedy any condition identified by the Company as causing any of its Equipment to be not in compliance with the provisions of this Agreement, which remedy may include but not be limited to the relocation, reorientation, transfer or de-energizing of the Equipment as deemed acceptable by the Company. The Company shall promptly restore electric service to such Equipment upon receipt of notice from the Customer that remedial action has been taken to address such emergency or non-compliance, provided however that the Company shall have no obligation to restore service to such Equipment if it has the lawful right to withhold service from such Equipment for any other reason.

3.4.9. **Failure to Remedy**. If the Customer fails to remedy any condition identified by the Company as not in compliance with the provisions of this Agreement

within thirty (30) days or such longer period as may be agreed to by the Company in writing, the Company may deem the License for the Equipment in question to be revoked, deem the Equipment an Unauthorized Attachment and proceed to exercise its Removal Rights with respect to the Equipment constituting such Unauthorized Attachment as stated in Article 6 of this Agreement.

3.4.10. **No Warranty.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, as to the adequacy, safety or other characteristics or any structures, equipment, wires, appliances or devices owned, installed or maintained by Customer or leased by Customer from third parties.

3.5. **Damage to Facilities.**

3.5.1. **Liability; Obligation to Report.** Customer shall be liable for any damages it causes to the Facilities and to any equipment of third parties (including any Joint Owner(s), Joint User(s), and/or Other Customers) attached to the Facilities, and Customer assumes all responsibility for any and all loss from such damage caused by Customer or any of its agents, contractors, servants or employees. Customer shall make an immediate report to the Company and any Joint Owner(s), Joint User(s), and / or Other Customers of the occurrence of any such damage and agrees to reimburse the respective parties for all Costs incurred by the Company, Joint Owner(s), Joint User(s) and/or Other Customers in making repairs to the Facilities or such other equipment.

4. **REQUIREMENTS APPLICABLE TO NEW ATTACHMENTS OR EQUIPMENT AND MATERIAL CHANGES TO AUTHORIZED ATTACHMENTS OR EQUIPMENT**

4.1. **License Application.**

4.1.1. **Customer Requirements.** Customer shall not install any new Equipment on the Facilities, add any Attachments, or make any Material Change to any Authorized Attachment or to any Equipment that has been granted a Preliminary License until:

- (a) Customer has first analyzed any Equipment, Attachments, or Authorized Attachments and confirmed that any new Equipment or Attachments can be installed, or any Material Changes to any Authorized Attachment or Equipment can be implemented, in compliance with all applicable safety

codes, including the NESC, and will not create loading or other issues on the Equipment or Authorized Attachments;

- (b) Customer has submitted a written application to the Company for a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment utilizing the form in APPENDIX II, Form A-1 (Application for Street and Area Lighting Attachment License); and
- (b) The Company has approved such request and issued a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment, which shall then be deemed a new Authorized Attachment under the terms of this Agreement

The Company shall provide an assessment and response to the application based upon the proposed action(s), description and engineering / construction detail provided.

4.1.2. **Unique Identification Number.** Such additional Licenses shall establish a unique identification number for each such additional Authorized Attachment, which identification number shall be used as the individual license reference and for purposes of inventory and billing administration.

4.1.3. **Right to Refuse License.** The Company reserves the right to refuse to grant a License(s) or refuse authorization for the relocation, reconfiguration, Material Change or replacement of existing Equipment or Authorized Attachments, or the installation of new Equipment or Attachments, when the Company reasonably determines that:

- (a) Refusal is necessary to maintain the safe operation of the Company's electric distribution system;
- (b) The relevant Pole or Structure may not be replaced to accommodate Customer's proposed Attachment;
- (c) The existing Facilities on the Pole or within the Structure may not be rearranged to accommodate the proposed Attachment; or
- (d) The proposed Attachment will negatively impact other customer services provided by the Company.

For the avoidance of doubt, the Parties understand and agree that the list of above-mentioned conditions is not an exhaustive list as other conditions may exist that would require the Company to refuse to grant a License.

4.2. **Field Survey.**

4.2.1. **Requirements for Field Survey.** The Company shall perform a Field Survey for each Facility upon or within which the Customer requests a new Authorized Attachment requiring an electrical connection or the reconfiguration, relocation, Material Change or replacement of existing Equipment. The Field Survey shall identify the required work, if any, that is necessary to facilitate the electrical connection and determine whether the Pole or Structure is adequate to accommodate the requested Attachment. The Company shall provide Customer with a Field Survey cost estimate representing all anticipated Costs. The Company shall perform the Field Survey(s) following receipt of the Customer's written authorization and advance payment of the estimated amount specified by the Company in accordance with the provisions of Section 7.2.1 of this Agreement.

4.2.2. **When Survey Not Required.** The Company may determine that a Field Survey is not required if Customer proposes a new, in-kind replacement of existing Equipment having the same physical and operational characteristics and is to be in the same location and orientation as the existing Equipment in an Authorized Attachment. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind LED luminaire and/or the installation or inclusion of an NLC Node with similar physical and operational characteristics in the same location and orientation as the existing luminaire nor the initial installation of a Disconnect Device within the specified twenty-four (24) months following the Closing will require a Field Survey.

4.2.3. **Connection Point.** The Connection Point shall have the meaning ascribed to it in the Purchase and Sale Agreement, as further defined herein and as the Parties understand such to be where the street light Facility is energized from the electric distribution system or similarly referenced as the point of ownership demarcation. The Company shall own the electric distribution system up to and including the Connection Point. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Company, at its sole discretion, shall define the Connection Point.

4.3. **Make-Ready Work.**

4.3.1. **Authorization of Make-Ready Work.** In the event that the Company determines in the Field Study that a Pole or Structure is physically inadequate or

that the reconfiguration of the existing electric distribution system equipment or other Facilities is required, the Company will indicate on the Authorization for Make-Ready Work (APPENDIX II, Form B-2) its estimate of its Cost of completing the design for the Make-Ready Work and for performing the required Make-Ready Work and forward such completed authorization form to the Customer.

4.3.2. **Performance of Make-Ready Work.** The Company will schedule and perform the required Make-Ready Work following its receipt of the executed Authorization for Make-Ready Work form and Customer's advance payment of the estimated amount specified by the Company. Customer shall pay the Company for all the Costs of all Make-Ready Work in accordance with the provisions of Section 7.2.2 of this Agreement, and shall also arrange with the owner(s) of other attachment(s) on the Pole or within the Structure or other Facility for the transfer or rearrangement of such facilities to accommodate the installation, reconfiguration or removal of the Attachment(s).

4.3.3. **No Reimbursement.** Customer shall not be entitled to reimbursement of any amounts paid to the Company for Pole and/or Structure replacements, capacity upgrades, or for the reconfiguration or rearrangement of other attachment(s) on its Poles or within its Structures by reason of the use by the Company or other authorized user(s) of any additional space or capacity resulting from such Make Ready Work.

4.3.4. **Costs for Additional Equipment and Changes.** If the Company or a Joint Owner needs to attach additional equipment or make changes to existing Facilities within or upon which Customer has an Authorized Attachment, Customer agrees to be responsible to perform or to reimburse the Company for all Costs either: (i) to reconfigure its Authorized Attachment(s) in or on such Structure(s), as such reconfiguration shall be determined by the Company; or (ii) to transfer its Authorized Attachment(s) to an alternate location designated by the Company so that the additional Facilities of the Company may be attached where either an agency of government, whether local, state or federal, requires the removal, relocation, or modification of a Structure affecting Customer's Authorized Attachment; or a Structure must be repaired or replaced for any reason (as determined by the Company).

4.3.5. **Scheduled Workload.** The Company will endeavor to perform all Make-Ready Work to accommodate Customer's Authorized Attachments as a part of its normal, scheduled workload.

4.3.6. **Costs for Reconfiguration, Transfer, or Removal.** When reconfiguration, transfer or removal of Facilities of the Company is required to facilitate attachments of Other Customers or third parties on or within Structures, Customer shall be responsible for all costs incurred in connection with such reconfiguration, transfer or removal of Customer's Attachments as a result. Customer has sole responsibility for the recovery of the costs of the reconfiguration, transfer or removal of Attachments from such Other Customer(s) or third party(ies).

4.4. **Installation Requirements for New Authorized Attachments and Material Changes.**

4.4.1. **Disconnect Device.** Customer shall install a Disconnect Device within each Authorized Attachment. The Disconnect Device shall be located as close as feasibly practical to the energizing source or Connection Point and shall be readily accessible to both the Company and the Customer. The Disconnect Device shall, at a minimum, be dual pole to completely separate the Customer's energized conductors from the Company's distribution system.

4.4.2. **No Joint Use of Ducts.** Joint use of the Company's Ducts by Customer for the installation of new Equipment is not permitted.

4.4.3. **Authorization Required.** The installation of Customer Equipment is to be external of Company Structures except to facilitate access to the Connection Point as specified by the Company. If unique circumstances cause the Customer to request the installation of Equipment, such as splice boxes and coiled cables to be within Structures, the installation will only be allowed if specifically authorized by the Company in writing and such Equipment complies in all respects with Article 2 of this Agreement. Where splice boxes are allowed, cable slack shall be installed to allow the Equipment to be moved clear of the Structure, which will allow for the Company to perform facility maintenance and/or Facility repairs.

4.4.4. **Identification Labels.** Customer shall place or have placed by the Company (at Customer's sole cost and expense) as Make-Ready Work, Identification



Labels on all of Customer's Equipment including, but not limited to, cables located within or in close proximity to the Company's underground Structures and Customer handholes containing circuit Disconnect Devices. The Company shall have the right to approve or reject Customer Identification Labels that are significantly different than those described in APPENDIX II, Form E.

4.4.5. **Tree Trimming.** All tree trimming made necessary to accommodate initial construction, reconstruction, relocation, or Material Change of Authorized Attachments shall be performed by qualified contractors approved by the Company and Customer, at the sole cost and expense of Customer. The Customer and not the Company shall be solely responsible for the performance of such work and shall also be responsible for obtaining permission for such work from the owner(s) of such tree(s) and from any other governing authorities regulating such work.

## 5. **UNAUTHORIZED ATTACHMENTS**

5.1. **Failure to Comply with Tariffs.** In the event that Customer converts, replaces or otherwise uses a lighting or illumination source other than those provided in the Lighting Tariff in any Authorized Attachment, or operates such Equipment in a manner other than as stated in the Lighting Tariff, the Electric Tariff, or in this Agreement, such action shall cause the Authorized Attachment to become an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.2. **Backbilling.** If any Equipment is found on the Facilities within the Customer's municipal boundaries at any time after the third month following the Closing as set forth in the Purchase and Sale Agreement that is not covered by a License or a Preliminary License, the Company shall provide Customer with written notice thereof and may, without prejudice to its other rights or remedies under this Agreement, submit a backbill to the Customer for service to such Unauthorized Attachments as authorized by the Lighting Tariff and the PSC's rules.

5.3. **Application.** If Customer wishes to retain such Equipment, Customer shall submit to the Company a written Application For Street and Area Lighting Attachment License (Form A-1) within thirty (30) days after receipt of the Company's written notice of the existence of such Unauthorized Attachment(s). If such application is not received

by the Company within the specified time period or is rejected by the Company, the Equipment shall be deemed to be an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.4. **Company Modification or Removal of Structures.** If the Company elects, in its sole discretion, to modify, change or replace any Structure on which Equipment is located or is directly impacted, including, without limitation, to upgrade such Structure or any Facilities located on or near that Structure, the Company shall provide Customer with written notice of such work ("Company Notice") and Customer agrees to remove and relocate the Customer's Equipment located on or adjacent to such Structure to an alternate location designated by the Company within six (6) months following the date of the Company Notice, at Customer's expense and in compliance with all applicable laws, rules, regulations, codes and standards, as provided in Section 4.3.4 of this Agreement. Any Equipment not removed by Customer in accordance with a Company Notice shall be deemed to be Unauthorized Attachments.

## **6. REMOVAL RIGHTS**

### **6.1. Removal of Authorized Attachments.**

6.1.1. **Costs, Fees and Charges; Company's Right to Remove and Dispose.** Customer, at its sole expense, shall remove or have removed in accordance with this Agreement any Attachment(s) from any Facilities within thirty (30) days of its receipt of a notice from the Company requiring removal of such Attachment(s). If Customer fails to remove such Attachment(s) from the Company's Facilities within such time, the Company shall have the right to remove those Attachment(s) without any liability for damage or injury thereto, and Customer shall pay all Costs incurred by the Company in connection therewith. If the Company exercises its Removal Rights as described herein, the Company shall have the option to sell or otherwise dispose of the removed Attachment(s) provided that the Company shall credit any amounts received to Customer's account. Customer shall be liable for and pay all fees and charges pursuant to the Lighting Tariff and the terms of this Agreement to the Company until such Attachment(s) are removed.

6.2. **Removal of Unauthorized Attachments.**

6.2.1. **Right to Remove; No Notice.** The Company may de-energize and remove any Unauthorized Attachments without the need to provide any further notice to the Customer and without liability to Customer of any kind.

6.2.2. **Liability.** The Customer shall be liable to the Company for its charges under the Lighting Tariff and the Electric Tariff for electric service furnished to any Unauthorized Attachment within Customer's municipal boundaries through and until the date of its de-energization or removal and for all Costs incurred by the Company in removing the Unauthorized Attachment, and the Company shall have no liability to Customer for loss of service provided by Customer or any damage or injury to Customer's Unauthorized Attachment(s).

7. **FEES, CHARGES AND PAYMENTS**

7.1. **Fees for electric service.**

7.1.1. **Applicable Tariff.** Charges for electric energy supplied to the Equipment and for the attachment of the Equipment to the Facilities shall be as specified in the Lighting Tariff unless such equipment is not specified in the Lighting Tariff, in which instances the charges set forth in the Electric Tariff shall apply.

7.1.2. **Calculation and Payment of Fees and Charges.** Electric service charges and fees for individual Equipment not specified in the Lighting Tariff are in addition to any fee for outdoor lighting service associated with the Equipment and shall be either: (i) metered and billed per the applicable provision of the Electric Tariff; or (ii) an unmetered estimate in accordance with the terms of the Electric Tariff, with the kWh use calculation based on the cumulative maximum energy consumption value of each individual piece of Equipment at a location applied continuously over a 24 hours per day, 7 days per week, 365 days per year operation schedule, unless otherwise defined by the Company in its sole discretion. Customer will pay the electric service fees to the Company in accordance with the Electric Tariff and the Company's established monthly billing period and conditions as stated upon the rendered bill.

7.1.3. **Right to Convert to Metered Service.** Customer agrees that the Company reserves the right to convert any unmetered electric service to a metered electric

service in its sole discretion, with all conversion costs from unmetered electric service to metered electric service borne by Customer, except as otherwise provided in the Electric Tariff or the Lighting Tariff. Electric service fees shall be assessed continuously, inclusive of periods of inactive service, temporary inoperable condition, replacement, or relocation, until written notice is provided by Customer to the Company of the permanent removal of the Licensed Equipment.

7.2. **Costs for Modifying/Relocating Facilities.** Customer shall reimburse the Company for all Costs incurred in modifying and/or relocating Facilities owned by the Company to accommodate any Customer-desired service or Attachment in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing Relocation of Existing Facilities.

7.2.1. **Field Surveys.** The Company's obligation to perform any Field Survey requested by the Customer pursuant to Section 4.2 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of that Field Survey determined by the Company, which shall be sufficient to cover the Company's Costs of performing the required Field Survey. The estimated amount shall include the standard Field Survey charge as found in APPENDIX I, Schedule of Fees and Charges, and any other required ancillary service costs incurred in the performance of the Field Survey. The estimated ancillary service costs shall include but not be limited to; applicable permits, work zone and police detail protection and other safety and environmental functions which shall be required to perform the Field Survey at a specific location. The Parties agree that upon completion of the Field Survey by the Company, no adjustment of the Field Survey costs paid by Customer shall be made to reflect the Company's actual costs to perform the Field Survey, whether or not the Company's actual costs are more or less than the estimated costs paid by Customer. The current standard charge assessed to Customer and all Other Customers for the Field Survey can be found in APPENDIX I, Schedule of Fees and Charges, and is based on the Company's current estimated cost to perform and complete the Field Survey. The Company reserves the right to change such standard Field Survey charge assessed to Customer and all Other Customers from time to time and to provide written notice as stated in Section 7.4 of this Agreement.

7.2.2. **Make-Ready Work.** The Company's obligation to perform any Make-Ready Work requested by the Customer in accordance with Section 4.3 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of such Make-Ready Work as determined by the Company. The Parties agree that upon completion of the Make-Ready Work by the Company, no adjustment of the Make-Ready Work amount paid by Customer shall be made to reflect the Company's actual Costs of performing the Make-Ready Work, whether or not the Company's actual Costs are more or less than the estimated costs paid by Customer.

7.2.3. **Fees for New Attachments or Material Changes.** Customer shall pay to the Company the fees and charges for any other services performed by the Company in conjunction with any request by Customer for License(s) for new Attachments or for Material Change to existing Attachments. Such charges will be established in accordance with the terms and conditions of APPENDIX I, attached hereto and are incorporated into this Agreement by reference.

7.3. **Costs for Failure to Comply with Agreement.** Customer shall also reimburse the Company for all Costs incurred by the Company in disconnecting, removing or performing any other required work on the Equipment necessitated by Customer's failure to install, operate and maintain such Equipment in compliance with the requirements of this Agreement, provided, however, that any such action by the Company shall be without prejudice to any other remedies that the Company may have as a result of such failure by Customer to comply with the requirements of this Agreement.

7.4. **Changes to Fees and Charges.** The Company may change the amount of fees and charges specified in APPENDIX I, Schedule of Fees and Charges by giving Customer no fewer than sixty (60) days' written notice prior to the date the change becomes effective or as otherwise approved and made effective by the PSC. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement at the end of such sixty (60) day notice period if the change in fees and charges is not acceptable to Customer, provided that Customer gives the Company no fewer than thirty (30) days' written notice of its election to terminate this Agreement prior to the end of such sixty (60) day period. Upon termination of the Agreement, the Customer shall be responsible for the removal of all of its Attachments as provided in Section 16.3.3 of this Agreement.

## **8. LEGAL REQUIREMENTS**

8.1. **Obligation to Obtain Authorizations.** Customer shall be responsible for obtaining from the appropriate public and/or private authority any authorizations required to construct, operate and/or maintain its Attachments on the public and private property at the location of Poles and/or Structures for which Customer has obtained License(s) under this Agreement and shall submit to the Company evidence of such authorizations before making Attachments on such public and / or private property.

8.2. **Obligation to Comply with Applicable Law.** The provisions of this Agreement are subject to, and the Parties hereto shall at all times observe and comply with, all laws, ordinances, regulations, and rulings that in any manner affect the rights and obligations of the Parties, so long as such laws, ordinances, regulations or rulings remain in effect.

8.3. **No Forfeiture of Rights.** No Preliminary License or License granted under this Agreement shall extend to any Facilities or Equipment outside of the Customer's municipal boundaries or where the placement of Attachments would result in a forfeiture of the rights of any of the Company, Joint Users, or Other Customers to occupy the property on which such Facilities are located. If placement of Customer's Attachments would result in a forfeiture of the rights of the Company, Joint User(s), or Other Customers to occupy such property, Customer agrees to remove its Attachments forthwith; and Customer agrees to pay the Company, Joint User(s), or Other Customers all losses, damages, and Costs incurred as a result thereof.

8.4. **Not Evidence of Usable/Unusable Space.** Neither this Agreement nor the payment of any fees under this Agreement shall be used by any Party as evidence that the space occupied by Customer's Attachments is either usable or unusable space.

## **9. LIMITATION OF LIABILITY**

9.1. **Limitation on Type of Damages.** The Company, the Company's affiliates and their respective officers, directors, agents, employees, parents, affiliates, successors or assigns, shall not be liable to Customer or to its officers, directors, agents, employees, successors or assigns for any claims, suits, actions or causes of action or otherwise for

incidental, punitive, special, indirect, multiple or consequential damages (including, without limitation, attorneys' fees or litigation costs) connected with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including, without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty or strict liability.

9.2. **Limitation on Amount of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Company and the Company's affiliates and their respective officers, directors, agents, and employees to Customer and anyone claiming by or through Customer, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Agreement from any cause or causes shall not exceed the total compensation received by the Company under this Agreement, or the total amount of \$100,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9.3. **No Warranty.** The Company is not responsible or liable and gives no warranty, expressed or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, for the adequacy, safety or other characteristics of any Structures, Equipment or wires purchased by the Customer under this Agreement or owned, installed, operated or maintained by Customer or leased by Customer from third parties.

9.4. **Survival.** The provisions of this Article 9 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion, or expiration of this Agreement.

## **10. REPRESENTATIONS AND WARRANTIES; COVENANTS**

10.1. **Representations and Warranties.** On the Effective Date, each Party represents and warrants to the other Party that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it;
- (iii) This Agreement and each other document executed and delivered in accordance with this Agreement constitutes the legally valid and binding obligation enforceable against it in accordance with its terms;
- (iv) It is not bankrupt or insolvent, and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- (v) There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceeding that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vi) It is acting for its own account, has made its own independent decision to enter into this Agreement, and, as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (vii) It is in compliance with all relevant and applicable laws, tariffs, and regulations.

10.2. **General Covenants.** Each Party covenants that throughout the term of this Agreement:

- (i) it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it shall maintain (or obtain from time to time as required, including through renewal, if applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions of its governing



documents, any contracts to which it is a party, or any law, rule, regulation, or order applicable to it.

## **11. INDEMNITY**

11.1. **Requirement to Indemnify.** Customer shall at all times indemnify, defend, and save harmless, as applicable, the Company and its affiliates and their respective officers, directors, agents, and employees, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from:

- (i) Any work or action done upon the Facilities licensed hereunder or any part thereof performed by Customer or any of its agents, contractors, servants, or employees;
- (ii) Any use, occupation, condition, operation of the Facilities or any part thereof by Customer or any of its agents, contractors, servants, or employees;
- (iii) Any act or omission on the part of Customer or any of its agents, contractors, servants, or employees, for which the Company may be found liable;
- (iv) Any accident, injury (including, but not limited to, death) or damage to any person or property occurring upon the Facilities or any part thereof or arising out of any use thereof by Customer or any of its agents, contractors, servants, or employees, except where such work is performed by the Company;
- (v) Any failure on the part of Customer to perform or comply with any of the representations, warranties, covenants, agreements, terms or conditions contained in this Agreement;
- (vi) Any payments made under any Workers' Compensation Law or under any plan for employee disability and death benefits arising out of any use of the Poles, Structures, or Facilities by Customer or any of its agents, contractors, servants, employees;
- (vii) Any installation, operation, maintenance, presence, use, occupancy or removal of the Equipment by Customer or any of its agents, contractors, servants or employees, including without limitation, taxes, special charges by others, and all claims and demands for infringement of patents with respect to the manufacture, use, and

operation of the Attachments in combination with Poles, Structures, Facilities, or otherwise; or

- (viii) The proximity of the Equipment to the property of the Company or of any third party.

**11.2. FAILURE TO INDEMNIFY. IF THE COMPANY IS ENTITLED TO INDEMNIFICATION UNDER THIS ARTICLE 11 AS A RESULT OF A CLAIM BY A THIRD PARTY, AND CUSTOMER FAILS, AFTER NOTICE AND REASONABLE OPPORTUNITY TO PROCEED UNDER SECTION 11.3 OF THIS AGREEMENT, TO ASSUME THE DEFENSE OF SUCH CLAIM, THE COMPANY MAY AT CUSTOMER'S EXPENSE, SETTLE OR CONSENT TO THE ENTRY OF ANY JUDGMENT WITH RESPECT TO, OR PAY IN FULL, SUCH CLAIM. IF CUSTOMER IS OBLIGATED TO INDEMNIFY AND HOLD THE COMPANY HARMLESS UNDER THIS ARTICLE 11, THE AMOUNT OWING TO THE COMPANY SHALL BE THE AMOUNT OF THE COMPANY'S ACTUAL LOSS, NET OF ANY INSURANCE OR OTHER RECOVERY.**

**11.3. Indemnity Procedures.**

11.3.1. **Notification.** Promptly after receipt by the Company of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article 11 may apply, the Company shall notify Customer of such fact. Any failure of or delay in such notification shall not affect Customer's indemnification obligation unless such failure or delay is materially prejudicial to Customer.

11.3.2. **Right to Assume Defense; Right to Participate.** Except as stated below, Customer shall have the right to assume the defense thereof with counsel designated by Customer and reasonably satisfactory to the Company. If the defendants in any such action include the Company and Customer and if the Company reasonably concludes that there may be legal defenses available to it which are different from or additional to those available to the Customer, the Company shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. The Company shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by Customer.

11.3.3. Notwithstanding the foregoing, Customer:

- (i) Shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Company and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Company, or there exists a conflict or adversity of interest between the Company and Customer, in which event the Customer shall pay the Company's reasonable expenses; and
- (ii) Shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Company, which shall not be unreasonably withheld, conditioned or delayed.

**12. EXCLUSION OF WARRANTIES**

12.1. **No Representations Regarding Condition of Poles, Structures, or Facilities.** The Company makes no warranties, representations, guarantees or promises, whether statutory, oral, written, express, or implied as to the present or future strength, condition, or state of any Poles, Structures, Facilities, wires, apparatus or otherwise in connection with any Attachment, Equipment or any other facilities or equipment in connection with this Agreement. To the extent applicable, the Customer, or its contractors, agents and representatives performing any Attachment work, shall be responsible and liable for observations, assessments and non-destructive testing of the Poles and/or Structures to determine whether the Poles and/or Structures are safe to utilize, support, access or ascend. If the Customer questions the integrity or safety of any Pole, Structure or Facility or if any Pole, Structure or Facility is marked as unsafe, the Customer shall refrain from utilizing, accessing, ascending, or handling the Pole, Structure or Facility in any manner whatsoever and shall notify or confirm such condition with the Company. Should the Customer, or its contractor, agent or representative decide, in its sole judgment, to utilize or access a Pole, Structure or Facility (including, without limitation, Poles, Structures or Facilities that are marked unsafe or appear to be unsafe), the Customer, not the Company or its affiliates, shall assume all risk of loss, liability and damages (including injury to any person(s) (including death) or property), and Customer shall indemnify, defend, release and hold harmless the Company, its affiliates, and the Company's and its

affiliates' successors, assigns, officers, agents, representatives from all claims arising in whole or in part from use of such Poles, Structures, or Facilities in accordance with the provisions of Article 11 of this Agreement.

12.2. **No Warranties**. Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose, to the Customer or its contractors, agents or representatives performing any Attachment work as to the adequacy, safety or other characteristics of any Poles, Structures or Facilities owned by the Company or by any third party or of any Equipment, wires, appliances or other devices owned, installed or maintained by Customer or leased by Customer from third parties. It is understood that any Field Survey or other assessment of the condition of any Facilities of the Company made pursuant to this Agreement is performed solely for the protection of the Company and its other customers and not for the benefit of the Customer, its contractors, agents, employees or representatives.

12.3. **Survival**. The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement or any license issued under this Agreement.

### 13. **INSURANCE**

13.1. **Customer's Obligation to Insure**. Customer shall procure and maintain, at its own expense, insurance issued by an insurance carrier(s) satisfactory to the Company to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury, or damage as covered in Article 11 of this Agreement. Such insurance shall be primary and non-contributory, with no right of contribution by any other coverage available to the Company, its affiliates, and the Company's and its affiliates' successors, assigns, officers, agents, and representatives.

13.2. **Comprehensive/Commercial Liability Insurance**. Comprehensive or Commercial General Liability Insurance, including Contractual Liability and Product/Completed Operations Liability covering all insurable operations required under

the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion or collapse with the following minimum limits of liability:

Bodily Injury Liability	\$5,000,000
Property Damage Liability	\$5,000,000

If a combined single limit is provided, the limit shall not be less than \$5,000,000 per occurrence. Customer's insurance requirements for General Liability or Automobile Liability may be satisfied through any combination of excess liability and/or umbrella. Coverage shall include contractual liability with this Agreement and all associated agreements with respect to the Customer's ownership of the street lights being included. In the event the Customer is a governmental entity and such entity's liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the "Law"), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an insured entity.

13.3. **Worker's Compensation.** Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act and the Jones Act.

13.4. **Automobile.** Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury & Property Damage
Combined Single Limit - \$1,000,000

13.5. **Self-Insurance:** Customer may elect to self-insure any or all the requirements herein, provided the Company consents, and Customer provides written notice and evidence of self-insurance to the Company prior to the Closing as set forth in the Purchase and Sale Agreement. With respect to the Workers' Compensation, such

evidence shall consist of a copy of a current self-insured certificate or other acceptable form of proof of self-insurance. Any deductible or self-insured retention shall be at Customer's expense.

13.6. **Waiver.** The Customer and its insurance carrier(s) shall waive all rights of recovery against the Company and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision. To the extent the Customer's insurance carriers will not waive their right of subrogation against the Company, the Customer agrees to indemnify the Company for any subrogation activities pursued against them by the Customer's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Company or its employees, subcontractors or agents.

13.7. **Insurance Required Before Attachments Made; Changes to Insurance.** All insurance must be effective before the Company will authorize Customer to make Attachments to any Pole and/or Structure to the Equipment and shall remain in force until such Attachments have been removed from all such Poles and/or Structures. Customer accepts the obligation to inform the Company of changes in insurance or insurance carrier and/or policy on a prospective basis.

13.8. **Certificates of Insurance.** Customer shall submit to the Company certificates of insurance including renewal thereof, by each company insuring Customer to the effect that it has insured Customer for all liabilities of Customer covered by this Agreement; and that such certificates will name the Company as an additional insured under the General Liability, Automobile Liability, and Umbrella/Excess Liability policies (when applicable) and provide that the insurance company will not cancel or change any such policy of insurance issued to Customer except after the giving of not less than thirty (30) days' written notice to the Company. Customer shall also notify and send copies to the Company of any policies maintained under this Article 13 written on a "claims-made" basis. The following language shall be used when referencing the additional insured status of the Company: National Grid USA, its direct and indirect parents, subsidiaries and affiliates, shall be named as additional insureds.

13.9. **Contractor Insurance.** Customer shall require all of its contractors to carry insurance which meets the requirements specified under this Article 13, and to name

the Company and Customer as additional insureds, utilizing the language provided in Section 13.1 above. Customer shall also require its contractors to provide a waiver of subrogation under all policies in favor of the Company.

#### 14. **ASSIGNMENT OF RIGHTS**

14.1. **No Right to Assign.** Customer shall not assign or transfer this Agreement, or any rights or authorization granted hereunder, and this Agreement shall not inure to the benefit of Customer's successors, without the prior written consent of the Company. In no event shall any assignment of this Agreement extend the territory to which this Agreement applies beyond the Customer's municipal boundaries or permit any entity that is not eligible under the Lighting Tariff to receive street lighting service from the Company in such location, to assume any of the rights or obligations of Customer hereunder.

14.2. **Successors Bound.** In the event such consent or consents are granted by the Company, this Agreement shall extend to and bind the successors and assigns of the Parties.

14.3. **No Right to Lease.** Pole and Structure space licensed to Customer hereunder is for Customer's exclusive use only and is licensed to Customer for the sole purpose of permitting Customer to place or retain Authorized Attachments. Customer shall not lease, sublicense, share with, convey, or resell to others any such space or rights granted hereunder. Customer shall not allow a third party, including affiliates, to place attachments or any other Equipment anywhere on its Attachments or on the Facilities, Poles or within Structures, including, without limitation, the space on Facilities, Poles or within Structures licensed to Customer for Authorized Attachments, without the prior written consent of the Company.

14.4. **Maintenance Not an Assignment.** No contract between the Customer and any other party limited solely to the operation, maintenance, modification, or repair of the Equipment shall be considered an assignment or transfer under this Article.

#### 15. **TERM OF AGREEMENT**

15.1. This Agreement shall be co-terminus with the Customer's Service Agreement(s) for service to its Street Lights under either Service Classification No. 3

(energy only) of the Company's Lighting Tariff, or under the applicable provisions of the Company's Electric Tariff, or applicable successor tariffs, as may be amended from time to time, unless this Agreement is terminated earlier in accordance with Article 16 of this Agreement.

15.2. Termination of this Agreement or any licenses issued hereunder shall not affect: (i) Customer's liabilities and obligations incurred hereunder prior to the latter of the effective date of such termination or the date on which Customer's Attachments are removed from the Facilities; or (ii) the Company's and Customer's rights pursuant to the laws, ordinances, regulations, and rulings governing the subject matter of this Agreement; or (iii) any provisions of this Agreement that shall survive expiration or earlier termination of this Agreement, including Articles 9, 11 and 12 of this Agreement.

## **16. TERMINATION RIGHTS**

### **16.1. Termination of Service to Authorized Attachments.**

16.1.1. **Termination for Past-Due Bills.** The Company's bills for service under this Agreement are due when issued and are past due if not paid within twenty (20) days of issue. If Customer fails to pay such bills within such twenty (20) day period, the Company may serve Customer with a written Final Notice of Termination of Service in conformance with Section 13.3(b) of the PSC's rules, 16 N.Y.C.R.R. § 13.3(b) (a "Final Termination Notice") and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules.

16.1.2. **Final Termination Notice.** The Company may also issue a Final Termination Notice to Customer if Customer fails to comply with any of the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules. Any such notice shall identify the specific Attachments that are not in compliance with the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and the specific requirements that those Attachments do not meet.

16.1.3. **No Restriction on Removal Rights.** Nothing in this Agreement shall be construed as restricting in any way the Company's Removal Rights under Article



6 of this Agreement or the Company's right to terminate service to Authorized Attachments without notice in the event of an emergency as authorized by Section 3.4.5 of this Agreement and Section 13.13 of the PSC's rules.

16.2. **Termination of Individual Licenses.**

16.2.1. Any License(s) issued pursuant to this Agreement shall automatically terminate when Customer ceases to have authority to construct, operate, and/or maintain its Attachments on the public or private property at the location of the Facilities covered by the License.

16.2.2. Customer may at any time terminate a License for a specific Attachment provided written notice of such termination is received by the Company no less than fifteen (15) days prior to the proposed removal of the Attachment from the specific Facilities (APPENDIX II, Form D), in accordance with Article 6 of this Agreement. Following such removal, Customer shall not make any new Attachment to such Facilities until Customer has first complied with the provisions of this Agreement as though no Attachment had ever been made to such Facilities.

16.2.3. The Company may terminate a License for specific Attachment(s) on fifteen (15) days' written notice to the Customer. The Company may exercise its Removal Rights under Article 6 of this Agreement upon the expiration of this fifteen (15) day notice period.

16.3. **Termination of Agreement.**

16.3.1. **Termination for Failure to Comply with Agreement.** If Customer fails to materially comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement, or if the Attachments or Equipment is maintained or used in violation of any law and Customer shall fail within thirty (30) days after written notice from the Company to correct such default or noncompliance, the Company may, at its option, terminate this Agreement in whole or in part, along with all Licenses granted hereunder or the Licenses covering the Facilities as to which such default or noncompliance shall have occurred.

16.3.2. **Termination for Failure to Adequately Insure.** If, at any time, an insurance carrier notifies the Company that any policy or policies of insurance, acquired pursuant to Article 13 of this Agreement, will be canceled or changed so that the

requirements of Article 13 of this Agreement will no longer be satisfied and, prior to the effective date of the cancellation or change in the insurance policy(ies), Customer fails to furnish to the Company new certificates providing evidence of insurance, or other sufficient documentation that Customer meets the requirements for self-insurance in accordance with the provisions of Article 13 of this Agreement, then the Company shall have the right, at its option, to either: (i) purchase insurance at the required coverage and to include all Costs incurred by the Company in connection therewith in the Company's bills for service under this Agreement; or (ii) terminate this Agreement.

16.3.3. **Schedule for Removal; Costs.** In the event of any termination of part or all this Agreement by the Company, Customer shall submit a plan and schedule to the Company pursuant to which Customer (or its agents) will remove the Attachments affected by such termination from the Facilities within six (6) months from the date of termination, unless otherwise agreed to by both Parties in writing, provided, however, that Customer shall be liable for and pay all fees, charges and associated Costs due to the Company pursuant to the terms of this Agreement until its Attachments are removed from the Company's Poles, Structures, and Facilities.

## 17. **DISPUTE RESOLUTION**

17.1 Any claim which the Customer may have against the Company arising out of the Agreement shall be presented in writing to the Company no later than 30 days after the first occurrence of the circumstance which gave rise to the claim. The claim shall contain a concise statement of the question or dispute and the relevant facts and data (including the applicable Agreement provision) which support the claim. The Customer shall furnish any additional information which the Company may require to enable it to evaluate and decide the claim. Failure to submit any claim in such 30-day period shall constitute a waiver on the Customer's part for entitlement to either additional reimbursement or additional time for performance under the Agreement.

Any dispute between the Company and the Customer with respect to the Agreement that cannot be resolved in the normal course by the respective representatives of the Parties, shall be referred to the responsible officers of the Company and the Customer for resolution. Notwithstanding the existence of a dispute, the Customer shall be obligated to

maintain payments not in dispute to the Company and the Company shall be obligated to proceed (or to continue) with the provision of services.

If the dispute remains unresolved, after 60 days, either Party may pursue any legal remedies available to it by law.

18. **CONSTRUCTION**

18.1. **AUTHORIZATION NOT EXCLUSIVE.** Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Customer. The Company shall have the right to grant, renew and extend rights and privileges to others that are not parties to this Agreement, by contract or otherwise, to use any Pole, Structure, or Facility subject to this Agreement.

18.2. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles contained therein. Only the courts in the State of New York shall have jurisdiction over this Agreement and any controversies arising out of or relating to this Agreement and/or provisions hereunder. Each Party respectively waives personal service by manual delivery and agrees that service of process in any action arising out of this Agreement may be made by registered or certified mail, return receipt requested, and directed to each Party.

18.3. **SEVERABILITY.** In the event that any provision or part of this Agreement or the application thereof to any Party or circumstance is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions or parts hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18.4. **NO THIRD-PARTY BENEFICIARIES.** The terms and provisions of this Agreement are intended solely for the benefit of Customer, the Company and their permitted successors and assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

18.5. **FAILURE TO ENFORCE.** Failure of the Company to enforce or require compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not

constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

18.6. **ENTIRE AGREEMENT.** The Parties have freely entered into this Agreement and agree to each of its terms without reservation. Section headings are for the convenience of the Parties only and are not to be construed as binding under this Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the matters addressed herein, and all previous representations either oral or written (including, but not limited to any and all previous Attachment Agreements and/or license agreements for overhead poles/structures or underground structures insofar as Customer is concerned except as to liabilities accrued, if any), are hereby annulled and superseded.

18.7. **REMEDIES UNDER THE TARIFFS.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of the Lighting Tariff and the Electric Tariff and, accordingly, that the Company and the Customer expressly reserve all of their rights and remedies under the Lighting Tariff and the Electric Tariff, including the Company's right to terminate electric service to the Customer under the Lighting Tariff or the Electric Tariff in conformance with Section 13.3 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3 (2016), in the event of the Customer's failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under the Lighting Tariff, the Electric Tariff, or the PSC's Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions of this Agreement and the provisions of the Lighting Tariff and the Electric Tariff, the applicable provisions of the Lighting Tariff and the Electric Tariff shall apply.

18.8. **AMENDMENT.** This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by authorized representatives of both Parties.

## **19. NOTICES**

All written notices required under this Agreement shall be given by posting the same via first class mail as follows:

- (i) **To Customer:** All correspondence related to Customer's street and area lighting including but not limited to; this Agreement, Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License to Customer's office at:

City of Hudson, Corporation Counsel

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone number: \_\_\_\_\_

**24-hour Emergency Situation contact:**

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

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

- (ii) **To the Company:** Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License, and all certificates of Insurance to the Company's district office, based on region of municipality to:

**WEST**

Niagara Mohawk Corporation d/b/a National Grid  
Attention: Director, Community & Customer Management  
144 Kensington Avenue  
Buffalo, NY 14214

**EAST**

Niagara Mohawk Corporation d/b/a National Grid  
Attention: Director, Community & Customer Management  
1125 Broadway  
Albany, NY 12204

**CENTRAL**

Niagara Mohawk Corporation d/b/a National Grid  
Attention: Director, Community & Customer Management  
7496 Round Pond Road  
North Syracuse, NY 13212

A copy of all applications, notices, authorizations and certificates to:

Niagara Mohawk Power Corporation d/b/a/ National Grid  
Attention: Outdoor Lighting and Attachments  
300 Erie Boulevard West  
Syracuse, NY 13202

For Notification of Planned Work or Unsafe Conditions:

Name: Customer Service (24 hours per day)

Email: customerservice@nationalgrid.com

Phone number: 800-642-4272

- (iii) Each Party has the right to add, modify, change or remove contact information as presented herein provided such corrections are communicated in writing to the other party and made part of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement in duplicate as of the Effective Date.

**NIAGARA MOHAWK POWER  
CORPORATION d/b/a NATIONAL GRID**

**CITY OF HUDSON**

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

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

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

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

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



**APPENDIX I**  
**SCHEDULE OF FEES AND CHARGES**  
**STREET LIGHT ATTACHMENTS**

(A) Design and Engineering Fees

Design and engineering fees will be equivalent to the lighting service charge found in the Lighting Tariff, as such charge may be modified or amended from time to time.

(B) Field Survey

Whenever a Field Survey is required under this Agreement, Customer shall pay the Company for the Cost thereof. The current standard charge assessed to Customer and all Other Customers for the Field Survey is \$130.00 per Attachment and is based on the Company's current estimated Cost to perform and complete the Field Survey, but may be adjusted, as necessary, by the Company to account for estimated Costs at the time the survey is performed. Specific to each occurrence, any actions required by the Company to remedy a Pole or Structure ingress or egress condition in compliance with applicable laws, regulations, codes and company policies and procedures is considered to be in addition to the Field Survey function. The Customer shall be responsible for the associated Costs which will be predefined as an estimate in addition to the aforementioned fee.

(C) Make-Ready Work

Whenever Make-Ready Work is required under this Agreement, Customer shall pay the Company for the Costs thereof. Make-Ready Work may include, but is not limited to, the modification or replacement of the Pole, Structure, or Facility within or upon which Customer's Attachments will be placed, to safely accommodate Customer's Attachments, and such other changes in the existing facilities within or upon such Pole, Structure, or Facility as accommodating Customer's Attachments may require. Make-Ready Work Costs charged by the Company may also include the following:

- (1) The net loss to the Company on the replaced Pole, Structure, or Facility based on its reproduction cost less depreciation, plus cost of removal;
- (2) Transferring the Company's attachments from the old Pole, Structure, or Facility to the new Pole, Structure, or Facility; and
- (3) Any other rearrangements and changes necessary by reason of Customer's proposed or existing Attachments.

(D) Other Charges and Fees

Customer shall be subject to and responsible for all other applicable charges and fees under the Lighting Tariff and the Electric Tariff.



(E) Payment Date

Bills are due and payable when rendered. Full payment must be received on or before the date shown on the bill to avoid a late payment charge of one and one-half percent (1-1/2%) per month pursuant to subpart C of the Rules on Determination of Billing established in Rule IV of the Lighting Tariff.

## **APPENDIX II**

### **ADMINISTRATIVE FORMS AND NOTICES**

#### **INDEX OF ADMINISTRATIVE FORMS**

APPLICATION FOR STREET & AREA LIGHTING ATTACHMENT LICENSE	A-1
STREET LIGHT ATTACHMENT DETAILS	A-2
ESTIMATE FOR FIELD SURVEY / AUTHORIZATION FOR FIELD SURVEY	B-1
MAKE-READY WORK ESTIMATE / AUTHORIZATION FOR MAKE-READY WORK	B-2
ITEMIZED MAKE-READY WORK	C
NOTIFICATION OF DISCONTINUANCE OF USE FOR STREET LIGHT ATTACHMENT	D
IDENTIFICATION TAGS	E
LIGHTING SOURCE IDENTIFICATION LABELS	F

Agreement No.: \_\_\_\_\_

**Form A-1**

Application No.: \_\_\_\_\_ (to be provided by the Company)

**APPLICATION FOR**  
**STREET LIGHT ATTACHMENT LICENSE**

DATE \_\_\_\_\_

CUSTOMER \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

In accordance with the terms and conditions of the Street Light Attachment License Agreement between the Company and Customer, dated \_\_\_\_\_, \_\_\_\_\_ application is hereby made for a license to make \_\_\_\_\_ as Attachments to Poles or Structures as indicated on the attached Form A-2.

CUSTOMER \_\_\_\_\_

By (Print Name) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Telephone No. \_\_\_\_\_

**STREET LIGHT ATTACHMENT LICENSE**

Street Light Attachment License(s) is hereby granted to make the Attachments described in this application, identified as License No(s).:\_\_\_\_\_ as Attachments to Poles or Structures as indicated on the attached Form A-2.

DATE\_\_\_\_\_

COMPANY\_\_\_\_\_

By (Print Name)\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

Telephone No.\_\_\_\_\_

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**NOTES:**

1. Applications shall be submitted to the Company.
2. Applications to be numbered in ascending order by municipality.
3. The Company will process in order of application numbers assigned by Customer.

Agreement No.: \_\_\_\_\_

**Form A-2**

Application No.: \_\_\_\_\_

**STREET LIGHT ATTACHMENT DETAILS**

CUSTOMER\_\_\_\_\_

Municipality\_\_\_\_\_

(Note: Provide separate sheets for each municipality)

Location  
Reference

Pole or Structure Type  
Reference

Attachment Description

\_\_\_\_\_ (Yes/No) CUSTOMER HEREBY REQUESTS THE COMPANY TO  
PROVIDE AN ITEMIZED ESTIMATE OF MAKE READY  
WORK REQUIRED AND ASSOCIATED CHARGES  
(APPENDIX II FORM C).

DATE\_\_\_\_\_

CUSTOMER\_\_\_\_\_

By (Print Name)\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

\Telephone No.\_\_\_\_\_

Agreement No.: \_\_\_\_\_

**Form B-1**

Application / Request No.: \_\_\_\_\_

**ESTIMATE FOR FIELD SURVEY**

\_\_\_\_\_  
(Customer)

In accordance with the Street Light Attachment License Agreement, dated \_\_\_\_\_, \_\_\_\_\_, the following is a summary of the charges which will apply to complete a field survey covering Application / Request Number \_\_\_\_\_.

<u>Unit Quantity</u>	<u>Rate / Unit</u>	<u>Total</u>	
Field Survey	_____	_____	\$ _____
Ancillary Services	_____	_____	\$ _____
Administrative Compensation	_____ %		\$ _____
TOTAL			\$ _____

If you wish us to complete the required field survey, please sign this copy below and return with an advance payment in the amount of \$ \_\_\_\_\_.

Date \_\_\_\_\_

Company \_\_\_\_\_

By (Print Name) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Telephone No. \_\_\_\_\_

---

**AUTHORIZATION FOR FIELD SURVEY**

The required field survey covering Application / Request Number \_\_\_\_\_ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to Street Light Attachment License Agreement.

DATE\_\_\_\_\_

CUSTOMER\_\_\_\_\_

By (Print Name)\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

Telephone No.\_\_\_\_\_



Agreement No.: \_\_\_\_\_

**Form B-2**

Application / Request No.: \_\_\_\_\_

**MAKE-READY WORK ESTIMATE**

\_\_\_\_\_  
(Customer)

Field survey work associated with your Application / Request Number  
\_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, for  
Attachment to Poles or Structures has been completed. The following is a summary of  
the charges which will apply to complete the required Make-Ready Work.

TOTAL MAKE-READY CHARGES \$ \_\_\_\_\_

Attached as requested, is an itemized description (Form C) of required Make-Ready  
Work. A cost estimate of associated Make-Ready Work is also attached. If you wish us  
to complete the required Make-Ready Work, please sign this copy below and return with  
an advance payment in the amount of \$\_\_\_\_\_.

DATE \_\_\_\_\_

COMPANY \_\_\_\_\_

By (Print Name) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Telephone No. \_\_\_\_\_

---

**AUTHORIZATION FOR MAKE-READY WORK**

The Make-Ready Work associated with Application / Request Number \_\_\_\_\_ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to License Agreement.

DATE\_\_\_\_\_

CUSTOMER\_\_\_\_\_

By (Print Name)\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

Telephone No.\_\_\_\_\_

Agreement No.: \_\_\_\_\_

Application / Request No.: \_\_\_\_\_

## Form C

## ITEMIZED MAKE-READY WORK

[illegible]

Agreement No.: \_\_\_\_\_

**Form D**

Application / Request No.: \_\_\_\_\_

**NOTIFICATION OF DISCONTINUANCE OF  
STREET LIGHT ATTACHMENT**

CUSTOMER \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

In accordance with the terms and conditions of the Street Light Attachment License Agreement dated \_\_\_\_\_, notice is hereby given that specific Attachments to Poles or Structures, as listed below, in the municipality of \_\_\_\_\_, covered by permit number \_\_\_\_\_ were removed on \_\_\_\_\_.

<u>Attachment License No.</u>	<u>Location Reference Street Address</u>	<u>Pole or Structure Ref. Type</u>	<u>Attachment Description</u>	<u>Removal Date</u>
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Total quantity of Attachments to Poles or Structures to be discontinued is \_\_\_\_\_.

DATE \_\_\_\_\_

By  
(Print Name) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

---

**ACKNOWLEDGMENT OF DISCONTINUANCE OF**  
**STREET LIGHT ATTACHMENT**

Use of Poles or Structures has been discontinued as above.

DATE\_\_\_\_\_

COMPANY\_\_\_\_\_

By (Print Name)\_\_\_\_\_

Signature\_\_\_\_\_

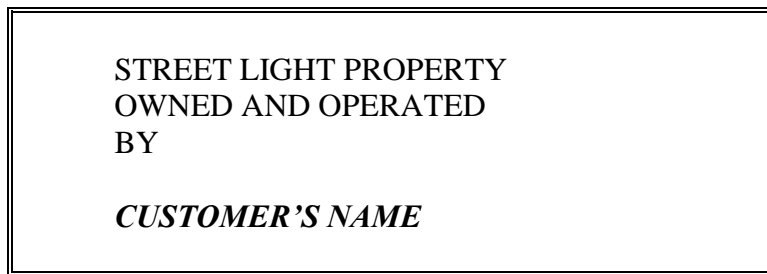
Title\_\_\_\_\_

## **IDENTIFICATION LABELS**

### **(A) GENERAL**

This Appendix describes identification tags to be installed and maintained by Customer on its cables and other apparatus to allow the Company to readily identify the owner of such cables and apparatus.

### **(B) DESCRIPTION OF IDENTIFICATION LABELS**



**FIGURE 1: Identification Label**

The tags shall be white or yellow with black lettering. Customer shall be responsible for maintaining the legibility of identification tags at all times.

The Identification Tag shall be placed on Customer's facilities including, but not limited to, cables guys, terminals, terminal closures, and cabinets. The Identification Label shall read as follows: "STREET LIGHT PROPERTY OWNED AND OPERATED BY" and clearly display CUSTOMER's name. Customer's name may be printed on the tag using indelible ink.

### **(C) PROCUREMENT OF TAGS**

It shall be the responsibility of Customer to obtain, place, and maintain Identification tags.

### **(D) INSTALLATION OF IDENTIFICATION TAGS**

When required by Section 5.5, Identification Labels shall be installed at the following locations:

- (1) On cables at each manhole or handhole, on the top of the cable so that it is visible from outside the manhole or handhole.
- (2) At terminal or Connection Point locations.
- (3) Within cabinets or other equipment where appropriate.

**LIGHTING SOURCE IDENTIFICATION LABELS**

The Customer is required to provide and affix to each luminaire a clear, legible and comprehensive lighting source identification label consistent with ANSI-NEMA Standards for Roadway and Area Lighting Equipment – Field Identification of High Intensity Discharge Lamps and Luminaires, (ANSI/NEMA C136.15-2009, latest revision) or other industry standard compliant with the specific lamp or lighting source, as applicable.

### **APPENDIX III**

#### **ACKNOWLEDGMENT FOR THE USE OF QUALIFIED ELECTRICAL WORKERS**

The City of Hudson hereby acknowledges and agrees to the following:

1. Niagara Mohawk Power Corporation d/b/a National Grid (hereinafter “National Grid”) expects the use of electrically-qualified personnel as required by OSHA in 29 CFR 1910.269 for all work associated with the LICENSE AGREEMENT FOR ATTACHMENTS TO UTILITY POLES AND STRUCTURES FOR STREET AND AREA LIGHTING BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID and CITY OF HUDSON DATED September 9, 2022 (hereinafter “CITY OF HUDSON LICENSE AGREEMENT”).
2. The City of Hudson hereby agrees that any work being done pursuant to the CITY OF HUDSON LICENSE AGREEMENT will be done by qualified electrical workers as defined by OSHA in 29 CFR 1910.269 and in accordance with all relevant laws, regulations, codes, and industry standards.
3. The City of Hudson understands and agrees that any injuries to persons or property arising out of or related to this work, including without limitation as a result of a failure to comply with this ACKNOWLEDGMENT, will be the sole responsibility of the City of Hudson.

#### **CITY OF HUDSON**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_