

ORIGINAL



# City of Augusta Outdoor Lighting Proposal

February 27, 2023

Nealy Scott – Account Executive  
Kathy Randolph – Key Account Manager  
Stephen King – External Affairs Manager  
Stacey Lusk – Solutions Sales Director  
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Georgia Power Company  
Attn: Nealy Scott  
Bin# 79451  
1769 Sands Place  
Marietta, GA 30067

The Director of Procurement  
Augusta Procurement Department  
UNSOLICITED PROPOSAL  
535 Telfair Street – Room 605  
Augusta, GA 30901

\*Attachment I is incorporated herein, and where Attachment I conflicts with this proposal, Attachment I shall take precedence.



## Project Description

Georgia Power Company (GPC), a leader, installer, and service provider of outdoor lighting solutions, is pleased to propose the acquisition of the City of Augusta's (City) lighting assets. The term "lighting assets" as used within this proposal refers to the light fixture, pole, wiring, service panels, conduit, and all other necessary components for the operation of an outdoor light. In addition, GPC proposes to upgrade and maintain those newly acquired lighting assets along with presently existing GPC-owned roadway lights throughout the Augusta Richmond County (ARC) area. Additional details are set forth and described in the attached Letter of Intent (Attachment I). GPC proposes to begin by auditing City-owned assets through a third-party company, to be paid for by the City; GPC will then reconcile the findings of that audit with the 2016 audit performed by the City. GPC will then make a monetary offer based on the results of this reconciliation.

By contracting with GPC, the citizens of ARC will benefit from well-lit roadways, sidewalks, and parks. GPC proposes to install and maintain the latest generation of utility grade LED outdoor lighting equipment outfitted with network lighting controls (NLC's) that proactively provides advanced knowledge of the health of each fixture, the location of each device, and advanced light distribution, all while significantly reducing the carbon footprint of equivalent High Intensity Discharge (HID) lighting systems. GPC's goal is to provide better lighting throughout ARC and provide a lighting system that supports the City's sustainability commitments but at a predictable cost structure.



## Feasibility Statement

Georgia Power Company (GPC) will acquire all lighting assets upon completion of the audit (including reconciliation with the City of Augusta's 2016 audit) and execution of a definitive agreement transferring title of ownership of the lighting assets from Augusta Richmond County (ARC) to GPC. After full execution of such agreement, GPC will, at the City's direction, provide either a bill credit or check payable to the City of Augusta within 60 days, or otherwise make payment in accordance with the terms of the agreement.

After the definitive agreement is signed, GPC would begin acquiring permits from local, state, and federal agencies while performing necessary upgrades to the lighting assets. In addition, GPC would notify public utility companies such as Augusta Utilities Department, AT&T, Comcast, Charter Communications, WOW, Georgia Power Company, Jefferson Energy Cooperative, Planter's Electric Membership Corporation, Atlanta Gas Light, etc., about any work being performed in direct conflict to their respective facilities in accordance with Georgia 811 Call Before You Dig laws.

GPC will maintain the purchased lighting assets immediately upon taking ownership at a reduced rate. Upon completion of lighting upgrade, GPC will begin charging the City the standard maintenance rate, as further presented in Attachment I of this document, and as such would be further set out in the parties' definitive agreement.



## **Project Schedule**

Georgia Power Company (GPC) proposes a phased approach to upgrading the lighting assets. The phases will be determined and communicated to the City based on findings from the GPC audit, material availability, labor resources, and/or other arising factors. GPC proposes to begin project engineering within three (3) months after acquisition of the lighting assets and to begin construction within three (3) months of the completion of project engineering. GPC will work collaboratively with the City to identify areas of special priority to receive lighting upgrades. Prior to commencement of work, GPC will obtain all required permits from local, state, and federal agencies. GPC will notify the City of delayed permits from such agencies if delayed by more than six months from the date of filing. In addition, GPC will continue working in other areas or phases of the project should delays occur as a result of road closures, traffic control, utility work, or other unforeseen conditions.



## **Project Financing**

Payment terms will be finalized in the definitive agreement, but certain proposed payment terms are outlined in Attachment I.

Generally, Georgia Power Company (GPC) will acquire, finance, and maintain the City of Augusta's (City) lighting system by means of its normal procurement and maintenance process and procedures. GPC will bill the City on a monthly basis a service cost for each light location.

However, the City will pay GPC an upfront payment for GPC's audit of City-owned lighting assets.



## Business Case Statement

The acquisition of City owned lighting assets will integrate into GPC's current portfolio of lighting assets in the Augusta Richmond County service area and will provide the following benefits to both the City and community.

- ✓ Operational savings to the City – Augusta Engineering Department (AED) resources currently charged with maintenance of City owned lighting assets can be re-purposed to other areas of need.
- ✓ Uniformity – all lighting assets will be converted to “like” fixtures and create a uniform look throughout the city (including new assets as they are added in the future).
- ✓ Quicker response time to light-outs – the new GPC owned system will be outfitted with network lighting controls (NLC) that will provide for predictability before a light goes out, as well as automated communication to GPC when a light does go out (i.e. struck by car).
- ✓ Tailored energy usage management – current assets will be upgraded from legacy high intensity discharge (HID) to light emitting diode (LED). The new LED system is capable of scheduled reductions in output, and therefore energy usage of the new system, at certain intervals of the day (i.e. 1:00 am – 4:00 am, reduce output by 50%). The new system has the capacity to be tailored to meet any energy savings goals the City may have (now or in the future).
- ✓ Cost predictability – the flat rate per fixture (to include maintenance) is proposed as a 5-year rate, subject to review at the end of the term. This cost structure allows the City to better manage budgets and predict costs.
- ✓ Safety – the proposed agreement includes an audit of all current City owned assets. As these assets have aged through the years, so has the potential for degradation of material, tampering, etc. Any infrastructure issues that do not comply with current codes and guidelines will be updated to meet such. Additionally, the new system will provide better light distribution to foster well-lit roadways, sidewalks, and parks.





## Contacts

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February 27, 2023

The Honorable Garnett L. Johnson  
Mayor, City of Augusta, Georgia  
535 Telfair Street  
Augusta, Georgia 30901

**Re: Letter of Intent for Asset Purchase Agreement**

Dear Mr. Mayor:

This Letter of Intent ("**LOI**") evidences the present mutual intent of the Georgia Power Company ("**GPC**") and the City of Augusta, Georgia (the "**City**") (GPC and the City are jointly referred to as the "**Parties**" and individually as a "**Party**") to enter into discussions and negotiations with regard to a potential definitive asset purchase agreement and lighting services agreement whereby GPC would, in one or more transactions, (i) purchase certain outdoor lighting currently owned by the City; (ii) upgrade certain of such lights to provide LED lighting service; and (iii) enter into a long-term definitive agreement to provide lighting services to the City in certain of its public spaces (the "**Potential Transaction**"). Following the execution and delivery of this LOI, the Parties agree that their discussions and negotiations will be governed by the following:

1. **Definitive Agreement**. Following the execution and delivery of this LOI, the Parties will engage in further discussions and negotiations with regard to a potential definitive agreement(s) to implement the Potential Transaction (a "**Definitive Agreement**"). The Parties presently intend that the terms of a Definitive Agreement will reflect the principles set forth in **Exhibit A** to this LOI, as well as other material terms and conditions that are not set forth in **Exhibit A** and require further development and consideration.

2. **Confidentiality**. Subject to paragraph 2(e) below, each Party agrees to keep confidential all Confidential Information (as defined below) provided by the other Party and its Representatives and, except as may otherwise be authorized in a prior written consent of the other Party, to not disclose such Confidential Information to any third party, firm, corporation, or entity; provided, however, that each Party will be entitled to disclose such information to its and its affiliates' officers, employees, consultants, attorneys, agents, bankers, and accountants ("**Representatives**") on a need-to-know basis as reasonably necessary for such Party to evaluate, enter into, or perform under the Potential Transaction. Each Party's Representatives must agree to maintain as confidential such Confidential Information consistent with this paragraph 2. Each Party hereby agrees to be responsible for any breach of this paragraph 2 by its respective Representatives.

(a) As used in this LOI, "**Confidential Information**" means the substance and content of: (i) prior and subsequent discussions between the Parties and their respective Representatives concerning the Potential Transaction and all information ascertained through such discussions; and (ii) any and all materials and information (regardless of form) provided by either Party or its Representatives to the other Party or its Representatives concerning or in connection with the Potential Transaction. Notwithstanding the foregoing, Confidential Information does not include information that: (A) at the time of disclosure by a Party is publicly available or later becomes publicly available other than through a violation of this paragraph 2; (B) was in the receiving Party's possession prior to disclosure by the disclosing party; (C) was received by the receiving Party from a third party who, to the best of the receiving Party's

knowledge, did not acquire such information on a confidential basis either directly or indirectly from the disclosing party; or (D) the receiving Party can demonstrate was independently developed by or for it without violating any obligations under this paragraph 2.

(b) To the extent permitted by applicable law, if a Party is required to disclose (by oral questions, interrogatories, requests for information or documents, subpoena, the public records laws of the State of Georgia, or similar process) any Confidential Information, it is agreed that such Party will provide the other Party with prompt notice of such requirement(s) so that such other Party may seek an appropriate protective order or other legal remedy and/or waive its compliance with the provisions of this LOI. It is further agreed that if, in the absence of a protective order or the receipt of a waiver hereunder a Party hereto is nonetheless, based upon a written opinion of its counsel, compelled to disclose such Confidential Information concerning the other Party or else risk liability for contempt or suffer other censure or penalty, such Party may disclose such information without liability hereunder, but in all cases will take commercially reasonable steps to maintain such Confidential Information as confidential.

(c) The obligations and commitments established by this paragraph 2 will remain in full force and effect for two (2) years following the cessation of discussions and negotiations related to the Potential Transaction or until such time as the Parties have entered into an agreement providing otherwise.

(d) The Parties each hereby accept the representations of the other Party that the Confidential Information of the other Party is of a special, unique, unusual, extraordinary, and intellectual character and that money damages would not be a sufficient remedy for any breach of this paragraph 2 by the other Party or its Representatives and that specific performance and injunctive or other equitable remedies for any such breach will be available to it. The Parties also acknowledge that the interests of the other Party in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. The remedy stated above may be pursued in addition to any other remedies applicable at law or equity for breach of this paragraph 2. GPC will not be liable for punitive, exemplary, consequential, incidental, or indirect damages under this paragraph 2.

(e) Notwithstanding the foregoing provisions of this paragraph 2, the Parties agree that the existence and terms of this LOI (including **Exhibit A**) are excluded from the definition of Confidential Information and may be publicly announced and disclosed in their entirety after execution by the Parties of this LOI.

3. **Termination of LOI.** Either Party may terminate this LOI without liability or recourse upon thirty (30) days' written notice to the other Party in its sole and absolute discretion at any time (the period from the date of this LOI until the termination thereof, the "**Term**").

4. **Relationship.** The Parties agree that this LOI does not create a corporation, partnership, limited liability company, association, joint stock company, business trust, joint venture, or other legal or contractual entity involving the Parties. Any actions taken by a Party or any other person in reliance on the non-binding terms expressed in this LOI or statements made (whether orally or in writing) during the discussions or negotiations between the Parties of this LOI, a Definitive Agreement, or otherwise will be at that Party's or person's own risk, and neither this LOI nor any actions or statements (whether written or oral) made by a Party or its Representatives during the course of discussions or negotiations of this LOI, a Definitive Agreement, or otherwise will constitute any basis for a contract by estoppel, implied contract, or any other legal or equitable theory. Unless and until a Definitive Agreement has been duly authorized, executed, and delivered by the Parties with respect to the Potential Transaction, except as may be specifically set forth in paragraph 7(b) below, no Party has any legal obligations to the other, expressed or implied, arising in any other manner under this LOI or in the course of discussions or negotiations as contemplated

by this LOI, including the negotiations of a Definitive Agreement. If the Parties are unable to agree upon a Definitive Agreement or if a Party decides in its sole discretion not to enter into a Definitive Agreement for any reason at any time, neither Party will be entitled to assert a claim under any legal or equitable theory as a result of such inability or decision, including without limitation any claim based on the failure to negotiate in good faith or detrimental reliance.

5. **Exclusivity.** Nothing in this LOI will prevent either Party from considering, entertaining, or taking any action to solicit, initiate, encourage, or assist the submission of, any proposal, negotiation, or offer from any person or entity other than the other Party relating to all or any part of the Potential Transaction, including but not limited to transactions which are inconsistent with the full performance in good faith by either Party of any of the terms of **Exhibit A**. Each Party's decision to enter into a Definitive Agreement will be subject to its receiving all requisite governmental approvals and approvals of its management.

6. **Expenses.** Each of the Parties is responsible for bearing all expenses incurred by it in connection with its respective undertakings under this LOI.

7. **Legal Effect.**

(a) This LOI: (i) does not constitute a legally binding agreement, except for those provisions set forth in paragraph 7(b) below; (ii) does not constitute a legally binding offer or agreement to consummate the Potential Transaction or any other transaction or enter into any agreement with respect to the Potential Transaction; and (iii) does not constitute the basis for an agreement by estoppel or otherwise.

(b) The provisions of paragraphs 2, 3, 4, 5, 6, 7, and 8 of this LOI are legally binding upon the Parties and will survive termination of this LOI.

8. **Miscellaneous.** This LOI will be interpreted, governed by, subject to, and construed in all respects in accordance with the laws of the State of Georgia (without giving effect to any principles of conflicts of laws that would lead to the application of the laws of another jurisdiction). Neither Party may assign or otherwise transfer any of its rights or obligations under this LOI without the prior written consent of the other Party, provided that either Party may assign this LOI to an affiliate. This LOI may be amended or modified only by a written agreement signed by both Parties. This LOI may be signed in electronic format and in multiple counterparts, each of which will be deemed an original. This LOI constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other written or oral agreements and discussions between the Parties or their Representatives related thereto. This LOI is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on any third party.

[Signature Page Follows]

Please confirm that the terms of this LOI accurately reflect the understanding and intent of the City by signing and returning a duplicate copy of this letter to me.

Sincerely,

GEORGIA POWER COMPANY

Stacey Lusk  
Solutions Sales Director

**ACCEPTED AND AGREED:**

CITY OF AUGUSTA, GEORGIA

By: \_\_\_\_\_  
Garnett L. Johnson

Its: Mayor \_\_\_\_\_

*[Remainder of Page Blank. Exhibit A Follows.]*

## EXHIBIT A

<b>Phase 0 Audit:</b>	A preliminary audit will be undertaken by GPC to determine the number, condition, and location of each light currently existing within the City of Augusta and to determine the proper manner by which to split the transaction into phases. The audit will also identify any observed third-party equipment (e.g., street lights, colocation facilities, cameras, etc.). The City will pay GPC \$1M for the preliminary audit and GPC will provide the audit data to the City after completion.
<b>Phase I Lights:</b>	The "Phase I Lights" will be lights that the preliminary audit determines to be within the City right-of-way and mutually agreeable by the Parties. The City will transfer ownership of its Phase I Lights to GPC upon the Closing Date. The lights will be transferred in their as-is, where-is condition pursuant to such documents as GPC may reasonable require and must be free and clear of all liens and encumbrances.
<b>Purchase Price:</b>	<p>The Parties will establish a Purchase Price for the Phase I Lights, based upon the results of the Phase 0 preliminary audit; however, the Purchase Price will be an amount no less than \$100,000 and no greater than \$500,000.</p> <p>GPC will pay the Purchase Price to the City by issuing a bill credit against amounts owed for future annual electric service costs.</p>
<b>Lighting Services:</b>	From and after the Closing Date, GPC will be responsible for the operation and maintenance of the Phase I Lights. After the Closing Date and pursuant to a schedule prepared by GPC and agreed upon by the City, GPC will upgrade, operate, and maintain the Phase I Lights from high-pressure sodium to light-emitting diode (LED).
<b>Maintenance Cost:</b>	<p>As consideration for the above Lighting Services, the City will be responsible for paying GPC a monthly per light fee for each high-pressure sodium or non-LED lights (collectively, HPS) or GPC-upgraded light-emitting diode (LED) light based on a pricing formula to be developed and agreed upon by the Parties, e.g.:</p> $\begin{aligned} &(\text{Number of HPS or City-Upgraded LED Lights} * \$[ \_\_\_\_\_\_ ]) \\ &+ (\text{Number of Lights Upgraded to LED by GPC} * \$28.00) \\ &= \text{Maintenance Cost} \end{aligned}$ <p>During the scheduled upgrade period, the monthly per light fee for any HPS and City-Upgraded LED Lights will be less than the LED fee of \$28.00. The schedule will provide that, during and after the completion of the upgrade period, the Parties will make regular, periodic determinations of the number of each type of light within the Phase I Lights and will adjust the then-payable Maintenance Cost as applicable. Notwithstanding the</p>

	<p>foregoing, and solely with respect to the Phase I Lights, for the first five (5) years after the Closing Date, GPC agrees that the Maintenance Cost for each HPS and LED light shall not increase above \$28.00/month. After such time, the Maintenance Cost is subject to increase in accordance with the terms of the Definitive Agreement.</p> <p>The Definitive Agreement will also provide appropriate mechanisms for the Parties to periodically evaluate and renegotiate the Maintenance Cost and other amounts payable to GPC in order to ensure that such amounts are adjustable to account for increases in costs after the Closing Date. The Definitive Agreement will also establish a mutually agreeable default cost adjustment mechanism or methodology (by way of example and not as an exhaustive list, CPI or cost-plus) should the Parties be unable to reach an agreement as to any such adjustment.</p>
<b>Regulated Energy Cost:</b>	In addition to the monthly Maintenance Cost, the City will also pay GPC the monthly Regulated Energy Cost, which will be determined by the applicable Georgia Public Service Commission-approved tariff at the time of billing.
<b>City Budget Allocation:</b>	The City has currently earmarked approximately \$4.5M for safety- and street light- related projects to be allocated prior to the end of CY2023. The City will take such action as is necessary in order to allocate necessary and appropriate funding to the transactions contemplated in the Definitive Agreement, whether from the \$4.5M or such other funds that may be available to the City.
<b>Closing Date:</b>	The Closing Date will be contemporaneous with the signing of a Definitive Agreement; however, the Parties agree that the Closing Date will occur no later than December 31, 2023.
<b>Additional Phases:</b>	Any additional lighting services for lights other than the Phase I Lights will, unless otherwise mutually agreed upon by the Parties, be subject to GPC's standard terms and conditions for GPC's provision of lighting services.
<b>Upgrade Period:</b>	During the scheduled upgrade period, the Parties will periodically confer to discuss project progress and related developments (e.g., work activity, schedule, identified third-party equipment, additional lights not previously identified in the applicable phase, etc.).
<b>Term:</b>	The Parties acknowledge that the City may not be able to make certain commitments of funds beyond the then-current fiscal year. The Parties further acknowledge that the Definitive Agreement will require GPC to make substantial financial investments that GPC will only be able to recover through the City's participation in the Definitive Agreement for a period of time beyond a single fiscal year. Therefore, the Definitive Agreement will have a one-year term with multiple one-year renewal options exercisable by the City. If the City elects not to renew, the City will be responsible for an early termination fee

	due and payable in the year of non-renewal, which will be calculated by GPC to recover GPC's costs associated with the acquisition and upgrading of the Phase I Lights. The early termination fee will decline on an annual basis.
<b>Access:</b>	<p>The City will grant GPC Access to the locations where the Phase I Lights are located at any time to perform any activity related to the transactions contemplated in the Definitive Agreement or that GPC may deem reasonably necessary for its ownership, operation, or maintenance of the Phase I Lights. Such rights of "Access" will include, among other things, (i) the right for GPC to relocate Phase I Lights within fifty (50) feet of their currently-existing locations, (ii) the right of GPC to allow third-parties to locate, collocate, or otherwise attach additional devices or facilities to the Phase I Lights and for GPC to receive and retain any revenues or other benefits derived therefrom (except to the extent that revenue sharing with the City may be required by applicable law (other than an ordinance of the City)), and (iii) an obligation for the City to grant GPC an access easement or license agreement upon the expiration or termination of the Definitive Agreement for GPC to continue to own, operate, or maintain (or to permit any third-party to own, operate, or maintain) the Phase I Lights, including any associated or attached devices or facilities.</p> <p>All Access rights granted to GPC will survive the expiration or termination of the Definitive Agreement.</p>
<b>Existing Facilities on Purchased Lights:</b>	If GPC identifies any existing third-party equipment attached to the Phase I Lights, GPC and the City will confer to determine what actions GPC may find acceptable with respect to such third-party equipment (e.g., the City's execution of an assignment and assumption agreement in favor of GPC, the City's assignment of rents or cancellation of any related agreements, or any other actions). If the Parties are unable to reach an agreement on the actions to be taken with respect to any third-party equipment, GPC may remove such equipment at the City's cost and expense.
<b>Further Obligations of the City:</b>	The City will agree that it will not attach or affix anything to any GPC asset, including, without limitation, any GPC equipment or the Phase I Lights. Except as GPC may consent in writing, the City agrees that it will not, and will not permit others to, rearrange, disconnect, remove, relocate, repair, alter, tamper with, or otherwise interfere with any GPC equipment or the Phase I Lights.
<b>Limitation of Liability:</b>	The City will agree to waive any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, interruption of electric service or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the loss or interruption of electric service, the Phase I Lights, or the agreement to provide lighting services, or arising from damage, hindrance, or delay involving GPC's obligations under the agreement to provide lighting services or the Phase I Lights, whether reasonable, foreseeable,



	contemplated, or avoidable. GPC's liability will be limited to: (i) with respect to GPC's obligations to provide lighting services under the Definitive Agreement, the annual amount actually paid by the City for such services; or (ii) with respect to any other liability, to proven direct damages.
<b>Further Assurances:</b>	Following the Closing Date, each Party will execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of a Definitive Agreement and give effect to the transactions contemplated by a Definitive Agreement.