

## AGREEMENT OF SALE FOR STREETLIGHTS

This Agreement of Sale for Streetlights ("Agreement"), is made as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as the "Effective Date") by and between Potomac Electric Power Company d/b/a Pepco, a corporation organized and existing under the laws of DC and Virginia, having its principal office at 701 9<sup>th</sup> Street, N.W., Washington, DC 20068 (hereinafter referred to as the "Seller" or the "Company"), and the City/Town Name, a municipality organized and existing under the laws of the State of Maryland, having its principal office at Street Address, City/Town, Maryland Zip Code (hereinafter referred to as the "Buyer"). The Seller and the Buyer may hereinafter be referred to individually as a "Party", and, collectively, as the "Parties."

**WHEREAS**, the Seller presently provides street lighting services to the Buyer pursuant to multiple Potomac Electric Power Company tariffs approved by the Maryland Public Service Commission ("MPSC"); and

**WHEREAS**, the Buyer has exercised its rights under Local Government Article Section 1-1309 and has requested in writing on [Insert date] that the Company sell to the Buyer certain of the Company's existing outdoor street and/or area lighting and associated equipment located within the boundary limits of the City/Town Name as shown and described on Exhibit A attached hereto and made a part hereof (each, individually, a "Facility" and, collectively, the "Facilities"); and

**WHEREAS**, the Seller, pursuant to Local Government Article Section 1-1309, has agreed to transfer the Facilities to the Buyer, subject to the terms and conditions of this Agreement; and

**WHEREAS**, such sale shall be made on an "as is, where is" basis.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Buyer agree to the following terms and conditions:

### I. BASIC UNDERSTANDINGS

1. The Seller agrees to sell, and Buyer agrees to purchase, the Facilities, subject to the terms and conditions of this Agreement on an "as is, where is" basis.
2. Upon Closing (as defined below), the Seller will convey to the Buyer all of its rights, title and interests in such Facilities; provided, however, that the Seller is not making any representations or warranties to the Buyer regarding the same.
3. The Buyer maintains sole responsibility for ensuring that the list of Facilities in Exhibit A is accurate and complete as of the Closing Date. Prior to creating the Exhibit A list of Facilities, the Buyer shall conduct an inventory of existing outdoor street or area lights and associated equipment it intends to purchase. After the Closing Date, the purchase of any outdoor street or area lights and associated equipment not included in Exhibit A ("Additional Facilities") 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 a new purchase price in consideration for the Additional Facilities.

4. As of the Closing Date (as defined below), the Buyer shall assume all responsibilities and obligations associated with ownership of the Facilities.

5. To the extent that Seller possesses existing physical, hardcopy paper maps that appear to relate to the Facilities, and such maps are able to be copied in a legible form, Seller shall furnish the Buyer with one (1) copy of each such map in its current form ("Map(s)") after the Closing as such Maps may be available. Seller shall not have any obligation to create any new maps for the Buyer, nor shall Seller have any obligation to review, update or correct any Maps. The Buyer assumes all risk and liability arising from the Buyer's (including any contractor, agent or representative of Buyer) use or reliance on any Map or information contained therein. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THE MAPS, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (I) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (II) REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE MAPS. If and to the extent the Buyer transfers the Facilities back to the Seller, the Buyer agrees to return to Seller, at no charge, all Maps (including all revisions or updates thereto made by Buyer), together with all newly created maps with respect to the Facilities, on or before the date that the Facilities are transferred back to the Seller.

## II. PURCHASE PRICE

1. The Buyer shall pay to Seller at Closing a total consideration of \$Purchase Price ("Purchase Price") for the Facilities. The Parties acknowledge that the Purchase Price is mutually agreed and represents fair market value that is legal and sufficient consideration for the Facilities.

2. The Buyer shall be solely responsible for the payment of all taxes on or relating to the Facilities, if any, following the Closing Date and thereafter. The Seller shall pay all taxes on the Facilities up to and including the Closing Date. Notwithstanding the designation of a Party as the owner of record of the Facilities for tax purposes, unless the tax liability on the Facilities is abated in its entirety as of the Closing Date, the tax liability shall be apportioned between Buyer and Seller in proportion to the number of days during such tax year within which Buyer and Seller, respectively, owned the Facilities. If the amount of the tax liability is not known or cannot be determined reliably at the time of the Closing, the tax liability shall be apportioned on the basis of the tax assessed for the most recent tax year for which such an apportionment or determination can be made, with a reapportionment to be performed as soon as the new tax rate and valuation can be ascertained.

## III. CLOSING, TITLE AND DISCLAIMER OF WARRANTIES

1. **CLOSING:** Subject to the conditions precedent as indicated below, the closing of the purchase and sale of the Facilities ("Closing") shall occur on or about the Effective Date or such other date as may be mutually agreed by the Parties ("Closing Date"). At the Closing, Buyer shall pay the Purchase Price to Seller, and Seller shall deliver to the Buyer a Bill of Sale in the form attached hereto as Exhibit B and incorporated herein by reference (the "Bill of Sale").

2. **LIENS AND ENCUMBRANCES:** Notwithstanding any provision to the contrary, Seller represents to Buyer that the Facilities are free from all liens and encumbrances that are known to the Seller.

3. **CONDITIONS PRECEDENT:** The Closing shall be conditioned upon the execution of this Agreement for Sale of Streetlights, execution of the License Agreement for Overhead Electrical Service and Attachments to Utility Poles for Street and Area Lighting (the "License Agreement"), in the form attached hereto as Exhibit C, respectively, incorporated herein by reference, the delivery of any documentation as required by this Agreement and the License Agreement, and on Buyer obtaining the right from other support infrastructure owners (e.g. Verizon) to attach and maintain those Facilities that are attached to poles owned by other support infrastructure owners (e.g. Verizon).

4. **BILL OF SALE; DISCLAIMER OF WARRANTY:**

(a) Seller shall transfer title to the Facilities to Buyer by the Bill of Sale attached hereto as Exhibit B.

(b) THERE ARE NO PROMISES, COVENANTS OR UNDERTAKINGS WITH RESPECT TO THE FACILITIES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRICAL SAFETY CODE (NESC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. THE FACILITIES ARE SOLD "AS IS." IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF.

**IV. TRANSFER, OPERATION AND MAINTENANCE OF THE FACILITIES**

1. **REMOVAL OF COMPANY DESIGNATION:** Buyer shall remove or permanently cover up, in a reasonable manner and within a reasonable time, the designation "Potomac Electric Power Company" or any other reference to Seller, Seller's affiliates, or Seller's predecessors in interest found on or among the Facilities, so that no reference to Seller remains visible on or among the Facilities being transferred. The foregoing sentence shall only apply to street light standards included in the Facilities. The Buyer shall also place Buyer identification tags on all Facilities.

2. **FACILITY IDENTIFICATION:** The Buyer shall also place Buyer identification tags on all Facilities which shall include the name of the Buyer and a number identification pursuant to the License Agreement. As Buyer places its identification tags on the Facilities or any new street lighting equipment, Buyer shall provide a quarterly inventory list to the Seller that identifies (i) any equipment on which a new identification tag has been affixed, (ii) its unique identification number per luminaire location, and

(iii) the street address. The Buyer may utilize the numbering system established by the Seller. Any number identification system used by the Buyer shall be clear and comprehensive to the Seller.

3. **REPAIR AND MAINTENANCE:** From and after the Closing Date and subject to this Agreement, the Buyer shall be the sole owner of the Facilities with all rights, duties and obligations arising from, or in connection with, such ownership, including, without limitation, the obligations to repair, replace, maintain and operate the Facilities. Seller shall be responsible for the repair, replacement, maintenance, and operation of the Facilities up to, but not including, the Closing Date. Notwithstanding the foregoing, Buyer may contract with Seller to have Seller repair, replace, maintain and/or operate the Facilities on behalf of Buyer after the Closing Date.

4. **DEMARCATION OF OWNERSHIP:** 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 Facilities from Seller's electric distribution structures or systems. Accordingly, the Parties agree that the point of ownership demarcation shall be deemed to be the connection point where the applicable street light Facility 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 Facilities. 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.

5. **THIRD PARTY LIGHTING:** Lighting facilities (including, without limitation poles, standards, arms, brackets, wires, cable, conductor, conduit, foundations and luminaires) owned by Seller and used to provide regulated lighting services to independent third-party customers (each, a "Third Party Lighting Asset" or collectively, the "Third Party Lighting Assets") shall not be included in the Facilities that are being transferred to the Buyer through this Agreement. The Seller shall retain ownership of all existing Third Party Lighting Facilities. The Buyer understands that the Seller shall continue to provide the regulated lighting services to independent customers in the **City/Town Name** after the Closing.

6. **AUTHORITY TO PERFORM CONNECTIONS:** The Buyer shall not perform or make any connections (permanent or temporary) to, or disconnections from, or in any way handle, tamper or interfere with, or otherwise disrupt, the Seller's electric distribution system or assets, in whole or in part, nor shall the Buyer permit or cause any third party (including without limitation, Buyer's agent or contractor) to do so. The Seller shall be the sole Party with authority to perform or make any and all (permanent and temporary) connections or disconnections to the Seller's electric distribution system or assets for the purpose of providing electric service to the Buyer's outdoor street and area lighting system or otherwise in connection with the Facilities. If and to the extent the Buyer has a need for a connection to, or disconnection from the Seller's electric distribution system or assets, the Buyer shall contact the Seller through normal customer contact channels to initiate the proper work order and scheduling, whereas Seller shall perform the necessary work, provided, that the Seller determines, in its sole discretion, that such work is appropriate under the terms of Agreement, Licenses, applicable codes, standards, laws, regulations and Seller's practices and policies.

7. **JOINT USE INFRASTRUCTURE:** Buyer acknowledges and agrees that some of the Facilities ("Coexisting Facilities") are currently installed or otherwise coexist, in whole or in part, on Seller facilities, assets or infrastructure ("Joint-Use Structures"), that such Coexisting Facilities shall not be

separated from the Joint Use Structures prior to Closing, and that, following Closing, the Coexisting Facilities and/or the Joint Use Structures may, from time to time, require modification or replacement. If Seller elects, in its sole discretion, to significantly modify or replace any Joint Use Structure, including, without limitation, making significant repairs or upgrades to such Joint Use Structure or associated Seller assets, or if Buyer determines that the Coexisting Facilities require significant repair, modification or replacement, or as otherwise provided in the License Agreement, it shall be the sole responsibility of the Buyer to relocate the Buyer's Coexisting Facilities associated with such Joint Use Structure in accordance with the License Agreement.

8. **ACCESS:** The Buyer or its contractors are prohibited from, have no authority to, and shall not permit or cause any third party to, access or ingress any of the Seller's enclosed or underground primary or secondary electric distribution system infrastructure, including, but not limited to, manholes, handholes, vaults, transformers, and switchgears. The Buyer and its contractors shall comply with all applicable codes, standards, laws, regulations, and Seller's practices and policies when accessing or making contact with any overhead or underground electric distribution system infrastructure. If and to the extent the Buyer needs to access or ingress to any of the Seller's underground or overhead electric distribution system infrastructure, the Buyer shall contact the Seller and the Seller shall respond to the Buyer's request and provide required support, and/or perform the necessary work as requested following its normal work scheduling protocol, provided, that, the Seller determines, in its sole discretion, that such work is appropriate under the terms of applicable codes, standards, laws, regulations, any other applicable agreements between the Parties, including but not limited to the License Agreement, and Seller practices and policies. Buyer shall reimburse Seller for any such work in accordance with the License Agreement.

9. **ATTACHMENT RIGHTS:** The Seller shall provide attachment rights to the Buyer to attach the Facilities to the Seller's support infrastructure and electric distribution system in accordance with the terms in the License Agreement attached hereto. The Buyer, and not the Seller, shall be solely responsible for obtaining all other necessary and appropriate attachment rights or consents required for the Buyer to maintain and operate the Facilities or otherwise required in connection with the Facilities, including, without limitation, rights to attach to support infrastructure (i.e. poles). The Buyer, and not the Seller, has the responsibility to arrange with any other support infrastructure owners (e.g. Verizon) and any other necessary parties other than Seller to obtain such attachment rights, including, without limitation, the owners or joint owners of the support infrastructure (which may be entities other than the Seller). The Seller makes no representations or warranties with respect to, and is not purporting to provide any third party (including, without limitation, Verizon) attachment rights or consents for or in connection with the Facilities.

10. **EASEMENT/ACCESS RIGHTS:** The Seller makes no representations or warranties with respect to, and is not purporting to provide, easements, rights of way or other access rights in connection with this Agreement, the License Agreement or the Facilities ("Access Rights"). The Buyer, and not the Seller, shall be solely responsible for obtaining at Buyer's sole expense any Access Rights required to maintain and operate the Facilities or otherwise required in connection with the Facilities. It is not the responsibility of the Seller to provide or deliver to the Buyer any lists or other documentation of existing easements or rights granted currently held by the Seller. Nor shall it be the Seller's responsibility to assist the Buyer in obtaining any easement or Access Rights.

11. **NEW LIGHTING FACILITIES:**

(a) All new, reconfigured or Materially Changed (as defined in the License Agreement) street lighting facilities which the Buyer requests to be connected to the Seller's electric distribution system shall meet the requirements of the Seller's applicable engineering standards and other design requirements for customer owned Facilities (as determined by Seller) before any request for connection will be performed or completed. All customer equipment connections by the Buyer shall comply with all applicable Seller standards and requirements as provided in the License Agreement, including, but not limited to, the application of a physical disconnect in close proximity to the electric distribution system source. All new lighting/illumination sources (i.e. lamps) for existing or new lighting locations must comply with applicable Seller tariffs and policies.

(b) Buyer acknowledges and agrees that, in the event the Buyer seeks to convert to lighting/illumination sources other than those provided in Seller's tariff, (each, a "Non-Compliant Source"), Seller shall not be able to provide service for such Non-Compliant Source and Seller shall be under no obligation to permit or provide service to such Non-Compliant Source.

(c) Anything in this Agreement to the contrary notwithstanding, the Buyer understands and agrees that any new outdoor lighting within an underground residential distribution (URD) area shall be placed only in the name of the Buyer as opposed to being placed in the name of the developer or other third party.

(d)

## **V. LIABILITY**

From and after the Closing Date, the Seller, its affiliates, and their respective officers, directors, employees, and agents, shall not be liable to Buyer or its officers, officials, employees, representatives or contractors for direct, indirect, consequential, punitive, special, exemplary, or any other damages under any theory of law that is now or may in the future be in effect, including without limitation, contract, tort, strict liability, or negligence, in connection with this Agreement, the License Agreement or the Facilities, including, without limitation, damages with respect to or arising from the condition, operation of, or failure of operation of the Facilities. The Buyer's sole remedy for recovery under this Agreement shall be limited to an equitable remedy to enforce the transfer of the Facilities under the Agreement.

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.

## **VI. INDEMNIFICATION**

The Parties acknowledge and agree that the indemnification provisions in the License Agreement are incorporated herein by reference; provided, however, that this Article shall not apply to

any liability, loss, damages, or expense arising out of any claim from personal injury or property damage or other type of claim, in which the cause of action occurred before the Closing Date.

The Buyer agrees, to the extent permitted by law and to the extent of the Buyer's insurance coverage (under which Seller shall be named an additional insured as set forth in Article VI below) to defend and to pay, protect, indemnify and save harmless the Seller and its affiliates against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys' fees), costs, and expenses (hereinafter "Claims") arising out of or in connection with this Agreement resulting from any act, failure or omission on the part of the Buyer or its officers, officials, employees, representatives or contractors.

## **VII. INSURANCE**

In accordance with the License Agreement, the Buyer shall, at its sole cost and expense, obtain and keep in force comprehensive general liability insurance in terms and amounts commercially reasonable (but no less than any applicable statutory or regulatory limit or cap on liability) covering any action arising in connection with this Agreement, and shall name the Seller as an additional insured thereunder. Such insurance will insure all of the indemnity obligations set forth herein and, upon request, the Buyer shall provide a certificate of insurance to Seller showing such coverage.

## **VIII. GOVERNING LAW**

This Agreement shall be governed by, performed, and construed in accordance with the laws of The State of Maryland without regard to the conflicts of law principles contained therein.

## **IX. PRIOR AGREEMENTS**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements, discussions, communications, and correspondence. Any prior agreements, promises, negotiations, or representations not set forth in this Agreement are of no force or effect.

## **X. ASSIGNMENT, MODIFICATION**

This Agreement and the rights and obligations set forth herein shall not be assigned by either Party without the written agreement of both Parties. This Agreement may not be amended or modified except in a writing signed by both Parties, and shall inure to and be binding upon the Parties and their respective successors and assigns.

## **XI. 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.

## **XII. SURVIVAL**

Articles I, II, III, IV, V and VI shall survive Closing.

**XIII. NOTICE**

Any notice given under this Agreement shall be in writing and shall be hand delivered, sent by registered or certified mail, delivered by a reputable overnight courier, or sent by facsimile with electronic confirmation of receipt, to the other party's representative as follows:

Buyer:

City/Town Name

Street Address

City/Town, State Zip Code

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

Seller:

Potomac Electric Power Company

Real Property and Joint Use Department

701 9th Street NW

Mail Stop EP5607

Washington, DC 20068-0001

**XIV. APPLICABLE STATUTE AND TARIFF**

The Parties understand and agree that this Agreement is made pursuant to Local Government Article Section 1-1309.



**IN WITNESS WHEREOF**, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

POTOMAC ELECTRIC POWER COMPANY

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

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

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

CITY/TOWN NAME

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

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

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

**EXHIBIT A**  
**DESCRIPTION OF STREET AND AREA LIGHTING FACILITIES**

**EXHIBIT B**

**BILL OF SALE**

POTOMAC ELECTRIC POWER COMPANY, a corporation organized and existing under the laws of DC and Virginia, having its principal office at 701 9<sup>th</sup> Street, N.W., Washington, DC 20068 ("Seller"), in consideration of \$Purchase Price paid by the City/Town Name ("Buyer"), the receipt of which is hereby acknowledged, does hereby sell, transfer and assign all its right, title, and interest unto Buyer, in the following described goods and chattels, to wit:

[Description of Facilities –Exhibit A]

THERE ARE NO PROMISES, COVENANTS OR UNDERTAKINGS WITH RESPECT TO THE FACILITIES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRICAL SAFETY CODE (NEC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. THE FACILITIES ARE SOLD "AS IS." IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF.

TO HAVE AND TO HOLD the Facilities herein described unto Buyer, its successors and assigns, to its and their own use and benefit forever.

IN WITNESS WHEREOF, POTOMAC ELECTRIC POWER COMPANY has caused these presents to be signed in its name and behalf by its duly authorized representative, this day of Month, Year.

POTOMAC ELECTRIC POWER COMPANY

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

CITY/TOWN NAME

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

**EXHIBIT C**

**FORM OF LICENSE AGREEMENT**