



Outdoor Lighting Systems:

Services Agreement for Total Maintenance and Repair

Lighting & Smart Services Bin 78110
241 Ralph McGill Blvd. NE
Atlanta, GA 30308
(404) 506-6117

December 21, 2023

City of Forest Park
Bobby Jinks
Director of Public Works

Re: Miscellaneous Lighting Services Total Maintenance & Repair Project (L-TMR)

Georgia Power Company is pleased to provide you with this offer letter and the attached terms and conditions to provide the following Total Maintenance and Repair Services for Outdoor Lighting Systems (as defined in the terms and conditions) along Frontage Rd., in the City of Forest Park, GA.

Narrative: Maintain Customer Owned Lighting and Service

Detailed Scope of the Services:

Maintain the lighting system installed per GDOT Project No. 000-0285-011 – Frontage Rd. roadway lighting. Roadway lighting poles only.

- 25 – Galvanized Steel Poles, 35 – 88watt LED Roadway Fixtures located along the ramp from Forest Parkway, in Forest Park, GA.

The total annual fee is \$8,274.00, plus any applicable taxes. This fee will be billed in monthly increments. Additional fees may apply – see attached terms and conditions for details.

This pricing is valid for sixty (60) days or until earlier revoked by Georgia Power Company, and it is made in accordance with and subject to the terms and conditions attached hereto.

This offer is based on an initial term of two (2) years, which will renew automatically for consecutive two (2) year terms unless and until a party terminates the Services in accordance with Section 16 of the attached terms and conditions.

If you wish to accept this offer and the terms and conditions, please indicate your acceptance by signing the attached terms and conditions and returning to me for Georgia Power Company countersignature. **Such terms and conditions are expressly incorporated by reference into this letter and shall be binding on the parties upon the signature of both Georgia Power Company and you.**

Notwithstanding anything herein to the contrary, this offer is subject to and is pending upon final approval by Georgia Power Company management.

Thank you again for allowing us the opportunity to serve you. We are very eager to meet your Outdoor Lighting Systems needs and look forward to hearing from you soon.

Sincerely,

Gene Edwards

Lighting & Smart Services - Georgia Power Company
Phone – 404-535-0374 - Email – rgeoward@southernco.com

**Terms and Conditions:
Services Agreement for Total Maintenance and Repair**

This **Services Agreement for Total Maintenance and Repair** (the "Agreement") states the terms and conditions upon which Georgia Power Company ("GPC") will perform certain lighting maintenance and repair services to the "Customer" referenced on Page 9 and is effective as of the date on which this Agreement is fully executed by both Parties as indicated on the signature page (the "Effective Date"). Customer and GPC are referenced herein collectively as "Parties", and each individually as a "Party".

BACKGROUND

- Customer operates an Outdoor Lighting System (as defined in Section 1) on certain areas within Customer's jurisdictional limits and Customer's property, streets and/or roadways; and
- Customer desires that GPC provide the materials and services necessary for routine maintenance of, and certain repairs to, the Outdoor Lighting System; and
- GPC desires to assist Customer and is willing to perform such maintenance and repair work for the Outdoor Lighting System.

IN CONSIDERATION OF THE MUTUAL PROMISES DESCRIBED HERE, THE ADEQUACY AND SUFFICIENCY OF WHICH EACH PARTY ACKNOWLEDGES, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

ROUTINE MAINTENANCE AND REPAIR WORK

1. **Scope of Services.** Provided that the Customer is in compliance with this Agreement (including, without limitation, is not late in paying the applicable fees), GPC will perform Routine Maintenance and Repair Work for the Customer's Outdoor Lighting System (the "Services").

(a) The "Outdoor Lighting System" is the customer owned or controlled outdoor lighting facilities as identified in Exhibit 1 (such Exhibit is attached and incorporated by this reference into this Agreement) and located at the premises identified in Exhibit 1 ("Premises").

(b) "Routine Maintenance" means periodic inspection of the Outdoor Lighting System, and repair or replacement of fixtures, poles, and conductors, as needed due to ordinary wear and tear.

(c) "Repair Work" means repair or replacement, as determined by GPC in its sole but reasonable discretion and after consultation with Customer, due to physical damage to the Outdoor Lighting System resulting from the action of a third party, including vehicle crashes, or other event not in the control of the Customer. Notwithstanding the foregoing sentence, Repair Work does not include repair or replacement caused by Acts of God. "Acts of God" means acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages. The Repair Work will be performed as expeditiously as possible after Customer's written request (e-mail is acceptable) is received

by GPC's representative listed on Exhibit 1. Such notification shall reasonably describe the Repair Work requested.

(d) Customer may request Services for repairs or replacement due to Acts of God; provided, however, Customer shall (i) reimburse GPC for its costs of materials, supplies, and labor ("Reimbursable Expenses"), and (ii) pay an additional fee, which will be calculated as twenty-five percent (25%) of the Reimbursable Expenses. Before proceeding with the repair or replacement, GPC will provide Customer with an estimate of the Reimbursable Expenses and, upon written approval from Customer, GPC will perform the Services.

2. **Premises.** Customer grants a license and right of access to GPC, and its contractors and representatives, to enter the Premises and perform the Services. Customer represents that the individual signing this Agreement on its behalf has the authority to do so and that it has express authority from all the Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the performance of Services. **Customer is solely responsible for the safety of the Premises and agrees that GPC has no obligation to ensure the safety of the Premises.**

3. **Payment for Services.** GPC will invoice Customer for Services provided hereunder. The fees for the Routine Maintenance and Repair Work are included on Exhibit 1 and are based upon a certain number of lights. Within thirty (30) days from the date of an invoice from GPC, Customer shall pay GPC in full. If customer desires to increase the number of lights, then the fee may be increased at the discretion of GPC and a new Exhibit 1 shall be implemented and incorporated into this Agreement. Notwithstanding anything in this Agreement to the contrary, GPC may increase the fees for Services effective upon the beginning of any Renewal Term and upon at least sixty (60) days' prior written notice (e-mail is acceptable) prior to the beginning of such Renewal Term to Customer's representative listed in Exhibit 1.

4. **Additional Costs.** The Customer assumes full responsibility for and costs associated with, the following activities if required for GPC to perform Services: (a) the location of underground utilities at the site of the Services; (b) any relocation or removal of underground (including but not limited to rock) or overhead obstructions which are not part of the scope of work and which may interfere with or make more expensive the Services; (c) any pre-existing, unknown condition which prevents or makes more expensive the performance of the Services; and (d) any hazardous waste or toxic materials encountered at the Premises.

5. **Default.** Customer is in default if Customer does not pay the entire amount owed to GPC within forty-five (45) days of the applicable invoice date. GPC's waiver or past default will not waive any other default. If default occurs, GPC, at its discretion may immediately terminate this Agreement, collect all past due amounts (including late fees), stop performing Services, and seek any other available remedy. Notwithstanding the foregoing, if Customer is past due on payments owed hereunder, then GPC has no obligation to perform Services unless and until Customer is paid up in full.

PERFORMANCE BY GPC

6. **Labor and Materials.** GPC will provide the labor and materials necessary required to perform the Services. Customer agrees that GPC may use its own employees or may contract with one or more independent contractors to perform the Services.

7. **Permits.** GPC will obtain all permits, permissions, and licenses necessary to perform the Services. GPC will develop, implement, and maintain all work-zone traffic control plans that may be required by the Customer for working on the Outdoor Lighting System. Customer will cooperate with GPC in securing any necessary regulatory permit or approval and will provide assistance and information in its possession required by GPC, Customer and any other person or authority concerning these permits or approvals. The failure by either Party to secure any required regulatory permit, approval or property right after reasonable effort will relieve GPC of its obligations under this Agreement.

8. **Cooperation.** The Parties will communicate regarding performance of this Agreement through the representatives identified in Exhibit 1. The Parties agree to use their best efforts to coordinate and cooperate in connection with all activities under this Agreement.

9. **Services Warranty.** GPC will perform the Services in a professional and workmanlike manner with a reasonable degree of care, skill, and diligence. If the performance of any portion of the Services fails to comply with these requirements, and the Customer gives written notice of such failure to the GPC contact listed in Exhibit 1 not later than one (1) month following the completion of the affected Services then, to the extent necessary to cure such failure, GPC shall repair, replace, or reperform, at its option, the affected portion of the Services at no additional cost to the Customer, and this shall be Customer's sole remedy with respect to this warranty.

10. **WARRANTY DISCLAIMER.** EXCEPT FOR THE WARRANTY PROVIDED ABOVE IN SECTION 9, GPC MAKES NO COVENANT, WARRANTY, OR REPRESENTATION OF ANY KIND (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY) REGARDING THE SERVICES (OR ANY EQUIPMENT OR MATERIALS INCLUDED THEREIN). GPC SHALL HAVE NO OBLIGATION OR RESPONSIBILITY FOR OR WITH RESPECT TO ANY WARRANTY PROVIDED BY ANY THIRD PARTY SUPPLIER OF ANY EQUIPMENT, PARTS OR OTHER MATERIALS PROVIDED PURSUANT TO THIS AGREEMENT.

11. **Remedies and Damages.** TO THE FULLEST EXTENT ALLOWED BY GEORGIA LAW, CUSTOMER WILL NOT BE ENTITLED TO PAYMENT, DAMAGES, MONIES, OR COMPENSATION FROM GPC OF ANY KIND WHATSOEVER FOR INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF CAPITAL COSTS, LOSS OF REPUTATION, OR PUNITIVE DAMAGES) IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT OR BECAUSE OF HINDRANCE OR DELAY FROM ANY CAUSE WHATSOEVER, WHETHER THE HINDRANCE OR DELAY IS REASONABLE IS UNREASONABLE, FORESEEABLE OR UNFORESEEABLE, CONTEMPLATED OR NOT CONTEMPLATED, AVOIDABLE OR UNAVOIDABLE. TO THE FULLEST EXTENT ALLOWED BY GEORGIA LAW, THE PARTIES FURTHER AGREE THAT THE LIABILITY OF GPC UNDER ANY AND ALL CLAIMS ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, ANY SERVICES OR EQUIPMENT FURNISHED PURSUANT TO THIS AGREEMENT, OR THE SALE, DELIVERY, INSTALLATION OR USE THEREOF, WHETHER BASED UPON BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY, SHALL IN NO CASE EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID TO GPC FOR THE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM.

12. **Risk Allocation.** Each Party is responsible for its own acts and the results of its acts.

COMPLIANCE

13. Georgia Security, Immigration, and Compliance Act (Applicable Only if Customer is a Georgia Governmental Entity). Customer is a "public employer" as defined by O.C.G.A. 13-10-91 and this Agreement is a contract for physical performance of services within the State of Georgia. Compliance with the requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02 is a condition of this Agreement and is mandatory. GPC's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1-.02 will be attested by execution of the contractor's affidavit attached as Exhibit 2 and made a part of this Agreement. GPC agrees that, if it employs or contracts with any subcontractor(s) in connection with this Agreement, GPC will secure from each subcontractor attestation of the subcontractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1-.02 by execution of a subcontractor's affidavit in the form attached as Exhibit 3. The affidavit will become a part of the GPC/subcontractor agreement and GPC will maintain records of the affidavits for inspection by customer.

14. Compliance with Equal Employment Opportunity Laws. GPC is an equal employment opportunity employer and will not discriminate against any employee or applicant on the basis of age, color, disability, gender, national origin, race, religion, sexual orientation, veteran status or any classification protected by federal, state or local law. GPC is also a federal contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government and is committed to taking affirmative action to employ and advance in employment qualified women, minorities, disabled individuals, special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

MISCELLANEOUS

15. Authority. The execution of this Agreement and performance of Customer's obligations under this Agreement have been duly authorized as required by Applicable Law and by Customer's rules, policies, and procedures, and does not require the consent or approval of any person or entity other than those which have been obtained (evidence of which will be provided to GPC upon request).

16. Term and Termination. The initial term of this Agreement, commencing on the Effective Date, is two (2) years (the "Initial Term"). At the end of the Initial Term, this Agreement will automatically renew for successive two (2) year terms (each, a "Renewal Term" and, together with the Initial Term, the "Term"), unless a Party sends a written notice of non-renewal to the other Party at least [sixty (60) days] prior to the end of the then-current Term. Notwithstanding anything in this Section 16 to the contrary, a Party may terminate this Agreement for convenience upon at least 30 days' written notice to the other Party (a "Termination for Convenience"). In the event of a Termination for Convenience, Customer will receive Services up until the elected termination date and Customer will be responsible for paying all invoices issued up until the termination date.

17. Governing Law and Jurisdiction. This Agreement will be governed by and construed in all respects according to the laws of the State of Georgia. In the event of any dispute or claim related to this Agreement, any lawsuit or other legal action or proceeding will be filed in either a state or federal court sitting in the State of Georgia.

19. Notice. All notices permitted or required by this Agreement will be in writing and will be deemed delivered upon (a) personal delivery; (b) the next occurring business day if deposited with a commercial overnight delivery service; or (c) the fourth business day after being deposited, postage prepaid, in the United States Mail, registered or certified, return receipt requested. An email copy of the Notice must

also be sent. Each Party will provide all notices to the other at the address(es) and email addresses shown below or to any other address that a Party designates by written notice under this provision.

If to Customer:

City of Forest Park
745 Forest Parkway
Forest Park, GA 30297

With a Copy to:

Bobby Jinks
Public Works Director
5230 Jones Road
Forest Park, GA 30297
Bjinks@forestparkga.gov

If to GPC:

Manager, Contract Management
Georgia Power Company
Bin 10080
241 Ralph McGill Blvd., N.E.
Atlanta, GA 30308-3374

With a Copy to:

Georgia Power Company
Gene Edwards
2294 Skelton Rd.
Gainesville, GA 30504
rgedward@southernco.com

19. Interpretation. This Agreement will be interpreted in accordance with, and governed in all respects by, the laws of the State of Georgia. If any provision of this Agreement is ruled invalid or unenforceable, that invalidity or unenforceability will not affect the validity or enforceability of this Agreement as a whole. All captions in this Agreement are inserted for convenience only and are not to be used in interpreting this Agreement.

20. Relationship of Parties. GPC is and will be an independent contractor to Customer. GPC will not be considered an agent, partner, joint venturer, employee or representative of Customer. No affiliate of GPC will have any liability whatsoever for any Party's performance, nonperformance or delay in performance under this Agreement. Nothing in this Agreement will be construed to create any duty, obligation or liability of GPC to any person or entity not a party to this Agreement. Customer will not assign or transfer any of its rights or interests in or obligations under this Agreement or any document executed in connection with this Agreement without the prior written consent of GPC.

21. Entire Agreement; Modifications. This Agreement, including all documents attached or incorporated by reference, constitutes the entire understanding and agreement between the Parties relating to the subject matter of this Agreement and supersedes any and all prior agreements, whether written or oral. No waiver, amendment, change alteration or modification of this Agreement will be binding unless made in writing and signed by an authorized representative of each Party. The covenants expressed in this Agreement, except as otherwise provided, accrue to the benefit of and will be binding upon the successors and permitted assigns of the Parties. This Agreement may be executed in any number of duplicate originals, each of which is an original, but all of which constitute the same executed document. Notwithstanding the foregoing sentence, execution of this Agreement may be effected by signatures

submitted via facsimile or electronically scanned secured media in .pdf format and each signature so submitted will be treated as an original.

IN WITNESS WHEREOF, Customer and GPC have caused this Agreement to be executed by their duly authorized representatives.

GEORGIA POWER COMPANY

CUSTOMER

By: _____

By: _____

Printed Name: Gene Edwards

Printed Name: _____

Title: Project Manager Maintenance

Title: _____

Date: December 21, 2023

Date: _____

Exhibit 1

to Services Agreement for Total Maintenance and Repair

1. Outdoor Lighting Systems:

This Agreement relates to maintenance of the Outdoor Lighting System as located on the Premises as shown / described below:

GDOT Project No. 000-0285-011 – Frontage Rd. LED Roadway Lighting

*Note: Traffic Signal poles are not covered under this agreement.

2. ROUTINE MAINTENANCE SCHEDULE:

Customer and GPC agree that GPC will provide the Routine Maintenance on a quarterly basis.

3. NUMBER OF LIGHTS:

Customer and GPC agree that the total number of lights upon which GPC will perform Services is 35.

4. MONTHLY FEE FOR ROUTINE MAINTENANCE AND REPAIR WORK:

[\$689.50]

5. CONTACT PERSONS:

Communication between the Parties regarding performance of Routine Maintenance and Repair Work under this Agreement will be directed between the following representatives:

GPC Representative:

Name: Gene Edwards

Title: Project Manager

Georgia Power Company

Address: 2294 Skelton Rd.

Gainesville, GA 30504

Phone: (404) 535-0374

Customer Representative:

Name: Bobby Jinks

Title: Public Works Director

City of Forest Park

Address: 5230 Jones Rd.

Forest Park, GA 30297

Phone: (404) 366-4720

Exhibit 1 Acknowledged by GPC:

By: _____

Name: Gene Edwards

Title: Project Manager

Date: December 21, 2023

Exhibit 1 Acknowledged by Customer:

By: _____

Name: _____

Title: _____

Date: _____