Lighting Services Agreement

Georgia Power

Project # LP154148

Customer Legal Name CITY OF STONECREST DBA

Service Address 2985 Turner Hill Rd. Lithonia GA 30038 County DeKalb County

Mailing Address 3120 STONECREST BLVD LITHONIA GA 30038

Email rpowell@stonecrestga.gov Tel # 470-552-7275 Alt Tel # 470-464-3460

Tax ID# 4890 Business Description

Existing Customer Yes ☑ No ☐ If Yes (and if possible), does customer want the Service added to an existing account? Yes ☐ No ☑ If Yes, which Account Number?

Selected Components				
Action	**Qty**	**Wattage**	**Type**	**Description**
INS	8	160	LED	Roadway

Service Cost ($)	Regulated Cost ($)*	Monthly Cost ($)*
$296.00	$0.00	$296.00

Term (Months)	1

* The actual Regulated Cost will be calculated using the tariffs approved by Georgia Public Service Commission at the time of billing. The estimate is based on Summer Rates in effect at the time of this proposal. Excludes applicable sales tax.

Project Notes:
Project Driving Directions: These are 8 Georgia Power Roadway lights with receptacles along Turner Hill Rd; between Stonecrest Parkway and Mall Parkway

Customer agrees to this Lighting Services Agreement with Georgia Power Company under the attached terms and conditions and authorizes all actions noted on this agreement.

Customer also agrees to allow removal of existing lights. Yes ☐ N/A ☐

Type	Customer	Tariff	Content
NEC	Gov	Metered	NLC

Pre-Payment ($)
$92,685.71

Customer recognizes that the individual signing this Agreement on its behalf has authority to do so.

Customer Authorization		Georgia Power Authorization	
Signature		Signature	
Print Name		Print Name	LaRhonda Dukes
Print Title		Print Title	Account Executive
Date		Date	

TERMS and CONDITIONS *(Lighting Services – Governmental)*

1. **Agreement Scope.** These Terms and Conditions incorporate by reference the terms set forth in the attached transaction overview (the "**Transaction Overview**"), which collectively constitute the Lighting Services Agreement (the "**Agreement**"). The Agreement establishes the terms and conditions under which Georgia Power Company ("**GPC**") will provide lighting and, if applicable, related electric service (collectively, the "**Service**") to **Customer** at the Service Address (the "**Premises**"). GPC may at any time and from time to time, install, update, modify, or replace any GPC-owned pole, bases, wiring, conduit, fixture, control, equipment, device, or related item at the Premises (collectively, the "**GPC Assets**") for any reason related to the Service or the GPC Assets. GPC and Customer are each a "**Party**," and, collectively, the "**Parties.**" The Parties may exchange counterparts of the Agreement as a scanned image (e.g., .pdf or .tiff file extension) as an attachment to email; an electronic or scanned signature is an original signature for all purposes.

2. **Intent and Title.** This Agreement governs GPC's provision of the Service to Customer by GPC and is not a sale, lease, or licensing of goods, equipment, property, or assets of any kind. GPC retains the sole and exclusive right, title, and interest in and to all GPC Assets. Customer acknowledges that GPC Assets, although attached to real property, will always remain the exclusive personal property of GPC and that GPC may remove GPC Assets upon a Customer Default or Agreement termination. **GPC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law. Customer enters into this Agreement in sole reliance upon Customer's own advisors.**

3. **Term and Termination.** The initial Term of the Agreement is 1 month, as stated in the Transaction Terms section, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party (in accordance with the notice provisions of the Miscellaneous section below) at least 30 calendar days before the desired termination date. The initial term and any renewal term or terms are collectively, the "**Term.**"

4. **Payment.** GPC will invoice Customer in accordance with this Section 4 and the Transaction Overview, subject to any change in the electric service charge approved by the Georgia Public Service Commission. Customer acknowledges that the Monthly Cost set forth in the Transaction Overview may vary from month to month due to changes in the number of days in a billing month and modifications to the Georgia Public Service Commission-approved tariffs or regulatory charges. Customer agrees to pay the amount billed by the due date. If a balance is outstanding past the due date, Customer will pay to GPC an amount equal to the lesser of 1.5% per month of such unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by GPC in handling and processing the delinquent payment (the "**Late Charge**"). The Late Charge will be: (i) computed from the occurrence of Customer's payment Default until the earlier of the date upon which all delinquent payments are paid in full; and (ii) added to the Service Cost portion of the Monthly Cost, as described in the Transaction Overview. The terms and conditions of this Section 4 will not be construed as an agreement or privilege to extend the date of payments or the Monthly Cost, nor as a waiver of any other right or remedy accruing to GPC by reason of the occurrence of any payment Default by Customer. GPC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. If applicable, Customer must provide a copy of its Georgia sales tax exemption certificate. Customer will be required to pay all costs associated with Customer initiated changes to the Service after the effective date of this Agreement.

5. **Premises Activity.** Customer hereby grants to GPC and its contractors, agents, and representatives, the right and license to enter the Premises at any time and from time to time to perform any activity related to the Service, including the right to: (i) access the Premises with vehicles and other tools or equipment, to survey, dig, and excavate for the sole purpose of installing and connecting the GPC Assets, or to provide, suspend, or disconnect Service; (ii) remove and disconnect pre-existing equipment where necessary or convenient for the Service; (iii) inspect, maintain, test, replace, repair, and remove GPC Assets; (iv) provide electric energy in relation to the Service where GPC deems necessary; and (v) conduct any other activities reasonably related to the Service, including surveying, digging and excavation with tools, mechanized equipment, and other machinery (activity items (i) – (v) collectively, the "**GPC Activity**"). Customer represents and warrants that it has the right to permit GPC to provide the Service and perform the GPC Activity upon the Premises and, where applicable, has obtained the express authority and any required permissions from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the GPC Activity and Service. Customer is solely responsible for the safety and security of the Premises and agrees that GPC has no obligation to ensure the safety of the Premises. Customer agrees that GPC has no obligation to ensure the safety or security of the Premises and that, except to the extent determined to have been caused by GPC's gross negligence or willful misconduct, GPC has no liability for any personal injury, real or personal property damage or loss, or negative impact to Customer or any third-party that occurs at the Premises.

6. **Installation.** Customer acknowledges that providing the Service may require the installation of GPC Assets. Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, the Premises' property lines will be clearly marked before Installation of GPC Assets.

   A. **Customer Work.** If GPC permits Customer, either directly or through a third-party, to carry out any part of the activities for the GPC Assets at the Premises (including trenching), Customer warrants that the work will meet GPC's Installation specifications, which GPC will provide to Customer upon request and are incorporated by this reference. Customer must provide GPC with at least 10 calendar days' prior written notice of its schedule for Customer Work, to allow GPC to plan its installation work accordingly. Customer is responsible for all additional costs resulting from Customer's non-compliance with GPC's specifications, failing to inform GPC in advance that installation and connection of GPC Assets can begin. If the Customer Work impacts the performance or schedule of the Service performed by GPC, Customer is fully responsible for all resulting costs, expenses, losses, or damages arising directly or indirectly from such impact, including but not limited to additional labor, materials, equipment, or administrative expenses.

   B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because GPC Activity may require excavation not subject to the Georgia Utility Facility Protection Act (O.C.G.A. §§ 25-9-1 – 25-9-13) ("**Dig Law**"), **Customer must mark any private utility or facility (e.g., gas/water/sewer line; irrigation facility; low voltage/fiber/data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law.** If GPC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before GPC commences any GPC Activity, Customer is responsible for all damages and any damages arising from or related to any such delay.

   C. **Unforeseen Condition.** The charges shown in the Transaction Overview include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, or similar condition encountered during the GPC Activity ("**Unforeseen Condition**"). If GPC encounters an Unforeseen Condition, GPC, in its sole discretion, may stop all GPC Activity until Customer either remedies the condition or agrees to reimburse GPC for all costs arising from the condition. Customer is responsible for all costs of modification or change to the GPC Assets requested by Customer or arising from an Unforeseen Condition or circumstance outside GPC's control. Customer is responsible for

addressing any Unforeseen Conditions by either entering into a Change Order with GPC or contracting with a third party. Provided the Unforeseen Condition is not caused by GPC, GPC is entitled to adjustments in both the contract time and the contract sum.

D. **Safety and Security of Premises.** Customer will be responsible for the safety and security of the Premises. GPC will have no responsibility for the safety of the Premises except with respect to those portions of the Premises occupied or exclusively controlled by GPC in connection with the Services. GPC will exercise reasonable care in performing the Services and will be responsible for maintaining the safety of GPC Assets and work areas in a reasonably safe condition. In the event GPC becomes aware of any unsafe condition created solely by GPC in performance of the Services, GPC will use commercially reasonable efforts to correct such condition within a reasonable period of time or notify Customer thereof. To the extent permitted by applicable law, GPC will be liable for personal injury, death, or tangible property damage only to the extent directly caused by the gross negligence or willful misconduct of GPC, its employees, or authorized contractors. GPC will not be responsible for any unsafe condition, hazard, injury, damage, or loss resulting from (i) the condition of the Premises, (ii) the acts or omissions of Customer or any third party, or (iii) circumstances outside GPC's reasonable control. GPC's obligations under this Section 6(D) are limited to the performance of the Services and the conduct of its personnel in connection therewith and remain subject to the limitations of liability set forth elsewhere in this Agreement.

7. **GPC Asset Protection and Damage.** During the term of this Agreement, if Customer intends to perform any work or digging near the GPC Assets, Customer (or any person or entity working on behalf of Customer) must: (i) provide notices and submit locate requests to the Georgia Utilities Protection Center ("**UPC**") and other utility owners or operators as required by the then current Dig Law; (ii) coordinate with UPC and all utility facility owners or operators as required by the Dig Law; and (iii) comply with the High-voltage Safety Act (O.C.G.A. §§ 46-3-30 -- 46-3-40). Customer is responsible for all damages arising from failure to comply with applicable law or for damage to the GPC Assets caused by Customer or any person or entity working on behalf of Customer, other than GPC or a GPC contractor, agent, or representative.

8. **Interruption of Service.** Customer understands that Service is provided on an "as is" and "as available" basis and may be interrupted. If there is a Service interruption, Customer must notify GPC. Following notice, unless Customer is in Default, GPC will restore Service at no cost to Customer. Customer is responsible for providing any necessary or desired interim standalone lighting not attached or connected to any GPC Assets, until GPC can restore Service. No restoration timeline can or will be guaranteed, and any estimated timeline provided by GPC is subject to change in GPC's sole discretion. Customer must notify GPC of any outage by either calling 1-888-660-5890 or visiting https://www.georgiapower.com/community/outages-and-stormcenter/power-outage-overview/street-light-outage.html.

9. **Pole Attachments.** This Agreement does not grant Customer any right to attach or affix anything to any GPC Asset. Customer 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 Asset. If Customer desires to attach or affix anything to a GPC Asset, Customer must first obtain GPC's written consent, which may be withheld, conditioned, or delayed in GPC's sole discretion, and will be evidenced through a separate work authorization. Customer must contact GPC in writing at 241 Ralph McGill Boulevard, BIN 10210, Atlanta, Georgia 30308, to request consent.

10. **Disclaimer; Limitation of Liability. GPC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability, or noninfringement) regarding the Service, GPC Assets, any GPC Activity, or otherwise.** Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or selection of GPC Assets, the Service may not comply with IESNA guidelines. With respect to the portion of the Service relating to the Service Cost (but not the Regulated Cost), GPC warrants that it has the appropriate technical skills necessary to provide the Service and will perform the Service in a workmanlike manner and in accordance with applicable industry standards. As Customer's sole and exclusive remedy for a breach of the foregoing warranty, GPC will re-perform or repair any work that does not conform with the foregoing warranty. **To the fullest extent permitted by law, each Party waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Service, GPC Assets or this Agreement, or arising from damage, hindrance, or delay involving the Service or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable, and whether arising in tort, contract, or under any other theory of liability. Additionally, to the extent GPC is liable under this Agreement, and except to the extent determined to have been caused by GPC's gross negligence or willful misconduct, GPC's liability under this Agreement, whether arising in tort, contract, or under any other theory of liability, is expressly limited to the annual recurring service fees (excluding any pre-payment amount) paid by Customer for the year of Service during which GPC's liability arose.**

11. **Risk Allocation.** Each party will be responsible for its own acts and the results of its acts, except as otherwise described in this Agreement.

12. **Georgia Security, Immigration, and Compliance Act.** Customer is a "public employer" as defined by O.C.G.A. § 13-10-91, and this is a contract for physical performance of services in Georgia. Compliance with O.C.G.A. § 13-10-91 is a condition of this Agreement and is mandatory. GPC will provide to Customer a contractor's affidavit for installation services as required by O.C.G.A. § 13-10-91. If GPC employs any subcontractor in connection with installation under this Agreement, GPC also will secure from each subcontractor an affidavit attesting to compliance with O.C.G.A. § 13-10-91.

13. **Default.** Customer is in "**Default**" if: (i) Customer does not pay any amount to GPC, which remains unpaid 45 calendar days after the bill date: (ii) terminates this Agreement without proper written notice and prior to the end of the then current term of this Agreement; or (iii) breaches any material term, warranty, covenant, or representation of this Agreement. GPC's waiver of a past or concurrent Default will not waive any other Default. If a Default occurs, GPC may select one or more of the following remedies: (a) immediately terminate this Agreement; (b) remove any GPC Asset and anything attached or affixed to any GPC Asset from the Premises (including, without limitation, disconnect electric lighting service or removing Equipment) and to assess a reconnection charge; (c) without terminating this Agreement or removing any GPC Asset from the Premises, suspend or discontinue providing all or any portion of the Service to the Customer at the Premises (including, without limitation, disconnecting electric lighting service or removing Equipment) and to assess a reconnection charge; and (d) seek any available remedy provided under this Agreement or by law, including, the right to require a deposit, increase the amount of an existing deposit, or collect any past due amount, late payment charge, or amount due for the Service during the remaining term of the Agreement.

14. **Miscellaneous.** This Agreement, as amended or modified in writing by both parties from time to time, contains the parties' entire agreement relating to the Service, GPC Assets, and GPC Activity, and merges with and supersedes all prior discussions, proposals, representations, or agreements regarding this Agreement. GPC may modify the terms of this Agreement to comply with any regulatory changes during the term of this Agreement, or as otherwise required by law, by providing 30 calendar days' prior written notice to Customer of such modification, which will become effective on the date specified in the notice provided to Customer ("**Modification Effective Date**"). Continued performance under, or failure to object to the Agreement prior to the Modification Effective Date, will constitute acceptance of the Agreement as amended or modified. If Customer does not agree with the amended or modified terms of the Agreement, Customer must provide written notice of objection before the Modification Effected Date, or the amendments and modifications will be deemed accepted and binding. GPC's address for notice is 241 Ralph McGill Boulevard, BIN 10210, Atlanta, Georgia 30308; Customer's address for notice is as stated in the Transaction Overview. Either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or any right or obligation it

has under this Agreement; In this Agreement: (i) "include(ing)" means "include, but are not limited to" or "including, without limitation"; (ii) "or" means "either or both" ("A or B" means "A or B or both A and B"); (iii) "e.g." means "for example, including, without limitation"; and (iv) "written" or "in writing" includes email communication. Georgia law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective. The Sections titled Disclaimer; Limitation of Liability, Safety, Indemnity, Risk Allocation, and Miscellaneous will survive the expiration or termination of this Agreement. Additionally, the provisions of this Agreement will remain in effect to the extent necessary: (i) to provide for final billings and adjustments related to the period before termination with respect to the service provided to Customer before the date on which termination of this Agreement is effective, and (ii) payment of any money due and owing any party pursuant to this Agreement, in each case in accordance with the provisions of this Agreement.