

Agreement for Maintenance of Roadway Lighting Systems

This **Agreement for Maintenance of Roadway Lighting Systems** (the “**Agreement**”) is made by **Dekalb County** (“**customer**”) and **Georgia Power Company** (“**GPC**”), and, subject to the requirements of “**Effective Date**” below, is effective as of the date on which this Agreement is fully executed by both Parties as indicated on the signature page. Customer and GPC are referenced collectively as “**Parties**” and individually as “**Party.**”

THE PARTIES ACKNOWLEDGE THE FOLLOWING:

- Customer operates roadway lighting on certain interstate and limited access state highways within Customer’s jurisdictional limits and Customer’s streets and roadways (the “**Roadway Lighting**”); and
- Customer desires that GPC provide the materials and services necessary for maintenance of the Roadway Lighting; and
- GPC desires to assist Customer and is willing to perform the maintenance work for the Roadway Lighting.

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

1. **Roadway Lighting Definition.** In this Agreement, “**Roadway Lighting**” is generally defined as lighting facilities that provide illumination of the travel portion of those segments of the interstate and limited access state highways within Customer’s jurisdictional limits and Customer’s streets and roadways (collectively, the “**Roadways**”), as identified in “**Exhibit 1**” (attached and incorporated by this reference into this Agreement). Roadway Lighting includes lighting facilities on mainline, interchanges, and exit and entrance ramps, but does not include: (a) lighting facilities within enclosed structures along the mainline or ramps (classifiable as tunnels) that require continuous operation of lighting within said structures); or (b) lighting facilities for the illumination of signs and sign structures.

MAINTENANCE AND REPAIR WORK

2. **Maintenance Scope.** The maintenance work GPC will perform includes the routine maintenance of the Roadway Lighting and, when necessary due to damage, the repair of the Roadway Lighting. “**Routine Maintenance**” includes periodic inspection of the Roadway Lighting, replacement of lamps (based on expected lamp life) and replacement, as needed, of component parts (e.g., fuses, ballasts, relays and starter boards that may fail from time to time). “**Repair Work**” includes repair of physical damage to the median barrier walls or the Roadway Lighting resulting from vehicle crashes or from the action of any third party for whom GPC is not responsible and repair of damage to the Roadway Lighting due to acts of God. The Repair Work will be performed as expeditiously as possible after notification and repair authorization to GPC by Customer.
3. **Payment for Routine Maintenance.** For Routine Maintenance which GPC will perform periodically, Customer will pay GPC a set fee per light, for the mutually agreed number of lights and according to the frequency as set out in Exhibit 1. Upon receipt of an invoice from GPC, Customer will pay for the Routine Maintenance provided during the billing period.
4. **Payment for Repair Work.** For Repair Work, Customer will reimburse GPC for GPC’s cost of materials, supplies and labor and an additional 25% for GPC’s overhead and administrative costs. GPC will provide Customer with an invoice documenting its cost. Payment will be subject to Customer’s approval of the Repair Work, which will not be unreasonably withheld.

PERFORMANCE BY GPC

5. **Labor and Materials.** GPC will provide the labor and materials necessary to accomplish all services required for the Routine Maintenance and requested Repair Work (collectively, “**GPC’s Services**”). Customer agrees that GPC may use its own employees or may contract with one or more independent contractors to perform GPC’s Services.

6. **Permits.** GPC will obtain all permits, permissions and licenses necessary to perform GPC's Services. GPC will develop, implement and maintain all work-zone traffic control plans required by GDOT for working on the Roadways, as applicable. Customer will cooperate with GPC in securing, at GPC's expense, any necessary regulatory permit or approval and will provide assistance and information in its possession required by GPC, GDOT 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.
7. **Cooperation.** The Parties will communicate regarding performance of this Agreement through the contact persons identified in Exhibit 1. The Parties agree to use their best efforts to coordinate and cooperate in connection with all activities under this Agreement.
8. **Compliance with Applicable Law.** In performing GPC's Services under this Agreement, GPC will comply with all applicable statutes, laws, rules, codes, ordinances, regulations, decisions, orders, decrees, policies, or common law of any federal, state, local, or other governmental body, authority, and including, without limitation: (a) any judicial or administrative interpretation; (b) any order, consent decree, or judgment; and (c) any other applicable permits, licenses, or other governmental proclamations, including, without limitation, all applicable rules, regulations, permits, standards, guidelines, guidance, and directives prescribed by the State of Georgia and all applicable local or municipal codes (collectively, "**Applicable Law**").
9. **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 "1" 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 "2." The affidavit will become a part of the GPC/subcontractor agreement and GPC will maintain records of the affidavits for inspection by Customer.
10. **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.
11. **Insurance.** GPC will maintain in effect at all times during the term of this Agreement insurance covering workers' compensation, commercial general liability, and automobile liability in such amounts and with such deductible or self-insurance features as is consistent with GPC's customary practices. GPC will provide to Customer a self-insurance letter upon Customer's request. If GPC contracts with any independent contractor in connection with performance of GPC's obligations under this Agreement under "*Labor and Materials*" above, GPC will require that the independent contractor(s) maintain workers' compensation insurance as required by Applicable Law, commercial general liability insurance of at least \$2,000,000 per occurrence, automobile liability insurance of at least \$2,000,000 per occurrence and employer's liability insurance of at least \$1,000,000 per occurrence. GPC will also require that Customer be named as an additional insured on the contractor's commercial general, automobile and employer's liability policies.
12. **Property Damage and Risk of Loss.** As between GPC and Customer, GPC is responsible for all equipment and operating conditions at locations where GPC's Services are being performed. GPC will take all reasonable precautions and provide security, barriers or other devices as necessary to protect GPC's Services from damage. GPC will be responsible for the Services (including all materials and equipment) until the particular Maintenance Services or Repair Work, as the case may be, has been inspected by Customer (or its designee) and approved as complete.

- 13. Risk Allocation.** As between Customer and GPC, GPC will assume liability for any damage, loss, demand, claim, suit, action, judgment, fine, cost for any injury (including death) to a person and for damage to property to the extent arising out of or resulting from any error or omission of GPC or any negligent act of GPC or its independent contractors (or any of their officers, employees, agents or representatives) in performing GPC's Services under this Agreement.

MISCELLANEOUS

- 14. Effective Date.** 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). This Agreement will become effective as of the date it is fully executed on behalf of each Party ("**Effective Date**").
- 15. Term and Termination.** The initial term of this Agreement, commencing on the Effective Date, is two years. At the end of the initial term, this Agreement will automatically renew for successive one-year terms until terminated by either Party. Two months prior to expiration of the initial or any subsequent term, the Parties may discuss modifications to the Agreement, including the rates for Routine Maintenance and for Repair Work for the upcoming term. Notwithstanding the above, the Parties each reserve the right to terminate this Agreement at any time for any reason or no reason upon 30 days' written notice to the other Party.
- 16. 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.
- 17. 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. Each Party will provide all notices to the other at the address(es) shown below or to any other address that a Party designates by written notice under this provision.

If to Customer:

David W. Pelton
Director of Transportation
1950 West Exchange Place – 4th Floor
Tucker, GA 30084

With a Copy to:

Herman Fowler
Streetlight Coordinator
1950 West Exchange Place – 4th Floor
Tucker, GA 30084

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
Attn: Gene Edwards
2294 Skelton Road
Gainesville, GA 30504

- 18. 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.
- 19. 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.

20. Remedies and Damages. 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) ARISING FROM NONPERFORMANCE OF THIS AGREEMENT OR BECAUSE OF HINDRANCE OR DELAY FROM ANY CAUSE WHATSOEVER, WHETHER THE HINDRANCE OR DELAY IS REASONABLE OR UNREASONABLE, FORESEEABLE OR UNFORESEEABLE, CONTEMPLATED OR NOT CONTEMPLATED, AVOIDABLE OR UNAVOIDABLE.

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 document.

IN WITNESS WHEREOF, Customer and GPC have caused this Agreement to be executed under Seal by their duly authorized representatives as of the date(s) shown:

CUSTOMER:

By: _____ (SEAL)
Name: _____
Title: _____

Attest:

By: _____ (SEAL)
Name: _____
Title: _____
Date: _____

Approved as to Form:

By: _____
Name: _____
Title: _____

GEORGIA POWER COMPANY:

By: _____ (SEAL)
Name: _____
Title: _____

Attest:

By: _____ (SEAL)
Name: _____
Title: _____
Date: _____

Exhibit 1
to Agreement for Maintenance of Roadway Lighting Systems
between Georgia Power Company and Dekalb County

ROUTINE MAINTENANCE/ REPAIR WORK

1. ROADWAYS:

This Agreement relates to maintenance of Roadway Lighting on the following Roadways (or Roadway segments) of Customer:

Flat Shoals Road and I-285 E

*NOTE: Additional lights will be added to this agreement as lighting projects are completed and accepted by Dekalb County.

2. ROUTINE MAINTENANCE SCHEDULE:

Customer and GPC agree that GPC will perform Routine Maintenance on a **monthly** basis.

3. FEE PER LIGHT:

The Parties agree that Customer will pay **\$7.25** per light, per month, for the **18 – 50watt hps Wall Pack lights**, the **3 – 100watt hps Mongoose lights** and the **21 – 150watt hps mongoose lights**, **\$8.25** per light, per month for the **8 - 250watt hps wall pack lights**, **43 – 250watt hps Mongoose lights** and **\$9.25** per light, per month, for the **25 – 400watt hps Mongoose lights** for Routine Maintenance as provided in this Agreement.

The total monthly amount will be **\$956.50**.

Annual amount will be **\$11,478.00**.

4. NUMBER OF LIGHTS:

Customer and GPC agree that the total number of lights upon which GPC will perform Routine Maintenance is: 118.

5. CONTACT PERSONS:

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

GPC Contact:

Gene Edwards
Project Manager
Georgia Power Company
2294 Skelton Road
Gainesville, GA 30504
Phone: (770) 535-6405
Fax: (770) 535-6427

Customer Contact:

Herman Fowler
Streetlight Coordinator
Dekalb County
1950 W. Exchange Place 4th Floor
Tucker, GA 30084
Phone: (770) 492-5296
Fax: (770) 492-5201

GPC: _____

Customer: _____

DATE: _____

DATE: _____

MAINTENANCE:

Maintenance will occur on a monthly basis for Decorative Pedestrian Lights and Ramp Lights and a 6-month interval for the High Mast Lights and Wall Pack Lights and will include repairing any lighting fixture that is not working and inspection of the lowering system, high mast lighting, for proper operation.

Any bulb outages will be replaced at this time. Any failures to the lowering system, cable, conduit or service point(s) due to normal usage is included in routine maintenance.

Any call-out or requests made at times other than the 6-month interval or, circuit or tower outage will be billed at unit cost plus 25% and a \$250.00 call-out fee.

The following items are not included in this maintenance package: Damage by lighting, wind, or other “acts of God”, auto accidents, vandalism or rodents.

These items will be covered under the unit cost plus 25%.

*Rates are subject to change after initial contract term.