

BATAVIA CITY COUNCIL SPECIAL CONFERENCE MEETING

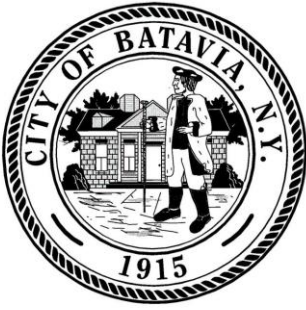
**City Hall - Council Board Room
One Batavia City Centre
Monday, September 12, 2022 at 7:00 PM
Prior to Business Meeting**

AGENDA

- I. Call to Order
- II. Invocation – Councilmember Canale
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
 - a. BID Wine Walk – 10/1/22
 - b. St. Paul Lutheran Church Craft & Vendor Fair – 10/15/22
 - c. Ever Present Church Fall Festival – 10/22/22
 - d. YWCA 5K – 10/15/22
- VII. Council President Report
 - a. Announcement of the next City Council Conference to be held on Monday, September 26, 2022 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre
 - I. Public Hearing – Restrictions on Animals and Fowl
 - II. CEMP (Comprehensive Emergency Management Plan) Presentation
 - III. Septage Hauler Rate for Use of the Wastewater Treatment Plant
 - IV. Amending Municipal Code To Include Restrictions on Animals and Fowl
 - V. Jackson Square Re-Design

- VI. National Grid Street Light Purchase and Sale Agreement
- VII. SEQR Associated With the National Grid Street Light Purchase And Sale Agreement
- VIII. Resolution to submit an application for Restore NY Grant project
- IX. Schedule a Public Hearing – Restore NY Grant***
- X. Fire Department FEMA Assistance to Firefighters Grant***
- XI. Police Traffic Services Grant 2022-2023***
- XII. Tracy Avenue Easement***
- XIII. Creation of Position Employee Payroll Insurance Clerk***
- XIV. Adjournment

***Move to Tonight's Business Agenda



MEMORANDUM

To: Rachael Tabelski, City Manager
From: Heidi J. Parker, Clerk-Treasurer
Date: 9/6/22
Subject: Event Summary

Below please find the summary for the events to be reviewed by City Council on September 12, 2022:

BID Wine Walk – 10/1/22

There are no costs from the departments.

St. Paul Lutheran Church Craft & Vendor Fair – 10/15/22

Estimated cost from public works is \$130-\$160. There are no costs from the other departments.

Ever Present Church Fall Festival – 10/22/22

Estimated cost from public works is \$357.28. There are no costs from the departments.

YWCA 5K – 10/15/22

Estimated cost from the police department is \$540. There are no costs from the departments.

****NOTE** – Event sponsors are responsible for any costs that may be incurred because of their event and have been made aware of estimate costs, if any.



City of Batavia
Batavia, New York 14020
(585) 345-6300

PAID
JUL 22 2022
CITY OF BATAVIA
CLERK-TREASURER

Official Use Only:

2022-45
Event Application #:

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor Batavia Business Improvement District
Type of Event Wine Walk
Day and Date of Event Saturday October 1 2022
Time of Event (don't include set up time here - just actual event time) 4-8 pm
Location of Event Downtown Batavia
Details of Event (be as specific as possible!) The Community Walks Store to Store downtown tasting wine

Contact Information:

Primary contact: Shannon Meule Secondary contact: _____
Name Shannon Meule
Phone # 409-5531
Mailing address 200 E. 1st St. Batavia N.Y. 14020
E-mail address Director@downtownbatavia.ny.com

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: _____

Will there be alcohol at your event? Yes No If yes, complete the following:
Type of alcoholic beverage to be served: Liquor Wine Beer
Will you be providing alcohol to your group? Yes No
Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.
Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? Each Store participating

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: Oct 1 2022

Set up time: 4 pm

Tear down date: Oct 1 2022

Tear down time: 8 pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 10/1/2022 Start time: 4 pm End time: 8 pm

Estimated crowd size: 625 # of Vendors/Displays 24 in Stores or Businesses

WILL THE EVENT INCLUDE:

- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
 - Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
 - Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? _____

Will generators be used? Yes No *see Special Events Inspection ✓ list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event? Yes No
Will a bounce house or other air supported structures be erected at event? Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected* _____

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: _____

List Street(s) and Cross Street(s) that will be affected:

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Will street barricades be requested from the City? Yes No How Many? _____

Will traffic cones be requested from the City? Yes No How Many? _____
(Drop off locations of requested items must be identified on the site drawing)

BANNERS / SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: (there may be additional costs)

POLICE

Will City Police Officers be requested for the event? Yes No

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

The BEO, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the The BEO (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

7/21/2022
Date:

Batavia Business Improvement Dist.
Name of Event Sponsor:

Shannon Maute Executive Director
Authorized Signature, Title

Shannon Maute
Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

7/21/2022
Date:

Shannon Maute
Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

OFFICIAL USE ONLY				
Department Recommendations:	Approved	Denied	Additional Costs	Department Initials
DPW (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Fire Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Police Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

If recommendation is denied, please attach a brief explanation

OFFICIAL USE ONLY	
_____	_____
<i>Date Received</i>	<i>Council Action: (Approved / Disapproved)</i>
_____	_____
<i>Date of Council Action:</i>	<i>Insurance Received (if applicable)</i>

Event Application #: _____

Department: _____
List Department Name Here

Department Approval	YES	NO
DPW	<input type="checkbox"/>	<input type="checkbox"/>
Fire	<input type="checkbox"/>	<input type="checkbox"/>
Police	<input type="checkbox"/>	<input type="checkbox"/>

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

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If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

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Submitted By: _____ _____
Name / Title *Date Submitted*

Appendices

SPECIAL EVENTS INSPECTION			
YES	Item to verify	NO	Corrective action
	Extension cords plugged into approved electrical boxes?		Do not use unless cords plugged direct
	Generator in use 20 feet from any structure?		Do not use generator unless moved to safe area
	Generator has appropriate extinguisher available		Do not use unless extinguisher present
	Generator grounded?		Do not use unless grounded
	Inflatable secured to ground?		Do not use unless secured
	Inflatable rods covered?		Do not use unless rods are covered for safety
	Propane tanks secured?		Do not use unless secured
	Outside cooking has appropriate extinguisher?		Do not use unless extinguisher present
	Fireworks display 75 feet from any structure?		Do not light unless in approved location
	Fireworks display has proper extinguishers?		Do not light unless extinguisher is present
	Does cooking under tent meet the safety standard?		Do not cook unless tent is rated for fire resistance or cooking outside tent
	Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse?		Do not occupy until proper securing is approved by inspector
	Does Easy up tent have permanent label ID of size and fabric?		Tent not to be used without proper label
	Outdoor cooking that produces sparks or grease laden vapors?		Shall be outside of tents unless tent is fire rated and extinguishers or hood present
	Does the venue have a crowd of 250 people or more?		Must have crowd managers trained as approved by inspector

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)			
YES	Item to Verify	NO	Corrective Action

Is structure at least 20 feet from any property lines?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines.
Is structure within 20 feet of any building?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building.
Is structure within 20 feet of another structure?	Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements.
Is structure within 20 feet of parking?	Restrict parking or relocate structure at least 20 feet from parking.
Is structure within 20 feet of any internal combustion engines?	Do not use internal combustion engine until relocated at least 20 feet from structure.
Are "No Smoking" signs posted inside and outside?	Do not occupy or use structure unless no smoking signs are posted and enforced.
Are fireworks and unapproved open flames prohibited inside and outside the structure?	Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure.
Are all points in the structure within 100 feet of an exit?	Do not occupy or use structure unless sufficient nearby exits are provided.
Ensure "Exit" signs are posted and clearly visible.	Do not occupy or use structure unless required "Exit" signs are provided.
Ensure "Exit" signs are illuminated.	Do not use or occupy structure unless illuminated exits are provided.
Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load.	Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup.
Are exits open and uncovered?	Do not occupy or use structure unless all required exits are functional.
Are all aisles at least 44 inches wide? Do aisles increase in width where required?	Do not occupy or use structure unless proper aisle widths are maintained.
Is the Occupant Load posted appropriately?	Do not occupy or use structure unless the correct occupant load is posted appropriately.
Ensure emergency lighting is provided.	Do not use or occupy structure unless emergency lighting is provided.
Is a label permanently affixed to the structure bearing the identification of size and material type?	Do not use or occupy structure unless label is present.
2A:10BC Fire extinguishers are provided (see information packet for minimum number required).	Do not use or occupy structure until sufficient, properly sized, fire extinguishers are provided.
At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed.	Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes.
Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area.	Do not use or occupy the structure unless combustible vegetation has been removed from the specified area.
The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste.	Do not use or occupy the structure unless combustible waste is removed or stored in proper containers.
Such waste shall be stored in approved containers until removed from the premises.	Do not use or occupy the structure unless trash containers have been emptied from the previous day.
Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent.	Do not use cooking source under tent
Is tent secure	20 lbs per leg or tent stakes
<p>Inspection performed by: _____ Date: _____</p>	



City of Batavia
Batavia, New York 14020
(585) 345-6300

Official Use Only:

2022-48
Event Application #:

PAID
AUG - 5 2022
CITY OF BATAVIA
CLERK-TREASURER

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor St. Paul Lutheran Church and School
Type of Event Craft & Vendor fair
Day and Date of Event Saturday, October 15, 2022
Time of Event (don't include set up time here - just actual event time) 10-3pm
Location of Event City Center concourse
Details of Event (be as specific as possible!) Variety of crafts & vendors
selling/displaying products. Local non-profit agencies
welcome

Contact Information:

Primary contact:

Name Deborah Porter
Phone # 585 409 5888
Mailing address 31 Washington Ave, Batavia
E-mail address deborehannporter@gmail.com

Secondary contact:

Name Joanna Weicher
Phone # 585-993-2410
Mailing address 31 Washington Ave Batavia
E-mail address joanna.weicher2410@gmail.com

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: stpaulbatavia@gmail.com

Will there be alcohol at your event? possibly - if there is a vendor
Yes No If yes, complete the following:

Type of alcoholic beverage to be served: sold by vendor
Liquor Wine Beer

Will you be providing alcohol to your group? Yes No

Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.

Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? individual vendor(s)

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: Fri. Oct. 14, 2022

Set up time: 3pm - 8pm

Tear down date: Sat Oct 15, 2022

Tear down time: 3pm - 4pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: Sat. Oct 15, 2022 Start time: 10:00 am End time: 3:00 pm

Estimated crowd size: 200 (?) # of Vendors/Displays 50+

WILL THE EVENT INCLUDE:

- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
 - Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
 - Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? only if requested by vendor

Will generators be used? Yes No *see Special Events Inspection ✓ list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event? Yes No
Will a bounce house or other air supported structures be erected at event? Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected* _____

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: _____

List Street(s) and Cross Street(s) that will be affected:

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Will street barricades be requested from the City? Yes No How Many? _____

Will traffic cones be requested from the City? Yes No How Many? _____
(Drop off locations of requested items must be identified on the site drawing)

BANNERS/ SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: (there may be additional costs)

POLICE

Will City Police Officers be requested for the event? Yes No

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

St. Paul Lutheran Church/School the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the St Paul Lutheran C/S (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

Aug 5, 2022
Date:

St. Paul Lutheran Church/School
Name of Event Sponsor:

Deborah Porter / fundraising co-chair
Authorized Signature, Title

Deborah A Porter
Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

Aug 5 2022
Date:

Deborah A Porter
Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

<u>OFFICIAL USE ONLY</u>				
Department Recommendations:	Approved	Denied	Additional Costs	Department Initials
DPW (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Fire Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Police Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<i>If recommendation is denied, please attach a brief explanation</i>				

<u>OFFICIAL USE ONLY</u>	
_____	_____
<i>Date Received</i>	<i>Council Action: (Approved / Disapproved)</i>
_____	_____
<i>Date of Council Action:</i>	<i>Insurance Received (if applicable)</i>

Event Application #: _____

Department: _____
List Department Name Here

Department Approval	YES	NO
DPW	<input type="checkbox"/>	<input type="checkbox"/>
Fire	<input type="checkbox"/>	<input type="checkbox"/>
Police	<input type="checkbox"/>	<input type="checkbox"/>

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

Submitted By: _____ Name / Title Date Submitted

Appendices

SPECIAL EVENTS INSPECTION			
YES	Item to verify	NO	Corrective action
	Extension cords plugged into approved electrical boxes?		Do not use unless cords plugged direct
	Generator in use 20 feet from any structure?		Do not use generator unless moved to safe area
	Generator has appropriate extinguisher available		Do not use unless extinguisher present
	Generator grounded?		Do not use unless grounded
	Inflatable secured to ground?		Do not use unless secured
	Inflatable rods covered?		Do not use unless rods are covered for safety
	Propane tanks secured?		Do not use unless secured
	Outside cooking has appropriate extinguisher?		Do not use unless extinguisher present
	Fireworks display 75 feet from any structure?		Do not light unless in approved location
	Fireworks display has proper extinguishers?		Do not light unless extinguisher is present
	Does cooking under tent meet the safety standard?		Do not cook unless tent is rated for fire resistance or cooking outside tent
	Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse?		Do not occupy until proper securing is approved by inspector
	Does Easy up tent have permanent label ID of size and fabric?		Tent not to be used without proper label
	Outdoor cooking that produces sparks or grease laden vapors?		Shall be outside of tents unless tent is fire rated and extinguishers or hood present
	Does the venue have a crowd of 250 people or more?		Must have crowd managers trained as approved by inspector

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)			
YES	Item to Verify	NO	Corrective Action

Is structure at least 20 feet from any property lines?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines.
Is structure within 20 feet of any building?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building.
Is structure within 20 feet of another structure?	Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements.
Is structure within 20 feet of parking?	Restrict parking or relocate structure at least 20 feet from parking.
Is structure within 20 feet of any internal combustion engines?	Do not use internal combustion engine until relocated at least 20 feet from structure.
Are "No Smoking" signs posted inside and outside?	Do not occupy or use structure unless no smoking signs are posted and enforced.
Are fireworks and unapproved open flames prohibited inside and outside the structure?	Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure.
Are all points in the structure within 100 feet of an exit?	Do not occupy or use structure unless sufficient nearby exits are provided.
Ensure "Exit" signs are posted and clearly visible.	Do not occupy or use structure unless required "Exit" signs are provided.
Ensure "Exit" signs are illuminated.	Do not use or occupy structure unless illuminated exits are provided.
Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load.	Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup.
Are exits open and uncovered?	Do not occupy or use structure unless all required exits are functional.
Are all aisles at least 44 inches wide? Do aisles increase in width where required?	Do not occupy or use structure unless proper aisle widths are maintained.
Is the Occupant Load posted appropriately?	Do not occupy or use structure unless the correct occupant load is posted appropriately.
Ensure emergency lighting is provided.	Do not use or occupy structure unless emergency lighting is provided.
Is a label permanently affixed to the structure bearing the identification of size and material type?	Do not use or occupy structure unless label is present.
2A:10BC Fire extinguishers are provided (see information packet for minimum number required).	Do not use or occupy structure until sufficient, properly sized, fire extinguishers are provided.
At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed.	Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes.
Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area.	Do not use or occupy the structure unless combustible vegetation has been removed from the specified area.
The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste.	Do not use or occupy the structure unless combustible waste is removed or stored in proper containers.
Such waste shall be stored in approved containers until removed from the premises.	Do not use or occupy the structure unless trash containers have been emptied from the previous day.
Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent.	Do not use cooking source under tent
Is tent secure	20 lbs per leg or tent stakes
Inspection performed by: _____ Date: _____	



City of Batavia
Batavia, New York 14020
(585) 345-6300

Official Use Only:

2022-47

Event Application #:

PAID
AUG - 8 2022
CITY OF BATAVIA
CLERK-TREASURER

Event Application Fee - \$25.00 (non-refundable)

(A separate permit must be issued for each item requested)

Event Sponsor Ever Present

Type of Event Fall Festival

Day and Date of Event 10-22 Saturday

Time of Event (don't include set up time here - just actual event time) 10-3 4-8pm

Location of Event Hillside Concourse Area From Harvester to

Details of Event (be as specific as possible!) Kids Games, Face painting, Pumpkin Painting, Waffles, Hot Dogs, Popcorn, Free Candy, Bounce Houses

Contact Information:

<u>Primary contact:</u>	<u>Secondary contact:</u>
Name <u>Pastor Michelle Norton</u>	Name <u>Pastor Jason Norton</u>
Phone # <u>585-297-3155</u>	Phone # <u>585-993-1888</u>
Mailing address <u>4 Batavia City Centre</u>	
E-mail address <u>Pastormichelle@EverPresentChurch.com</u>	

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: _____

Will there be alcohol at your event? Yes No If yes, complete the following:

Type of alcoholic beverage to be served: Liquor Wine Beer

Will you be providing alcohol to your group? Yes No

Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.

Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? No

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: 10-22

Set up time: 5pm

Tear down date: 10-22

Tear down time: 3pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 10-22 Start time: 10 End time: 3

Estimated crowd size: 500 # of Vendors/Displays _____

WILL THE EVENT INCLUDE:

- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
- Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
- Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ
Ever Present Church 585-297-3155
Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

4 Batavia City Centre Batavia 14020
Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No
What will you be providing electric to? Houses Waffle & Popcorn, Bounce

Will generators be used? Yes No *see Special Events Inspection list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) 5000 FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event?
Will a bounce house or other air supported structures be erected at event?

Yes No
Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected*

20x40, 8x10 10x20 10x10

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: _____

List Street(s) and Cross Street(s) that will be affected:

_____	_____	&	_____
Street to be closed		Cross Streets	
_____	_____	&	_____
Street to be closed		Cross Streets	
_____	_____	&	_____
Street to be closed		Cross Streets	
_____	_____	&	_____
Street to be closed		Cross Streets	

Will street barricades be requested from the City? Yes No How Many? _____

Will traffic cones be requested from the City? Yes No How Many? _____

(Drop off locations of requested items must be identified on the site drawing)

BANNERS, SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: (there may be additional costs)

No

POLICE

Will City Police Officers be requested for the event? Yes No

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

Ever Present, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the Ever Present (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

8-4-22
Date:

Ever Present Church
Name of Event Sponsor:

Pastor Michelle Norton
Authorized Signature, Title

Pastor Michelle Norton
Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

8-4-22
Date:

Pastor Michelle Norton
Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

<u>OFFICIAL USE ONLY</u>				
Department Recommendations:	Approved	Denied	Additional Costs	Department Initials
DPW (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Fire Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Police Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<i>If recommendation is denied, please attach a brief explanation</i>				

<u>OFFICIAL USE ONLY</u>	
_____	_____
<i>Date Received</i>	<i>Council Action: (Approved / Disapproved)</i>
_____	_____
<i>Date of Council Action:</i>	<i>Insurance Received (if applicable)</i>

Event Application #: _____

Department: _____
List Department Name Here

Department Approval	YES	NO
DPW	<input type="checkbox"/>	<input type="checkbox"/>
Fire	<input type="checkbox"/>	<input type="checkbox"/>
Police	<input type="checkbox"/>	<input type="checkbox"/>

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

Submitted By: _____ _____
Name / Title *Date Submitted*

Appendices

SPECIAL EVENTS INSPECTION

YES	Item to verify	NO	Corrective action
	Extension cords plugged into approved electrical boxes?		Do not use unless cords plugged direct
	Generator in use 20 feet from any structure?		Do not use generator unless moved to safe area
	Generator has appropriate extinguisher available		Do not use unless extinguisher present
	Generator grounded?		Do not use unless grounded
	Inflatable secured to ground?		Do not use unless secured
	Inflatable rods covered?		Do not use unless rods are covered for safety
	Propane tanks secured?		Do not use unless secured
	Outside cooking has appropriate extinguisher?		Do not use unless extinguisher present
	Fireworks display 75 feet from any structure?		Do not light unless in approved location
	Fireworks display has proper extinguishers?		Do not light unless extinguisher is present
	Does cooking under tent meet the safety standard?		Do not cook unless tent is rated for fire resistance or cooking outside tent
	Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse?		Do not occupy until proper securing is approved by inspector
	Does Easy up tent have permanent label ID of size and fabric?		Tent not to be used without proper label
	Outdoor cooking that produces sparks or grease laden vapors?		Shall be outside of tents unless tent is fire rated and extinguishers or hood present
	Does the venue have a crowd of 250 people or more?		Must have crowd managers trained as approved by inspector

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)

YES	Item to Verify	NO	Corrective Action
-----	----------------	----	-------------------

Is structure at least 20 feet from any property lines?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines.
Is structure within 20 feet of any building?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building.
Is structure within 20 feet of another structure?	Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements.
Is structure within 20 feet of parking?	Restrict parking or relocate structure at least 20 feet from parking.
Is structure within 20 feet of any internal combustion engines?	Do not use internal combustion engine until relocated at least 20 feet from structure.
Are "No Smoking" signs posted inside and outside?	Do not occupy or use structure unless no smoking signs are posted and enforced.
Are fireworks and unapproved open flames prohibited inside and outside the structure?	Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure.
Are all points in the structure within 100 feet of an exit?	Do not occupy or use structure unless sufficient nearby exits are provided.
Ensure "Exit" signs are posted and clearly visible.	Do not occupy or use structure unless required "Exit" signs are provided.
Ensure "Exit" signs are illuminated.	Do not use or occupy structure unless illuminated exits are provided.
Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load.	Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup.
Are exits open and uncovered?	Do not occupy or use structure unless all required exits are functional.
Are all aisles at least 44 inches wide? Do aisles increase in width where required?	Do not occupy or use structure unless proper aisle widths are maintained.
Is the Occupant Load posted appropriately?	Do not occupy or use structure unless the correct occupant load is posted appropriately.
Ensure emergency lighting is provided.	Do not use or occupy structure unless emergency lighting is provided.
Is a label permanently affixed to the structure bearing the identification of size and material type?	Do not use or occupy structure unless label is present.
2A:10BC Fire extinguishers are provided (see information packet for minimum number required).	Do not use or occupy structure until sufficient, properly sized, fire extinguishers are provided.
At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed.	Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes.
Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area.	Do not use or occupy the structure unless combustible vegetation has been removed from the specified area.
The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste.	Do not use or occupy the structure unless combustible waste is removed or stored in proper containers.
Such waste shall be stored in approved containers until removed from the premises.	Do not use or occupy the structure unless trash containers have been emptied from the previous day.
Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent.	Do not use cooking source under tent
Is tent secure	20 lbs per leg or tent stakes
Inspection performed by: _____ Date: _____	



City of Batavia
Batavia, New York 14020
(585) 345-6300

PAID
JUL 21 2022
CITY OF BATAVIA
CLERK-TREASURER

Official Use Only:

2022-42
Event Application #:

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor YNCA of Genesee County

Type of Event 5K

Day and Date of Event October 15, 2022 Saturday

Time of Event (don't include set up time here - just actual event time) 8:30am - 1:00pm

Location of Event YNCA of Genesee County 301 North St.

Details of Event (be as specific as possible!) 5K RUN until their voices are

heard. Awareness event For Survivors of Domestic Violence.
Vendors/Tables.

Contact Information:

Primary contact:

Secondary contact:

Name Justina Garner

Phone # 585-969-1600

Mailing address 301 North Street Batavia

E-mail address garner@ywcagenesee.org

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: ywcagenesee.org

Run Sign-up

Will there be alcohol at your event? Yes No If yes, complete the following:

Type of alcoholic beverage to be served: Liquor Wine Beer

Will you be providing alcohol to your group? Yes No

Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.

Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? NO

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: October 15, 2022

Set up time: 8:00 am

Tear down date: October 15, 2022

Tear down time: 12:00 pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 10/15/22

Start time: 8:30am

End time: 12:00pm

Estimated crowd size: 100+

of Vendors/Displays 10 estimated vendor
10 estimated tabling

Depends on registrations

WILL THE EVENT INCLUDE:

- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED) Road Block
- Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED) From
- Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES) wine/North
- Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED) Ross/North

Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative: _____ Phone #: _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ

DJ Briggs Johnson
Name of Company Providing Above: _____ Company Contact/Representative: _____ Phone #: _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 *The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.*

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? Speaker / DJ

Will generators be used? Yes No *see Special Events Inspection ✓ list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

YWCA, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the _____ (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

7/20/22
Date:

YWCA of Genesee County
Name of Event Sponsor:

[Signature]
Authorized Signature, Title

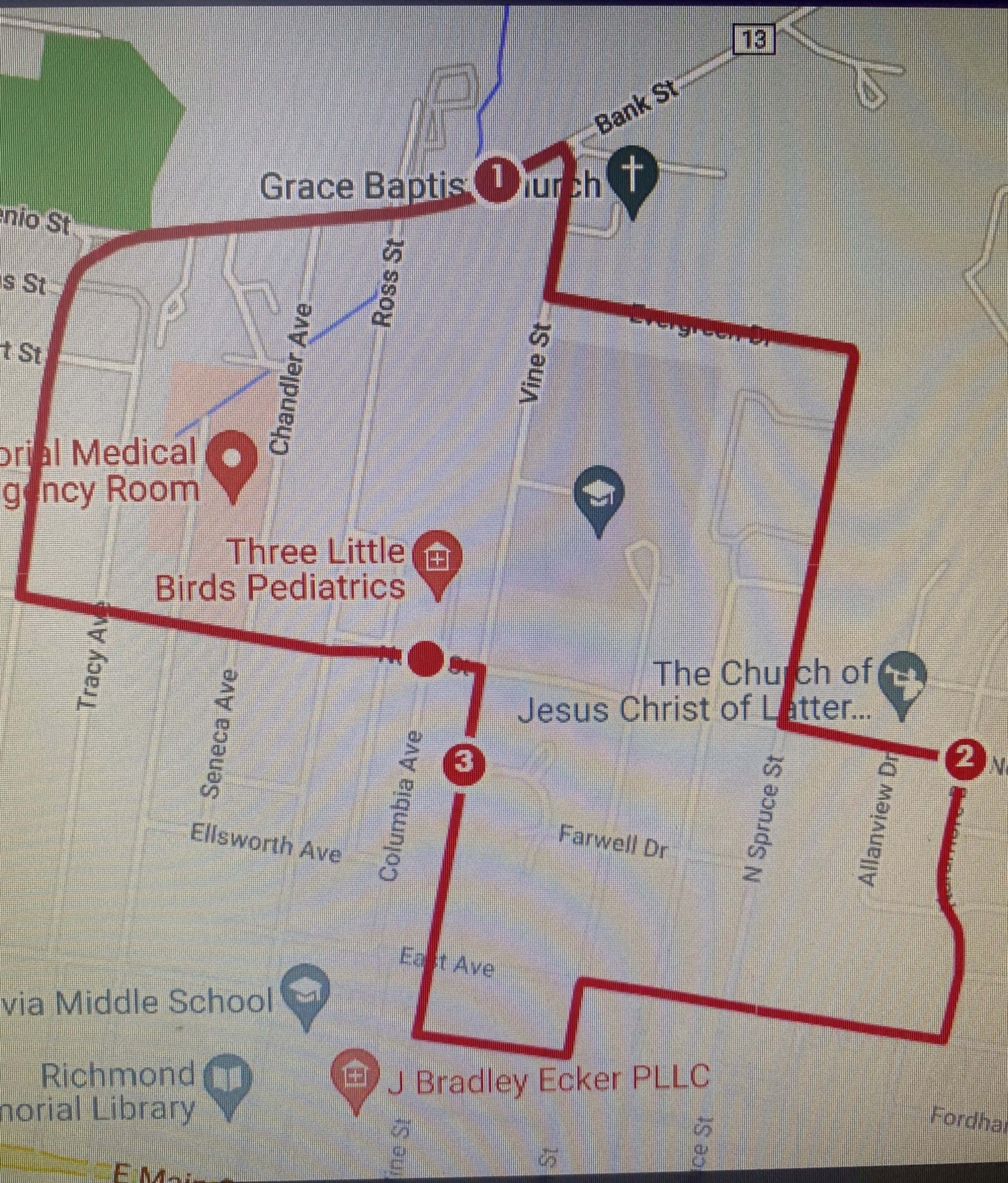
Justina Garner
Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.
7/20/22
Date:

[Signature]
Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**



...ss journey, so take control of your data, too. [Learn more ab](#)

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

<u>OFFICIAL USE ONLY</u>				
Department Recommendations:	Approved	Denied	Additional Costs	Department Initials
DPW (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Fire Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Police Dept. (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<i>If recommendation is denied, please attach a brief explanation</i>				

<u>OFFICIAL USE ONLY</u>	
_____	_____
<i>Date Received</i>	<i>Council Action: (Approved / Disapproved)</i>
_____	_____
<i>Date of Council Action:</i>	<i>Insurance Received (if applicable)</i>

Event Application #: _____

Department: _____
List Department Name Here

Department Approval	YES	NO
DPW	<input type="checkbox"/>	<input type="checkbox"/>
Fire	<input type="checkbox"/>	<input type="checkbox"/>
Police	<input type="checkbox"/>	<input type="checkbox"/>

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

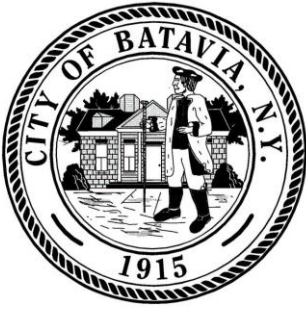
Submitted By: _____ _____
Name / Title *Date Submitted*

Appendices

SPECIAL EVENTS INSPECTION			
YES	Item to verify	NO	Corrective action
	Extension cords plugged into approved electrical boxes?		Do not use unless cords plugged direct
	Generator in use 20 feet from any structure?		Do not use generator unless moved to safe area
	Generator has appropriate extinguisher available		Do not use unless extinguisher present
	Generator grounded?		Do not use unless grounded
	Inflatable secured to ground?		Do not use unless secured
	Inflatable rods covered?		Do not use unless rods are covered for safety
	Propane tanks secured?		Do not use unless secured
	Outside cooking has appropriate extinguisher?		Do not use unless extinguisher present
	Fireworks display 75 feet from any structure?		Do not light unless in approved location
	Fireworks display has proper extinguishers?		Do not light unless extinguisher is present
	Does cooking under tent meet the safety standard?		Do not cook unless tent is rated for fire resistance or cooking outside tent
	Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse?		Do not occupy until proper securing is approved by inspector
	Does Easy up tent have permanent label ID of size and fabric?		Tent not to be used without proper label
	Outdoor cooking that produces sparks or grease laden vapors?		Shall be outside of tents unless tent is fire rated and extinguishers or hood present
	Does the venue have a crowd of 250 people or more?		Must have crowd managers trained as approved by inspector

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)			
YES	Item to Verify	NO	Corrective Action

Is structure at least 20 feet from any property lines?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines.
Is structure within 20 feet of any building?	Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building.
Is structure within 20 feet of another structure?	Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements.
Is structure within 20 feet of parking?	Restrict parking or relocate structure at least 20 feet from parking.
Is structure within 20 feet of any internal combustion engines?	Do not use internal combustion engine until relocated at least 20 feet from structure.
Are "No Smoking" signs posted inside and outside?	Do not occupy or use structure unless no smoking signs are posted and enforced.
Are fireworks and unapproved open flames prohibited inside and outside the structure?	Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure.
Are all points in the structure within 100 feet of an exit?	Do not occupy or use structure unless sufficient nearby exits are provided.
Ensure "Exit" signs are posted and clearly visible.	Do not occupy or use structure unless required "Exit" signs are provided.
Ensure "Exit" signs are illuminated.	Do not use or occupy structure unless illuminated exits are provided.
Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load.	Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup.
Are exits open and uncovered?	Do not occupy or use structure unless all required exits are functional.
Are all aisles at least 44 inches wide? Do aisles increase in width where required?	Do not occupy or use structure unless proper aisle widths are maintained.
Is the Occupant Load posted appropriately?	Do not occupy or use structure unless the correct occupant load is posted appropriately.
Ensure emergency lighting is provided.	Do not use or occupy structure unless emergency lighting is provided.
Is a label permanently affixed to the structure bearing the identification of size and material type?	Do not use or occupy structure unless label is present.
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At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed.	Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes.
Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area.	Do not use or occupy the structure unless combustible vegetation has been removed from the specified area.
The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste.	Do not use or occupy the structure unless combustible waste is removed or stored in proper containers.
Such waste shall be stored in approved containers until removed from the premises.	Do not use or occupy the structure unless trash containers have been emptied from the previous day.
Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent.	Do not use cooking source under tent
Is tent secure	20 lbs per leg or tent stakes
Inspection performed by:	Date:



Memorandum

To: Rachael Tabelski, City Manager

From: Mike Ficarella, Superintendent Water and Wastewater

Date: August 3, 2022

Subject: Septic Receiving Rate Increase WWTF

Currently, we accept waste from bulk septage haulers at the Wastewater Treatment Plant at the rate of \$0.04 per 1,000 gallons. I recommend we raise our fee to \$0.15 per 1,000 gallons. At which time, trucks are also being charged at full tank capacity.

This change would take effect immediately.

#-2022

A RESOLUTION TO INCREASE THE FEE FOR BULK SEPTAGE HAULERS

Motion of Councilmember

WHEREAS, The City of Batavia currently accepts waste from bulk septage haulers at the rate of \$0.04 per 1,000 gallons; and

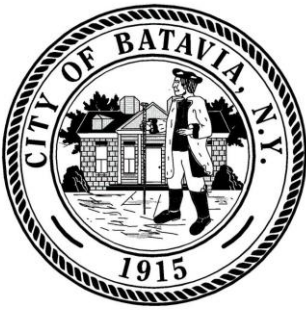
WHEREAS, This is higher concentrated waste, this fee does not cover the treatment cost; and

WHEREAS, The City bases its charge on the septage haulers full tank capacity; and

WHEREAS, The rate should be increased to \$0.15 per 1,000 gallons;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Council President is hereby authorized on behalf of the City to increase the rate of bulk waste hauled to the Wastewater Treatment Plant to \$0.15 per 1,000 gallons.

Seconded by Councilmember
And on the roll call



City of Batavia

Memorandum

To: Honorable City Council Members

From: Rachael J. Tabelski, MPA, City Manager

Date: August 30, 2022

Subject: Ordinance Amending Chapter 190 "Zoning" of the City of Batavia to provide Restrictions on Animal and Fowl

The City of Batavia City Council requested that the City Manager research potential restrictions on animals and fowl in the City of Batavia.

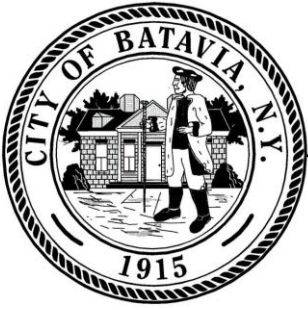
After researching other City's restrictions and regulations, it was discovered that regulating animals is a common practice in cities. The Cities of Geneva, Canandaigua, Jamestown, Elmira and Lockport all have code restrictions on animals in a variety of forms. A City, by its nature, has property close in proximity. By limiting animals in neighborhoods the City of Batavia may reduce current and potential neighbor issues and complaints to the Police Department and Inspections Bureau.

The proposed restrictions, written with input from the Code Enforcement Office and City Attorney, were referred to the Planning and Development Committee (PDC) for their review and comment. The following resolution as presented will add restriction in §190-42 Miscellaneous Regulations of the City of Batavia Municipal Code.

The regulation would restrict persons from owning bringing into, possessing, keeping, harboring or feeding farm animals, cloven hooved animals, equine, or fowl (ducks, turkey, geese) including but not limited to cattle, horses, sheep, goats, pigs, swine, llamas, alpacas, ducks, turkey, geese, feral cats, ponies, donkey's, mules or any other farm animal or wild animal within the City limits.

With the following exceptions:

1. Six (6) hen chickens may be kept as long that they penned appropriately, do not accumulate feces, cause odor, or an unsightly or unsafe condition.
2. Harborage, including transport to and from race tracks and all associated grounds.
3. Special events with the approval of an event application.



City of Batavia

4. Animals in transit through the City.
5. Transport to and from veterinary hospitals/clinics including short term boarding for medical procedures/conditions.

Attached is an ordinance amending chapter 190 entitled “zoning” of the city of Batavia municipal code to amend the zoning of the city of Batavia to restrict animals and fowl.

ORDINANCE #-2022

AN ORDINANCE AMENDING CHAPTER 190 ENTITLED “ZONING” OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND THE ZONING OF THE CITY OF BATAVIA TO RESTRICT ANIMALS AND FOWL

SECTION 1. AMENDMENT OF THE ZONING MAP OF THE CITY OF BATAVIA ADDING § 190-42 MISCELLANEOUS REGULATIONS. H. RESTRICTION ON ANIMALS AND FOWL

§ 190-42 Miscellaneous regulations.

H. Restriction on Animals and Fowl.

- A. No person shall own, bring into, possess, keep, harbor or feed farm animals, cloven hoofed animals, equine or fowl including, but not limited to, cattle, horses, sheep, goats, pigs, swine, llamas, alpacas, ducks, turkey, geese, feral cats, ponies, donkey’s mules or any other farm or wild animal within the City limits.
- B. No person shall own, keep, harbor, or feed wild animals, wild fowl (ducks, turkey, or geese), or feral cats within the City limit.
- C. Subject to the limited exceptions set forth herein; No person shall harbor, breed or maintain any farm animals, cloven hoofed animals, equine or fowl including, but not limited to, cattle, horses, sheep, goats, pigs, swine, llamas, alpacas, ducks, turkey, geese, feral cats, ponies, donkey’s mules or any other farm or wild animal within the City limit.

Exceptions:

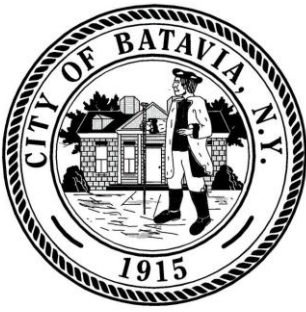
- (a) A maximum of six (6) hen chickens may be kept as long as that they are penned appropriately, do not accumulate feces, cause odor, or an unsightly or unsafe condition.
- (b) Harborage, including transport to and from race tracks and all associated grounds.
- (c) Special events with the approval of an event application.
- (d) Animals in transit through the City.
- (e) Transport to and from veterinary hospitals/clinics including short term boarding for medical procedures/conditions.

- D. No person shall permit an accumulation of animal and/or fowl feces on any property resulting in a foul odor or unsightly condition that makes travel or residence in the vicinity uncomfortable, or which attracts flies or other insects or animals thereby creating an unsanitary condition and may facilitate the spread of disease or which endangers the public comfort and repose.

SECTION 2. EFFECTIVE DATE

This Ordinance shall take effect immediately after the date of passage and in accordance with law. Residents with existing animals that are now regulated will have six (6) month grace period before enforcement action will be taken.

DRAFT



City of Batavia

Memorandum

To: Honorable Council Members

From: Rachael J. Tabelski, City Manager

Date: August 30, 2022

Subject: Jackson Square Architecture, Bidding and Construction Administration Services

The City of Batavia was awarded \$750,000 to complete an enhancement project at Jackson Square.

The City conducted a Request for Proposal (RFP) process in the Fall of 2020 to select an architecture/engineering firm to design the project, manage bids, and oversee construction. The City selected Architectural Resources (AR) for a contract amount of \$114,720. AR delivered the first set of design documents and put the project out to bid. The bids came back on November 12, 2021 between \$1,097,000 and \$1,304,000 which was double the project budget, and the DRI grant for construction.

AR charged the City an additional \$37,000 for value engineering. This consisted of changing materials and adding bid alternates to the project. AR put the project out to bid again and three bids were opened on April 22, 2022- Mark Cerrone, Inc. \$654,000, Scott Lawn Yard \$870,000, and Whitney East \$1,002,800.

The lowest responsive responsible bidder, Mark Cerrone Inc. (Cerrone), was selected and approved by City Council to enter in a contract for construction. Following council approval Cerrone sent a letter to Brett Frank the Director of Public Works increasing the amount of their bid to \$847,950.00. They refused to proceed with the project as bid, claiming significant mistakes and the need to adjust the contract price. After numerous attempts by City management to resolve the issue, City Council rescinded the contract award to Mark Cerrone, Inc. and reject the remaining two bids associated with the project.

At this point, and after two failed bid attempts, I am recommending that the City engage Architecture Unlimited LLC. to "re-engineer" the project. Architecture Unlimited is licensed architectural professional services firm that has completed projects on behalf of the City in the past including the



City of Batavia

Mall Roof I, Mall Roof II, the Police Roof, and is currently engaged with the City as the owner's representative for the new police station.

Specifically, Architecture Unlimited, LLC. will modify the scope and reduce the complexity of the original project to meet the City's goals for the DRI. They will create new construction documents based on the redesign effort for a new bidding initiative. Architecture Unlimited, LLC. will also provide construction administration services during construction. The total fee for services is \$87,400.

I recommend that City Council approve the accompanying resolution to engage the architectural services of Architecture Unlimited, LLC. for the Jackson Square project.

#-2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BATAVIA
AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR ARCHITECTURE
AND ENGINEERING FOR THE DOWNTOWN REVITALIZATION INITIATIVE
PROJECT JACKSON SQUARE**

Motion of Councilmember

WHEREAS, the City of Batavia was awarded \$750,000 to complete an enhancement project at Jackson Square; and

WHEREAS, the City of Batavia would like to engage Architecture Unlimited LLC. to “re-engineer” the project after the project came in over bid twice with a previous architectural firm; and

WHEREAS, Architecture Unlimited is licensed architectural professional services firm that has completed projects on behalf of the City in the past including the Mall Roof I, Mall Roof II, the Police Roof, and is currently engaged with the City as the owner’s representative for the new police station; and

WHEREAS, specifically Architecture Unlimited, LLC. will seek to modify the scope and reduce the complexity of the original project to meet the City’s goals for the DRI construction project; and

WHEREAS, Architecture Unlimited, LLC. will create new construction documents based on the redesign effort for a new bidding initiative and provide construction administration services during construction; and

WHEREAS, the total contract to Architectural Unlimited, LLC. is \$87,400.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia authorizes the City Council President to execute an agreement for architectural and engineering services for Jackson Square with Architecture Unlimited, LLC.

**Seconded by Councilmember
and on the roll call**



AIA[®] Document B105™ – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the 22nd day of August in the year 2022
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Batavia
One City Centre
Batavia, New York 14020

and the Architect:
(Name, legal status, address and other information)

Architecture Unlimited, LLC
8304 Main Street
Williamsville, New York 14221

for the following Project:
(Name, location and detailed description)

Re-Design of Jackson Square Enhancements, Batavia NY

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The Owner and Architect agree as follows.

Architecture Unlimited, LLC (AU) shall provide for the redesign of a project previously designed by Architectural Resources (AR) titled 'Downtown Revitalization Initiative, Enhance Jackson Square, Batavia, NY'.

The objective of services provided by AU is to modify the scope and/or complexity of the original AR project as necessary to meet the City's goals for a construction project budget.

In addition, AU will create new construction documents based on the redesign effort for a new bidding initiative, and upon completion of the bidding of the project, will provide construction administration services during the construction of the project.

End

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

Architectural Design, Civil/Site Design, Structural Design, Electrical Design

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Eighty-Seven Thousand, Four Hundred dollars (\$87,400.00), plus reimbursement for printing of bid and contract phase construction documents via Avalon Document Services, or other printer service provider), as per the following (to be determined) breakdown:

Design Development -	\$25,000.00
Construction Document Phase -	\$35,000.00
Bid Phase -	\$ 1,400.00
Construction Admin. Phase -	\$26,000.00
Total -	\$87,400.00

The Owner shall pay the Architect an initial payment of **zero (\$ 0.00)** as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus **ten percent (10 %)**.

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid **forty-five (45)** days after the invoice date shall bear interest from the date payment is due at the rate of **one and one-half percent (1.50 %) per month** , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond **eighteen (18)** months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

This agreement presumes the Owner will provide a copy of original CADD-format topographic and utility survey information previously provided to AR for same prior design work.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

ARCHITECT (Signature)

KENNETH W. FENZL, R.A.

PRES.

(Printed name and title)

Kenneth W. Pearl, RA President
(Printed name, title, and license number, if required)

Additions and Deletions Report for

AIA® Document B105™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:54:53 ET on 08/22/2022.

PAGE 1

AGREEMENT made as of the 22nd day of August in the year 2022

...

City of Batavia
One City Centre
Batavia, New York 14020

...

Architecture Unlimited, LLC
8304 Main Street
Williamsville, New York 14221

...

Re-Design of Jackson Square Enhancements, Batavia NY

...

The Owner and Architect agree as follows.

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The objective of services provided by AU is to modify the scope and/or complexity of the original AR project as necessary to meet the City's goals for a construction project budget.

In addition, AU will create new construction documents based on the redesign effort for a new bidding initiative, and upon completion of the bidding of the project, will provide construction administration services during the construction of the project.

End

PAGE 2

Architectural Design, Civil/Site Design, Structural Design, Electrical Design

PAGE 3

Eighty-Seven Thousand, Four Hundred dollars (\$87,400.00), plus reimbursement for printing of bid and contract phase construction documents via Avalon Document Services, or other printer service provider), as per the following (to be determined) breakdown:

<u>Design Development -</u>	<u>\$25,000.00</u>
<u>Construction Document Phase -</u>	<u>\$35,000.00</u>
<u>Bid Phase -</u>	<u>\$ 1,400.00</u>
<u>Construction Admin. Phase -</u>	<u>\$26,000.00</u>
<u>Total -</u>	<u>\$87,400.00</u>

The Owner shall pay the Architect an initial payment of zero (\$ 0.00) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus ten percent (10 %).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid (~~—forty-five~~ (45) days after the invoice date shall bear interest from the date payment is due at the rate of one and one-half percent (1.50 %) per month, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond eighteen (18) months of the date of this Agreement through no fault of the Architect.

...

This agreement presumes the Owner will provide a copy of original CADD-format topographic and utility survey information previously provided to AR for same prior design work.

PAGE 4

Kenneth W. Pearl, RA President

Certification of Document's Authenticity

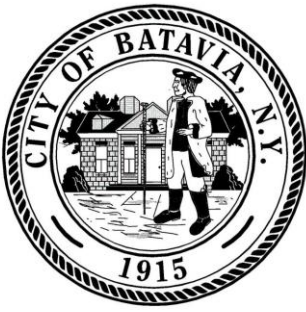
AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:54:53 ET on 08/22/2022 under Order No. 2114356328 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B105™ – 2017, Standard Short Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: August 30, 2022

Subject: LED Phase II – National Grid Street Light Purchase and Sale Agreement

The City of Batavia has invested in replacing all City owned street lights with LED's through a New York Power Authority LED Street Light Conversion Program.

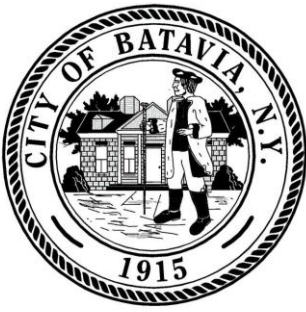
The project is 85% completed with just the downtown decorative lights that need to be upgraded. This will save in energy, maintenance, and cost while improving the overall quality of lights and public safety. In Phase I, 600 City owned lights will be converted to LED.

The remaining 948 lights in the city, mainly in residential neighborhoods, are owned by National Grid. As part of the City's electric bill we currently pay National Grid for the energy, delivery and operations and maintenance of these lights.

Several other municipalities have bought back/acquired the street lights from National Grid to upgrade them to LED, and have control over replacement and maintenance of the lights and to reduce the O&M fee. With assistance from the New York Power Authority, the City has the ability to purchase the National Grid street lights to make LED replacements and remain budget natural or better in the General Fund. This project would be considered Phase II.

Under the terms of the Purchase and Sale Agreement National Grid will agree to transfer ownership of the street lighting facilities, including luminaries, lamps, mast arms, the associated wiring, electrical connections and appurtenances, used to provide municipal lighting service to the City of Batavia.

National Grid will continue the operation of the street lighting system until the sale transaction is complete. If work is completed by National Grid it could affect the Net Book Value (NBV) of the system during the various stages of the sale process. Therefore the NBV can change before final closing of the sale, but typically these changes are minor.



By completing a full LED replacement project (Phase I and Phase II) the city will have new, 10 year warrantied lights. The savings the City will realize each year in operations and maintenance to National Grid will be used to cover the cost of annual finance/bond payments. The total project cost is estimated at \$1.7 million and will qualify for long-term financing.

I recommend that City Council approve a resolution authorizing the City Council President to execute the Purchase and Sale Agreement and the Street Light Attachment License Agreement.

Next Steps in Street Light Sale to City of Batavia

1. **Purchase & Sale Agreement Review** The parties are required to execute a PSA to formalize the sales transaction and the PSA will govern the terms and conditions of the asset sale. This also includes signing the attachment agreement to cover the lights remaining on National Grid's infrastructure. The Attachment Agreement will govern the terms and conditions of the attachment of Municipal owned facilities and equipment to Utility Owned infrastructure.
2. **PSC Review-** National Grid will file PSA and Section 70 Petition with the Public Service Commission (PSC) for Approval.
3. **PSC Approval-** National Grid receives notice of approval from the Public Service Commission and will coordinate with the City of Batavia to schedule closing date for street streetlight sale.
4. **Closing-** Utility and Municipality close on streetlight sale.
5. **Transfer of Assets-** the streetlight assets in question will transfer from the Utility to the Municipality. The City of Batavia will have title to and complete ownership over the street lighting assets, and will be responsible for the operation, maintenance, replacement, and installation of the street light assets subject to the sale.

#-2022

RESOLUTION TO AUTHORIZE ACQUISITION OF NATIONAL GRID LIGHTS IN THE CITY OF BATAVIA THROUGH THE EXECUTION OF A PURCHASE AND SALE AGREEMENT AND ATTACHMENT AGREEMENT

Motion of Councilmember

WHEREAS, the City of Batavia is desirous to upgrade the lighting quality in the City of Batavia and is taking steps to replace all City owned street lights with LED (LED Phase I); and

WHEREAS, National Grid owns 948 street lights within the City, primarily in residential neighborhoods; and

WHEREAS, the City has the option to buy back or acquire the street lights from National Grid for approximately \$226,038 and work with the New York Power Authority to complete a full LED Street Light Conversion (LED Phase II); and

WHEREAS, by purchasing the lights from National Grid the City will own and maintain the lights, continue to pay National Grid for electric and delivery, but not operations and maintenance; and

WHEREAS, under the terms of the Purchase and Sale Agreement National Grid will agree to transfer ownership of the street lighting facilities, including luminaries, lamps, mast arms, the associated wiring, electrical connections and appurtenances, used to provide municipal lighting service to the City of Batavia; and

WHEREAS, until final closing National Grid is obligated and committed to ensuring safe and effective operation of the street lighting system until the sale transaction is complete, which includes the Company incurring on-going capital costs to maintain the system as well as address emergent issues as needed.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia authorizes the City Council President to sign a Purchase and Sale Agreement (PSA) and an Attachment Agreement for the purchase of National Grid Street Lights in the City of Batavia.

**Second by Councilmember
and on roll call**

April 22, 2022

Mr. Michael Ficarella
 Superintendent Water and Wastewater
 City of Batavia
 One Batavia City Centre
 Batavia, NY 14020

Re: Street Light Acquisition Pricing Proposal
 Bill Account No. 19952-93109
 (Reference No. 23938-79100)

Dear Mr. Ficarella:

Niagara Mohawk Power Corporation d/b/a National Grid (the “Company”) provides this pricing proposal to the City of Batavia (the “Customer”) for the estimated price to purchase all the street lights serving the City of Batavia for the above-captioned account and reference numbers. In accordance with the New York Public Service Commission’s (the “Commission”) March 15, 2018 Order in Case 17-E-0238 (the “Order”), the estimated, non-negotiable, purchase price at net book value (“NBV”)¹ for the street lights, supporting infrastructure, associated electric circuitry (exclusive of infrastructure used to serve other customers), as well as transition and transaction costs, is \$226,038.00². This price is an estimate. Per the Order, the Company will calculate the final NBV at the time of closing and adjust the sales price (up or down) accordingly.

The Company develops the estimated NBV sales price using the City of Batavia’s street light facility billing inventory records, (generally referenced as 950 street light luminaires), the recorded original cost to install the street light facilities, and the accrued depreciation of those facility assets, as provided below. The estimated NBV is based on plant accounting records as of March 31st, 2022. As authorized by the Commission, the itemized pricing proposal also includes firm security, transaction and transition costs. The security represents the Company’s estimated cost to install all required disconnect devices and must be in a form acceptable to the Company. If the City of Batavia fails to install the required disconnect devices within 24 months of the sale, the Company will perform such work during a period immediately following the initial 24 months and apply the security toward the Company’s cost recovery of performing the work. The transaction costs consist of transfer taxes (if any) and recording fees. The transition costs are Company incurred costs related to internal system inventory updates, billing data changes, and other required data updates associated with the sale.

Pricing Proposal Itemized Cost Information	
Original Cost	\$412,024.00
Depreciation	\$208,494.00
Estimated Net Book Value	\$203,530.00
Transaction and Transition Costs	\$22,508.00
Proposed Estimated Purchase Price at NBV	\$226,038.00
Disconnect Device Security	\$442,400.00

¹ The NBV street light sales methodology was initially approved by the Commission in the Order and extended through the term of the Company’s current rate plan (*i.e.*, through June 30, 2024) by Commission order issued January 20, 2022 in Case 20-E-0380.

² The estimated purchase price does not include the disconnect device security that the Customer is required to provide, or the cost of other supplemental materials including maps and GIS records and additional work the Customer may request from the Company to install the disconnect devices.

This sale proposal is offered on an “as-is, where-is” basis, and therefore does not include any street light assembly reconfiguration work or removal costs.³ Upon transferring the assets, the City of Batavia would receive energy-only street light service from the Company under Service Classification No. 3 of the Company’s PSC No. 214 Outdoor Lighting Tariff (the “Tariff”). The City of Batavia would thereafter be solely responsible for the safe operation, maintenance, and repair of the street light system.⁴

This sales offer will remain effective for **180 calendar days** from the date of this letter. If the City of Batavia wishes to move forward with the street light system acquisition, the Company will prepare a Purchase and Sales Agreement and required License Agreement for Street Lighting Attachments to Company-Owned Poles and Structures for the City of Batavia’s consideration. Once the Company and the City of Batavia have executed the agreements, the Company must file them with the Commission for review and approval pursuant to Public Service Law §70 prior to the transaction closing.

As noted above, the price presented herein is an estimate and the NBV could change before the sales process is concluded. Several factors may contribute to a change in the NBV over the course of the sales process. Some of the factors may include:

- Replacement of street light components due to an external incident, including, for example, repair or replacement due to emergency response or a safety related matter.
- Work to address incidents of significant elevated voltage, damaged/leaning standards, or exposed wires requiring Company action to address regulatory or safety considerations.
- Customer-specified installation, removal, or component change requests.
- Activities to maintain street lighting service including ordinary replacement of existing assets, addition of new assets, transfers into or out of an asset class, and retirements of assets within a municipal tax district.
- Relocation and/or replacement of street lighting equipment to comply with regulatory orders or similar directives and NYS Department of Transportation relocation or compliance projects.

As an alternative to acquiring the street lights, the City of Batavia may consider converting the existing luminaires to energy-efficient LED luminaires as offered under the Company’s full-service option, Service Classification No. 2 of the Tariff. The cost to the City of Batavia for such a conversion is shown in the table below and the converted luminaires would still be owned, operated, and maintained by the Company.

LED Conversion Cost Information				
HID Luminaire	Quantity	Average NBV	Total NBV	EE Availability
Coach				
Edison				
Floodlight	2	\$3,172.16	\$6,344.31	YES
Roadway	946	66.11	\$62,537.63	YES
Shoebox				
Aspen Grove				
Central Park				
Contemporary				
Delaware Park				
Edgewater				
Franklin Square				

³ At the City of Batavia’s request, the Company can provide an estimate of the costs to perform reconfiguration or removal work specified by the Customer.

⁴ The Company, however, would remain responsible for on-going stray voltage testing only as required under the Commission’s safety rules.

Little Falls PT				
Little Falls TD				
Setback				
Traditional				
Washington				
Williamsville				
Total Estimated LED Conversion Cost	948	\$72.66	\$68,881.94	YES

As authorized by the Order, the Company also offers an energy-efficiency incentive to assist customers with the conversion of most styles of street light luminaires to energy efficient LEDs, whether the street lights to be converted are Company-owned or customer-owned. The incentive, which is between \$50-\$100 per luminaire, is available on a first-come first-served basis specifically for qualified, in-service LED luminaires and subject to an annual cap. To assist the Customer in evaluating the LED conversion options, the Company calculated the **estimated** energy-efficiency incentive below. The actual incentive value may differ and will only be provided to the Customer upon completion of the LED luminaire conversion and verification of the new LED luminaire inventory. The New York State Energy Research and Development Authority (“NYSERDA”) as well as the New York Power Authority (“NYPA”) may also be able to provide technical and financing support.⁵

Energy-Efficiency Incentive Based on 100% Conversion of Applicable Luminaires	
Estimated Incentive for Roadways Luminaires	\$47,425.00
Estimated Incentive for Decorative Luminaires	\$170.00
Total Estimated EE Incentive	\$47,595.00

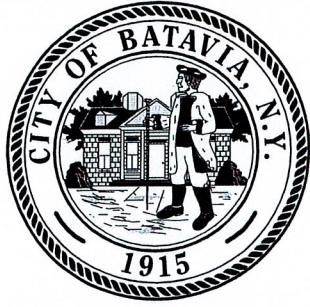
Thank you for the opportunity to work with you on this project. If you require additional information or seek to move forward with either project, please use the information provided below to contact me.

Respectfully,

Paul Gister

Paul Gister
 Manager of Customer and Community
 National Grid
 5100 E. Main St.
 Batavia, NY 14020
 716-831-7753
 Paul.Gister@nationalgrid.com

⁵ The contact for NYSERDA is Brad Tito. He can be reached at (212) 971-5342 (ext. 3545) or bradford.tito@nysesda.ny.gov. The contact for NYPA is Joseph Rende, Director of Business Development, Customer Energy Solutions. He can be reached at (914) 287-3431 or joseph.rende@nypa.gov.



City of Batavia

July 11, 2022

Mr. Paul Gister
Manager of Customer and Community
National Grid
5100 E. Main St.
Batavia, NY 14020

Re: Purchase and Sales Agreement and Pole Attachment Agreement Request
Street Light Acquisition Pricing Proposal
Bill Account No. 19952-93109
(Reference No. 23938-79100)

Dear Mr. Gister:

I, along with the City Council of the City of Batavia, have reviewed your letter dated April 22, 2022 regarding National Grid's offer for the City to purchase the National Grid owned street lighting within the City.

This is to notify you that the City of Batavia intends to move forward with the acquisition process. The City officially requests that National Grid prepare a Purchase and Sales Agreement and Pole Attachment Agreement for Street Lighting Attachments for the City's consideration.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Rachael J. Tabelski".

Rachael J. Tabelski,
City Manager



August 10, 2022

VIA CERTIFIED MAIL

Mr. Michael Ficarella
Superintendent Water and Wastewater
City of Batavia
One Batavia City Centre
Batavia, NY 14020

Re: Sale of Street Lighting Assets Located in CITY OF BATAVIA (Bill Account No. [19952-93109

Dear Mr. Ficarella:

Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “the Company”) is writing in connection with your letter indicating the interest of the City of Batavia (“the City”) to proceed with the acquisition of certain street lighting assets located in the City. Accompanying this letter are forms for the Purchase and Sale Agreement (“PSA”) for the assets subject to sale and the License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures (“Attachment Agreement”) that will govern the future arrangement for street lighting assets purchased by the City that remain located on Company facilities. In addition, this letter describes next steps, required approvals, and timeline going forward.

Purchase and Sale and Attachment Agreements

Both parties are required to execute a PSA and Attachment Agreement to formalize the transaction. The PSA will govern the terms and conditions of the asset sale. The Company’s form PSA is attached for your review, insertion of municipal information, finalization and execution. The Attachment Agreement is also necessary for any street lighting assets that will remain on National Grid electric facilities. Some municipalities have indicated an interest in smart city technology, such as network lighting control nodes, and the Company has worked with those municipalities to accommodate such technology consistent with the Company’s tariff obligations. If the City intends to pursue smart city technology as part of the street light acquisition, please let me know, as this will require additional terms and conditions in the Attachment Agreement.

Once all the documents are executed and returned, the Company will then review the materials, and if all are in order, the Company will countersign the PSA and Attachment Agreement, date the documents, and provide you with fully executed copies.

Section 70 Filing Process

Upon execution of the documents, the Company, which is regulated by the New York State Public Service Commission (“PSC”), must petition the PSC for approval pursuant to Public Service Law § 70. National Grid will compile and file the necessary documents required for PSC review. Because the original cost of the assets subject to sale is greater than \$100,000, a formal PSC proceeding is required. The time for a formal PSC review varies and can take several months depending on the complexity of the transaction.

Closing, Disconnection and Service Classification

The parties will be able to close the transaction once all necessary approvals are received for the sale. A sample of the bill of sale that will be executed at closing is included as an exhibit to the PSA. After closing, the City will have twenty-four (24) months to install disconnect devices for the assets in accordance with the Company's standards. Descriptions of the process and financial security requirements associated with asset separation are included in the PSA. The City will be responsible for the operation, maintenance, replacement, and installation of the street light assets subject to the sale after the closing. The City's service classification ("SC") for the account associated with the assets will then be changed in accordance with the Company's P.S.C. 214 – Outdoor Lighting Tariff from Service Classification ("SC-2") to SC-3 (energy only).

I hope this letter provides the information helpful for your evaluation of the street light sale. Please contact me if you have any questions. National Grid looks forward to working with the City towards completion of this sale.

Sincerely,

Paul Gister - Manager of Customer
and Community

National Grid

cc: Tracy Sutherland

Enc. PSA
Attachment Agreement



LICENSE AGREEMENT

FOR

CUSTOMER-OWNED
STREET AND AREA LIGHTING
ATTACHMENTS
TO
UTILITY POLES AND STRUCTURES

BETWEEN

Niagara Mohawk Power Corporation
d/b/a National Grid
(COMPANY)

AND

The City of Batavia,
New York
(CUSTOMER)

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THIS LICENSE AGREEMENT (“Agreement”), is made as of the last date appearing on the signature page of this Agreement (the “Effective Date”), by and between **NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID**, a corporation organized and existing under the laws of New York, having an office at 300 Erie Boulevard West, Syracuse, New York, 13202, (the “Company”) and the City of Batavia, a municipal corporation organized and existing under the laws of New York, having its principal office at 1 Batavia City Centre, Batavia, NY 14020, (the “Customer”). The Company and the Customer are collectively referred to herein as the “Parties” and individually as a “Party.”

WITNESSETH

WHEREAS, the Customer currently receives street lighting service from the Company within its municipal boundaries under Service Classification (“S.C.”) No. 2 of the Lighting Tariff (defined below) and owns, operates and maintains and/or intends to install, own, operate and maintain, certain Equipment (defined below) to provide street and area lighting within the Customer’s municipal boundaries and to thereafter receive the electricity required to power the Customer’s street lights from the Company; and

WHEREAS, that certain Equipment (defined below) that the Customer has purchased from the Company, has previously installed, and/or intends to purchase and/or install, that is or will be attached to Facilities (defined below) owned in whole or in part by the Company; and

WHEREAS, as part of any Purchase and Sale Agreement (defined below) with the Company for that certain Equipment, Customer has agreed to perform or to pay the Company to perform any Separation Work (defined below) required to install a Disconnect Device (defined below) between each street light purchased from the Company or thereafter installed and the Company’s distribution system and to install Identification Labels (defined below) at each such location within twenty-four (24) months of the Effective Date of this Agreement or the closing of a sale transaction pursuant to a Purchase and Sale Agreement including satisfaction of all closing conditions set forth in the Purchase and Sale Agreement (“Closing”), whichever is earlier; and

WHEREAS, the Customer and the Company also desire to establish a process to govern the modification of the Customer's existing Equipment and the installation by the Customer of any such additional Equipment on the Facilities within the Customer's municipal boundaries as the Customer may require from time to time for street lighting and related purposes; and

WHEREAS, the Company and the Customer understand that this Agreement does not cover any Supplemental Attachments (defined below), and that the placement of any Supplemental Attachments will require and be subject to a separate agreement between the Company and the Customer; and

WHEREAS, the Company is willing to permit, to the extent it may lawfully do so, the continued existence and new attachment of the Equipment on the Facilities within the Customer's municipal boundaries pursuant to the terms and conditions established in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby agree as follows:

1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the following meaning:

1.1. **“Attachment”** means any luminaire, supporting bracket, hardware, apparatus, assembly, structure, wire, conductor, cable or other circuitry and/or other lighting components, including the applicable Lighting Control, owned by Customer, existing or proposed to be installed on a Pole and/or connected to the Company's overhead or aerial distribution system or connected or proposed to be connected to the Company's underground distribution systems, for the sole purpose of providing street and/or area lighting within the Customer's municipal boundaries.

1.2. **“Authorized Attachment”** means any Equipment attached to the Company's Facilities within the Customer's municipal boundaries on or after the Effective

Date of this Agreement for which a License or a Preliminary License has been granted under this Agreement and remains in effect.

1.3. **“Conduit”** means a Structure containing one or more Ducts.

1.4. **“Connection Point”** means the point at which any Attachment receives electric power from the Company’s distribution system for the sole purpose of street and/or area lighting and shall also serve as the point of ownership demarcation.

1.5. **“Costs”** means all direct and indirect costs incurred by the Company pursuant to this Agreement, inclusive of all applicable adders and overheads in effect from time to time, and including, but not limited to, any federal, state or local taxes incurred on the Company’s receipt of amounts from Customer, on a grossed-up basis.

1.6. **“Disconnect Device”** means a Company-approved, physical disconnection assembly or apparatus that will function as a means to disengage electrical services between the Company’s electrical system and any Equipment, and may include an “in-line fuse” assembly or other form of dual pole disconnection device that may also provide a level of electrical system protection.

1.7. **“Duct”** means a single enclosed raceway or pipe in which wires or cables are or may be enclosed.

1.8. **“Electric Tariff”** means National Grid’s P.S.C. No. 220 – Electricity, Schedule for Electric Service, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.9. **“Electrical Space”** means the portion of the space on each Company or Joint Owned Pole between the top of such Pole and the point at which the lowest electrical conductor attaches to such Pole. This space is also known as the “supply space,” as defined in the National Electric Safety Code (“NESC”).

1.10. **“Equipment”** shall include all Customer-owned structural or electrical components, devices, assemblies or apparatus including the Lighting Control used or proposed to be used by the Customer to provide outdoor illumination of streets or areas, including all associated support infrastructure and electrical circuitry. Supplemental Attachments are not Equipment.

1.11. **“Facility”** or **“Facilities”** shall include all Structures, Poles, wires and other components, equipment, assemblies, apparatus or infrastructure owned by the Company in

whole or in part and used or proposed to be used by the Company to support any of the Equipment and / or to provide electric service and / or street lighting service.

1.12. **“Field Survey”** means the Company’s on-site audit and/or office asset/mapping record review of each Facility upon which the Customer proposes to:

- (i) Make a new Authorized Attachment(s);
- (ii) Relocate an existing Authorized Attachment(s); or
- (iii) Materially Change an existing Authorized Attachment.

1.13. **“Identification Labels”** means markings, tags, decals, signage or other displays that indicate ownership, location or asset reference and functional attributes of the Equipment.

1.14. **“Joint Owner”** means a person, firm, or corporation sharing an ownership interest in a Pole, Structure and/or related ancillary equipment with the Company. “Joint Owned” Poles, Structures, and/or related ancillary equipment are those in which Joint Owners share such ownership interest with the Company.

1.15. **“Joint User”** means any other utility, which shall now or hereafter have established the right to use specific Poles and/or Structures. The term “Joint User” shall not include Customer.

1.16. **“License”** means a revocable, nonexclusive license for the installation, maintenance and operation of the Customer’s Authorized Attachments subject to the provisions of this Agreement.

1.17. **“Lighting Control”** means the required ancillary device that, when connected to the individual luminaire or integral electric lighting circuitry associated with a designated group of luminaires, provides the minimal on/off operation of the luminaire(s) and may incorporate enhanced functionality (including but not limited to scheduled operation, varied illumination output and managed energy consumption as may be provided from a static, manufacturer preset or field adjustable control device or an NLC Node), but does not include any other Equipment and/or any other NLC System components, assemblies or apparatus used to facilitate the networked operation, communication, metering or other functional attributes.

1.18. **“Lighting Tariff”** means National Grid’s P.S.C. No. 214 – Street, Highway, Roadway, and Other Outdoor Lighting, Schedule for Electric Service, including

portions of the Electric Tariff incorporated therein by reference, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.19. **“Make-Ready Work”** means the work to be performed by or on behalf of the Customer, the Company, a Joint User or Other Customer, as applicable, in order to safely accommodate a new Authorized Attachment or a Material Change to an Authorized Attachment.

1.20. **“Material Change”** or **“Materially Change,”** means any alteration, modification, or replacement made to any Authorized Attachment that, in the Company’s sole judgment, would change the characteristics, licensed specifications, safety, mode of operation or maintenance, physical attributes, or use of the Facilities by the Company or Other Customers, or that would change the attributes of any such Facility related to engineering, billing or financial reporting. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind light-emitting diode (“LED”) luminaire, including the specified luminaire control, with similar physical and operational characteristics in the same location and orientation as the existing luminaire and the continued use of the existing luminaire support infrastructure, nor the initial installation of a Disconnect Device within twenty-four (24) months after Closing, as set forth in the Purchase and Sale Agreement, will be considered a Material Change except as required to facilitate accurate billing and inventory records.

1.21. **“Network Lighting Control Node”** or **“NLC Node”** means a communication-enabled photoelectric control device connected directly (affixed) or indirectly (non-affixed) to a luminaire as a component of the Equipment for the primary purpose of a Lighting Control to operate the designated luminaire and having secondary, generally recognized functional capabilities of energy consumption measurement, Equipment diagnostic monitoring, electrical surge protection, global positioning system location coordinate referencing, and having the additive incremental weight and maximum power consumption (watts) as defined in the latest version of the product manufacturer’s technical specification literature provided to the Company by the Customer for use in any required engineering analysis and/or determination of billing parameters per the Company’s Lighting Tariff. The NLC Node, and specifically the energy consumption

measurement integrated circuit or meter chip, will not be used for energy consumption billing until such time as meter chip testing standards are available, applicable regulatory metering guidelines and tariff applications are approved, the Company's information systems are compatible with the inventory, qualification testing and monthly billing requirements, and the Customer's NLC Nodes and NLC System are compliant with all regulatory requirements.

1.22. **“Network Lighting Control (“NLC”) System”** means any individual or combination of components, equipment, assemblies, devices and apparatuses, including, but not limited to, NLC Nodes, backhubs, gateways, receivers, transmitters, repeaters, and antennas to facilitate the networked operation of the wireless and/or wired communication of the Lighting Controls, attached to Equipment and including any associated information system management software.

1.23. **“OSHA”** means the Occupational Safety and Health Act, latest rule revisions as administered by the Occupational Safety and Health Administration within the U.S. Department of Labor.

1.24. **“Other Customer”** means any entity, other than the Customer, to whom the Company has extended or hereafter shall extend the privilege of attaching Equipment of any kind to the Facilities.

1.25. **“Pole”** means any vertically oriented utility structure constructed of treated wood, metal, composites or concrete used to support electrical conductors and other utility equipment necessary to facilitate the operation of the Company's electric distribution.

1.26. **“Purchase and Sale Agreement”** means any agreement(s) between the Customer and the Company providing for the purchase by the Customer of part or all of the Equipment, including street lights, located within the Customer's municipal boundaries and owned and operated by the Company prior to the execution of the Purchase and Sale Agreement and Closing of the transaction as provided therein.

1.27. **“Preliminary License”** means the limited license authorizing Customer to maintain Equipment purchased from the Company under the Purchase and Sale Agreement without change or modification as provided in Section 2.1 of this Agreement pending completion of the Separation Work.

1.28. **“PSC”** means the New York State Public Service Commission.

1.29. **“Qualified Electrical Worker”** means any worker, electrical worker, contractor or other designated individual electrically qualified to accommodate the environment within which Customer’s Equipment shall exist, in compliance with established standards associated with work in close proximity to electrical equipment and having successfully achieved a specified minimum level of training and/or experience including, but not limited to, all applicable federal, state, and local work rules and Company work rules, including compliance with OSHA 1910.269.

1.30. **“Removal Rights”** shall refer to the Company’s right pursuant to Article 6 of this Agreement or applicable laws to request or perform the removal of Unauthorized Attachments.

1.31. **“Separation Work”** means that work required to install Disconnect Devices and Identification Labels complying with the Company’s requirements on all of the Equipment purchased by the Customer under the Purchase and Sale Agreement, and includes removal of all existing Company labeling from such Equipment.

1.32. **“Structures”** includes, but is not limited to, the Ducts, Conduits, vaults, manholes, handholes, foundations, standards and other utility equipment or infrastructure necessary to facilitate the operation of an underground electric distribution system or underground sourced street and/or area light(s) owned by the Company.

1.33. **“Supplemental Attachment”** means any Customer-owned, Customer-leased or other third-party wired, wireless or self-energized hardware, equipment, assembly, apparatus, or device, including all support infrastructure and associated wiring, cabling and circuitry, that is physically affixed and/or electrically connected to the Equipment, and used for a purpose other than the primary operational function of luminaires to provide outdoor illumination. Supplemental Attachments are outside the scope of this Agreement, and must be authorized under a separate Supplemental Attachment Agreement.

1.34. **“Unauthorized Attachment”** means any Equipment attached to the Company’s Facilities other than an Authorized Attachment.

2. **SCOPE OF AGREEMENT**

2.1. **Preliminary License.** The Company hereby grants Customer a Preliminary License, effective as of the Closing as set forth in the Purchase and Sale Agreement dated _____, 202_, for the attachment to the Facilities of any and all Equipment sold by the Company to Customer in the Purchase and Sale Agreement as shown in APPENDIX II, Forms A-1 and A-2 hereto. The Preliminary License shall be limited to an initial term of twenty-four (24) months and shall only authorize Customer to maintain such existing Equipment, with no modification or change whatsoever, in its existing locations on the Company's Facilities. This Preliminary License shall terminate with respect to each individual Attachment upon completion of the Separation Work for that Attachment, at which point such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Provided, however, that for any Equipment as to which the Separation Work is not completed within such twenty-four (24) month period and for which the Company is therefore required to perform the Separation Work on the Customer's behalf under the terms of the Purchase and Sale Agreement, the Preliminary License shall be extended until the Company completes such Separation Work, at which time such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Upon the termination or expiration of the Preliminary License, the term of any License hereunder shall be determined in accordance with Section 15 of this Agreement.

2.2. **Use of NLC Nodes or NLC System; Supplemental Attachments.** The Customer agrees that if at any time it installs or utilizes an NLC System (as defined herein), only the NLC Node used for the primary operational function of the luminaire(s) (as further addressed in the Lighting Tariff) will be considered Equipment as defined and covered by this Agreement. All other NLC System equipment components or assemblies ("Additional NLC Equipment") will be considered Supplemental Attachments that will require execution of a separate Supplemental Attachment Agreement. Customer agrees not to install any Supplemental Attachments, including Additional NLC Equipment, until it has executed a Supplemental Attachment Agreement with the Company.

2.3. **Additional Equipment.** Any Equipment that is not listed in the Purchase and Sale Agreement and that is found within three (3) months following the Effective Date of this Agreement to be attached to the Company's Facilities within any area inside Customer's municipal boundaries and determined to have been owned by the Company as of the Effective Date will be considered to have existed prior to the date of this Agreement and to have been inadvertently omitted from the Purchase and Sale Agreement. If Customer purchases such additional Equipment in accordance with the Purchase and Sale Agreement, the Company shall grant Customer a Preliminary License for such Equipment, provided Customer agrees within thirty (30) days of notice to or by the Company of the discovery of such Equipment to perform any Separation Work required for such Equipment within the twenty-four (24) month period for such work established in the Purchase and Sale Agreement. If Customer does not agree to perform the Separation Work for such Equipment within such thirty (30) day period, such Equipment shall be de-energized and may be removed by the Company at the Customer's expense.

2.4. **Purpose of Licenses; Approval of Attachments and Changes.** Any Licenses granted by the Company to the Customer under this Agreement authorize the Customer to maintain its Equipment on the Company's Facilities for street lighting purposes only, subject to the provisions of this Agreement. The Company also agrees to grant Customer Licenses for such additional Authorized Attachments and for such Material Changes to Customer's existing Authorized Attachments as the Customer may request in accordance with the provisions provided in Article 4 of this Agreement. Any change to an Authorized Attachment not approved in advance by the Company as provided in Article 4 of this Agreement shall cause such Attachment to become an Unauthorized Attachment subject to the Company's Removal Rights in accordance with the provisions of Article 6 of this Agreement.

2.5. **Report of Equipment.** To assist the Company in maintaining its billing records, Customer shall provide the Company with a report of all Equipment in service as of December 31 of each calendar year during the term of this Agreement, in a form approved by the Company. This report shall be provided within thirty (30) days following the end of each calendar year and shall be provided in the form contained in the Company's

Application for Street and Area Lighting Attachment License, attached hereto as APPENDIX II, Forms A-1 and A-2, or in such other form as the Company may direct.

2.6. **Field Audits.** The Company may perform random field audits of the Customer's Equipment to determine the accuracy of any report provided by the Customer. To the extent there are any differences between either the Equipment identified in any Customer report or the Equipment listed in the Company's records and the Equipment identified by the Company after any such field audit that cannot be reconciled by the Company, the Company shall provide the Customer with written notice thereof. Within thirty (30) days of receipt of such notice, Customer shall either:

- (i) Provide the Company with written notice that it has removed such Equipment from the Facilities; or
- (ii) Submit a written request for the approval of such Equipment as a new Authorized Attachment pursuant to Article 4 of this Agreement.

If Customer fails to remove such Equipment or request approval of the Equipment as a new Authorized Attachment within such thirty (30) day period, such Equipment shall be deemed an Unauthorized Attachment subject to the provisions of Articles 5 and 6 of this Agreement.

2.7. **No Requirement to Construct, Retain, or Maintain.** Nothing contained in this Agreement shall be construed to compel the Company to construct, retain, extend, place or maintain any Facilities not needed for the Company's own service requirements. This Section is not intended to limit the obligation of the Company to provide electric distribution service to Authorized Attachments pursuant to the Lighting Tariff. In the event the Company and Joint Users / Other Customers no longer require the use of a Pole or Structure, the Company will notify the Customer and the Customer shall have the option to purchase the Pole or Structure at a price to be determined by the Company. If Customer fails to advise the Company of its intent to exercise such option within thirty (30) days of receipt of notice thereof from the Company, the License for use of that Pole or Structure shall terminate and the Company shall be free to remove the Pole or Structure with no further obligation to the Customer under this Agreement.

2.8. **No Limitation on Company's Agreements.** Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the

Company with respect to any agreement(s) or arrangement(s) that the Company has heretofore entered into or may in the future enter into with any Joint Owner(s), Joint User(s) or Other Customers not party to this Agreement regarding use of the Facilities covered by this Agreement. The rights of Customer shall at all times be subject to any such existing and future agreement(s) or arrangement(s) between the Company and any Joint Owner(s), Joint User(s) or Other Customers. Nothing contained in this Agreement shall be construed to grant, and the Company makes no representations or warranties with respect to, and is not purporting to provide, Customer with any attachment rights, licenses or consents for or in connection with the attachment of Equipment to the facilities of any Joint Owner(s), Joint User(s) or other third parties. Customer is solely responsible to obtain all approvals, licenses, attachment rights or other consents required for the attachment of the Equipment to the facilities of any such Joint Owner(s), Joint User(s) or other third parties.

2.9. **Separate Agreement for Supplemental Attachments Required.** Nothing contained in this Agreement shall be construed to grant any rights to Customer to include or install any Supplemental Attachments and/or any wired or wireless hardware, equipment, apparatus, device, antennae, or signage used for any purpose other than illumination directly on the Facilities. To the extent the Customer desires to install any such equipment directly on the Facilities, a separate agreement with the Company shall be required.

2.10. **Ownership Rights.** No use, however extended, of the Facilities and no payment of any fees or charges by Customer pursuant to this Agreement shall create or vest in Customer any ownership or property rights in such Facilities. Customer's rights herein shall be and remain a license. Neither this Agreement nor any License granted hereunder shall constitute an assignment of any of the Company's rights to use the public or private property at the location of any of the Facilities.

3. REQUIREMENTS APPLICABLE TO ALL AUTHORIZED ATTACHMENTS

3.1. Compliance with Applicable Regulations, Codes and Standards.

3.1.1. **Safety Requirements.** Customer shall, at its own expense and in accordance with the terms and conditions set forth in this Agreement, install, maintain and operate all Authorized Attachments in a safe condition and in a manner that does not:

- (a) Interfere with the Company's operation of its electric distribution system;
- (b) Conflict with the use of the Facilities by the Company or by any other authorized user thereof; or
- (c) Electrically interfere with the Facilities or any equipment attached thereon or therein.

3.1.2. **Compliance with Standards.** Customer shall install, maintain and operate all Authorized Attachments in compliance with all applicable federal, state and local laws, regulations, codes and the Company's policies, practices and standards, as amended and in effect from time to time, and in accordance with the applicable requirements and specifications of the most recent editions of National Grid's engineering standards, as may be amended from time to time; the National Electrical Code ("NEC"); the National Electrical Safety Code ("NESC"); the Occupational Health and Safety Administration ("OSHA") rules and regulations, including but not limited to OSHA 1910.269; Section 70-a(5) of the New York Public Service Law; "The Electric Power Generation, Transmission, and Distribution" standard, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, requirements by the New York State Department of Transportation, and any governing authority having jurisdiction over the subject matter of this Agreement, as each may be amended from time to time.

3.1.3. **Clearance.** Customer shall ensure that clearances between each of the Authorized Attachments and all communications, electric distribution system and street lighting Facilities are fully in compliance with all applicable codes, standards and Company requirements, all as amended and in effect from time to time, to allow for proper maintenance, repair and reconfiguration of electric distribution system, street lighting and communications cables.

3.1.4. **Notification of Unsafe Conditions.** Customer and its agents, contractors, servants, representatives, and/or employees shall by test or observation determine that the Facilities are safe to perform work thereon. If the integrity of any Facility is in question or is marked by Company as unsafe, the Customer shall immediately confirm said condition with Company via phone and email and refrain from working on

the Facility.

3.1.5. **Notice of Planned Work**. The Customer agrees to provide Company with at least forty-eight (48) hours' notice via phone and email to the person named in Section 18 of this Agreement (Notices) of when it intends to perform any work with regard to the Authorized Attachments, in order to ensure that such work will not interfere with any Company maintenance, inspection, or operation work. Such notice shall include an estimate of the time the Customer will require to perform the work. The Customer understands and agrees that Company maintenance, inspection, or operation work takes precedence over the Customer's work with regard to the Authorized Attachments, and if a conflict exists, the Customer agrees to coordinate with Company to reschedule its work with regard to the Authorized Attachments.

3.1.6. **Compliance with Tariffs and Policies**. Customer shall ensure that the Authorized Attachments conform to applicable requirements of the Lighting Tariff and Electric Tariff and applicable Company policies. All lighting or illumination sources (*i.e.*, lamps and luminaires) shall comply with the energy consumption schedules and defined hours of operation as set forth in the Lighting Tariff.

3.1.7. **Make-Ready Work**. Subject to Section 4.3.4 of this Agreement, Customer shall have no obligation to perform Make-Ready Work related to the pre-existing conditions of Authorized Attachments or Facilities at a location as of the Effective Date unless and until such time as Customer makes a Material Change that affects that location.

3.1.8. **Company's Obligations**. Except as set forth in Article 6, the Company shall have no obligation to, and shall not perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment on the Facilities unless: (i) Customer has provided specific written authorization for the Company to do so and the Company is able to perform such work in compliance with all applicable PSC rules and requirements, including without limitation Rule V.F.4 of the General Information Section of the Lighting Tariff governing "Relocation of Existing Facilities;" or (ii) there is a safety-related emergency that the Company must address with respect to such Equipment or a Facility to which such Equipment is attached. If the Company does perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment,

Customer shall reimburse the Company for all Costs incurred in connection with such work in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing “Relocation of Existing Facilities.”

3.1.9. **Removed Materials.** Any materials removed by Customer, or removed by the Company on Customer’s behalf, as part of or from within any Facilities shall be managed, tested, treated, transported, stored and disposed of by the Company in accordance with applicable rules, regulations or statutes and Customer shall reimburse the Company for all Costs incurred in connection therewith.

3.1.10. **Identification Labels.** Customer shall maintain applicable National Electric Manufacturers Association (“NEMA”) or other industry standard Identification Labels upon each luminaire, in a clear and legible condition, to identify the type of light source and associated wattage or lumen output.

3.2. **Personnel Authorized to Perform Work on The Company’s Facilities.**

3.2.1. **Qualified Electrical Workers.** Customer represents and warrants that any personnel that perform work on the Equipment in the Electric Space on the Company’s Poles or within the Company’s Structures shall at all times be Qualified Electrical Workers. Customer shall indemnify, defend and hold the Company harmless from any injury, damage, loss or claims resulting from any breach by Customer of this representation and warranty. Except where such work is performed by the Company, Customer is required to execute the “Acknowledgment For The Use of Qualified Electrical Worker” form (APPENDIX III) to affirm that any person(s) under contract with and/or the direction of the Customer, including Customer’s agents, who perform the installation, maintenance, and/or removal of Attachments in the Electric Space on the Company’s Poles or on or within Structures are qualified to perform such work in accordance with the requirements of this Agreement and have completed any required training for such work.

3.2.2. **Requirements If Workers Not Qualified Electrical Workers.** In the event Customer or its agents are unable to confirm the current status of their workers as Qualified Electrical Workers, before performing any work on the Equipment, Customer shall be required to: (i) notify the Company of its inability to confirm such status of its or its agents’ workers as Qualified Electrical Workers and to determine the appropriate electrical clearance distances for such work; (ii) only perform work on Equipment in a de-

energized condition; and (iii) perform such work in full compliance with all applicable requirements of the NEC, including without limitation any electrical clearance requirements established therein. If a Disconnect Device is not installed for such Equipment, the Customer or its agent must schedule a disconnect service request with the Company prior to performing any work on such Equipment. Following the completion of the work, the Customer or its agent must schedule a connection service request with the Company to re-energize such Equipment. The Customer will be assessed a Lighting Service Charge for each service work order occurrence as stated in the Lighting Tariff.

3.2.3. **No Access to Enclosed and Underground Structures.** Customer and its agents are prohibited from, have no authority to, and shall not permit or cause any third party to, access or ingress any of the Company's enclosed or underground primary or secondary electric distribution system Structures, including, but not limited to, manholes, handholes, vaults, transformers, and switchgears, unless such access or ingress is under the direct supervision of the Company.

3.2.4. **Company Assistance in Enclosed and Underground Structures.** If and to the extent the Customer or its agent needs access or ingress to any of the Company's underground electric distribution system infrastructure, the Customer or its agent shall contact the Company and the Company shall respond to such request, provide required support, and/or perform the necessary work as requested following its normal work order scheduling protocol, provided that the Company determines, in its sole discretion, that such connection / disconnection or other requested work is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.5. **No Connections/Disconnections.** Customer and its agents shall not perform or make any connections (permanent or temporary) to, disconnections from, or in any way handle, tamper or interfere with, or otherwise disrupt, the Company's electric distribution system or assets, in whole or in part, nor shall the Customer permit or cause any third party (including without limitation, Customer's agent) to do so. The Company shall be the sole party with authority to perform or make any and all (permanent and temporary) connections to or disconnections from the Company's electric distribution system or other assets. If and to the extent the Customer or its agent has a need for a

connection or disconnection associated with the Company's electric distribution system or assets, the Customer or its agent shall contact the Company by making a connection / disconnection request through normal customer contact channels and the Company shall make the necessary connection / disconnection, provided that the Company determines, in its sole discretion, that such connection is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.6. **Customer Responsibility for Costs.** The Customer agrees to compensate the Company for all Costs incurred by the Company in connection with work performed by the Company associated with each Attachment consistent with the charges or fees as set forth in this Agreement and/or as defined in the applicable provisions of the Lighting Tariff.

3.3. **Maintenance of Authorized Attachments.**

3.3.1. **Cable Locating; One Call System.** Customer shall be responsible for its own underground cable locating and for participation in the "One Call System(s)" providing one-call notifications within the Customer's operating service area. The One Call System is an independent association which, in compliance with federal, state and local requirements, facilitates the location identification of underground utility infrastructure through a notification / communication process between excavators and underground facility owners. The contact information for the One Call System responsible for a specific geographic area within the United States can be obtained by calling 811 nationally. As of the Effective Date, Dig Safely New York, Inc. is this association.

3.3.2. **NJUNS.** Customer shall participate, at its sole expense, in any forum, group or organization and utilize any designated common information management system established to facilitate communications, priority, schedule, and any other functions necessary to manage, locate or identify the attachment assets and actions of all customers and other facility owner(s) which are in conjunction with or may have an impact upon an Attachment. As of the Effective Date, the National Joint Utilities Notification System (NJUNS), is this organization.

3.3.3. **Access to Company Structures.** Customer may (or may expressly authorize the Company, its employees or agents to) access or enter the Company's Structures for the purpose of asset verification, inventory, inspection and/or other

engineering or asset management functions provided the Customer provides sufficient advance notice to the Company to accommodate all aspects of scheduling. A representative of the Company shall be present at all such times, for which Customer shall pay the Company the applicable fee or charge specified in the Lighting Tariff unless, in the sole discretion of the Company, the scope of such support service is in excess of the defined fee or charge scope, in which instance the Customer will pay all fully loaded costs for such support service. All personnel entering any Company Structure are to be properly qualified and outfitted with personal protective equipment (PPE) for the physical, environmental and electrical conditions to be encountered. Where Customer or its agent has been granted access as provided above, the Company may halt such activities if they threaten the safety of any individuals or property or the integrity or reliability of the Company's electric distribution system.

3.3.4. **Tree Trimming.** All tree trimming required to accommodate prospective maintenance and operation of Authorized Attachments, including but not limited to the functional performance, lumen output or illumination orientation, shall be performed by Customer or Customer's qualified contractor provided appropriate approvals have been granted by the owner(s) of the tree(s) and all governing authorities. The portion of the tree(s) to be impacted by trimming shall only be within a radial distance of three (3) feet of the luminaire extending below a horizontal plane established from the highest vertical point of the luminaire unless such area is within specified clearance distances of the electric distribution or transmission system as designated by the Company and/or other governing authorities.

3.4. **Inspection and Remediation of Authorized Attachments.**

3.4.1. **Right to Inspect.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment, at any time, without notice to Customer, at the Company's own expense.

3.4.2. **Right to Recover Costs of Inspection.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment and to recover its Costs in connection therewith from Customer, if the inspection performed pursuant to Section 3.4.1 of this Agreement reveals any of the following:

- (a) Unauthorized Attachments;

- (b) Material discrepancy in type, style or size of installed Attachment as compared with the Company's records;
- (c) Any situation creating a safety-related emergency or any condition that prevents safe access to or operation of any facilities or equipment installed on Pole(s) and/or Structures; or
- (d) Equipment that have been installed in violation of the provisions of this Agreement.

3.4.3. **Other Charges; No Ratification or Waiver.** Any charges imposed by the Company for such inspections shall be in addition to any other sums due and payable by Customer under this Agreement. No act or failure to act by the Company with regard to the charge or any unlicensed use by Customer shall be deemed ratification or the authorization of the unlicensed use. If any License should subsequently be issued, the License shall not operate retroactively or constitute a waiver by the Company of any of its rights or privileges under this Agreement or otherwise.

3.4.4. **Equipment Not in Compliance.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement, the Company may provide Customer with notice thereof, whereupon Customer shall bring such Equipment into compliance with the requirements of this Agreement within fifteen (15) days or such additional time as agreed to by the Company in writing (the "Notice Period"). If Customer fails to bring its Equipment into compliance with the requirements of this Agreement with such Notice Period, the Company shall provide Customer with a Final Notice of Termination of Service with respect to the Attachment that includes such Equipment in accordance with Section 13.3(b) of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3(b), and shall exercise its right to discontinue service to such Equipment in accordance with the provisions thereof.

3.4.5. **Hazardous Conditions.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement and the existing physical and/or operational conditions of such Equipment creates an emergency or has the potential to cause an imminent hazard and/or immediate danger to the safety of Company employees, contractors, other persons or property, or interfere with the performance of the Company's service obligations, the Company shall have the right to disconnect or remove such Equipment from the Facilities without notice to the Customer

in accordance with Section 13.13 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.13, and to recover all Costs incurred in connection therewith from Customer under this Agreement. After disconnection and/or removal, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.6. **Emergency Situations**. In the event of an emergency, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.7. **No Obligation with Regard to Removed Equipment**. In the event Company removes and/or disconnects Customer Equipment following a hazardous condition or emergency situation pursuant to Sections 3.4.5 or 3.4.6 above, Company shall not be responsible for disposal, delivery, or safekeeping of the Customer's Equipment (including but not limited to the control device or ancillary attachment) or replacement of same, nor shall Company be liable if any such Equipment is damaged, missing, or destroyed. The Customer shall be responsible for the proper disposal and any associated restoration caused by the removal of its Equipment and all appropriate actions required to replace such Equipment including the performance of all separation work (fuse and labeling) following such event.

3.4.8. **Customer Obligation to Remedy**. The Customer shall, at its sole cost and expense, remedy any condition identified by the Company as causing any of its Equipment to be not in compliance with the provisions of this Agreement, which remedy may include but not be limited to the relocation, reorientation, transfer or de-energizing of the Equipment as deemed acceptable by the Company. The Company shall promptly restore electric service to such Equipment upon receipt of notice from the Customer that remedial action has been taken to address such emergency or non-compliance, provided however that the Company shall have no obligation to restore service to such Equipment if it has the lawful right to withhold service from such Equipment for any other reason.

3.4.9. **Failure to Remedy**. If the Customer fails to remedy any condition identified by the Company as not in compliance with the provisions of this Agreement

within thirty (30) days or such longer period as may be agreed to by the Company in writing, the Company may deem the License for the Equipment in question to be revoked, deem the Equipment an Unauthorized Attachment and proceed to exercise its Removal Rights with respect to the Equipment constituting such Unauthorized Attachment as stated in Article 6 of this Agreement.

3.4.10. **No Warranty.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, as to the adequacy, safety or other characteristics or any structures, equipment, wires, appliances or devices owned, installed or maintained by Customer or leased by Customer from third parties.

3.5. **Damage to Facilities.**

3.5.1. **Liability; Obligation to Report.** Customer shall be liable for any damages it causes to the Facilities and to any equipment of third parties (including any Joint Owner(s), Joint User(s), and/or Other Customers) attached to the Facilities, and Customer assumes all responsibility for any and all loss from such damage caused by Customer or any of its agents, contractors, servants or employees. Customer shall make an immediate report to the Company and any Joint Owner(s), Joint User(s), and / or Other Customers of the occurrence of any such damage and agrees to reimburse the respective parties for all Costs incurred by the Company, Joint Owner(s), Joint User(s) and/or Other Customers in making repairs to the Facilities or such other equipment.

4. **REQUIREMENTS APPLICABLE TO NEW ATTACHMENTS OR EQUIPMENT AND MATERIAL CHANGES TO AUTHORIZED ATTACHMENTS OR EQUIPMENT**

4.1. **License Application.**

4.1.1. **Customer Requirements.** Customer shall not install any new Equipment on the Facilities, add any Attachments, or make any Material Change to any Authorized Attachment or to any Equipment that has been granted a Preliminary License until:

- (a) Customer has first analyzed any Equipment, Attachments, or Authorized Attachments and confirmed that any new Equipment or Attachments can be installed, or any Material Changes to any Authorized Attachment or Equipment can be implemented, in compliance with all applicable safety

codes, including the NESC, and will not create loading or other issues on the Equipment or Authorized Attachments;

- (b) Customer has submitted a written application to the Company for a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment utilizing the form in APPENDIX II, Form A-1 (Application for Street and Area Lighting Attachment License); and
- (b) The Company has approved such request and issued a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment, which shall then be deemed a new Authorized Attachment under the terms of this Agreement

The Company shall provide an assessment and response to the application based upon the proposed action(s), description and engineering / construction detail provided.

4.1.2. **Unique Identification Number.** Such additional Licenses shall establish a unique identification number for each such additional Authorized Attachment, which identification number shall be used as the individual license reference and for purposes of inventory and billing administration.

4.1.3. **Right to Refuse License.** The Company reserves the right to refuse to grant a License(s) or refuse authorization for the relocation, reconfiguration, Material Change or replacement of existing Equipment or Authorized Attachments, or the installation of new Equipment or Attachments, when the Company reasonably determines that:

- (a) Refusal is necessary to maintain the safe operation of the Company's electric distribution system;
- (b) The relevant Pole or Structure may not be replaced to accommodate Customer's proposed Attachment;
- (c) The existing Facilities on the Pole or within the Structure may not be rearranged to accommodate the proposed Attachment; or
- (d) The proposed Attachment will negatively impact other customer services provided by the Company.

For the avoidance of doubt, the Parties understand and agree that the list of above-mentioned conditions is not an exhaustive list as other conditions may exist that would require the Company to refuse to grant a License.

4.2. **Field Survey.**

4.2.1. **Requirements for Field Survey.** The Company shall perform a Field Survey for each Facility upon or within which the Customer requests a new Authorized Attachment requiring an electrical connection or the reconfiguration, relocation, Material Change or replacement of existing Equipment. The Field Survey shall identify the required work, if any, that is necessary to facilitate the electrical connection and determine whether the Pole or Structure is adequate to accommodate the requested Attachment. The Company shall provide Customer with a Field Survey cost estimate representing all anticipated Costs. The Company shall perform the Field Survey(s) following receipt of the Customer's written authorization and advance payment of the estimated amount specified by the Company in accordance with the provisions of Section 7.2.1 of this Agreement.

4.2.2. **When Survey Not Required.** The Company may determine that a Field Survey is not required if Customer proposes a new, in-kind replacement of existing Equipment having the same physical and operational characteristics and is to be in the same location and orientation as the existing Equipment in an Authorized Attachment. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind LED luminaire and/or the installation or inclusion of an NLC Node with similar physical and operational characteristics in the same location and orientation as the existing luminaire nor the initial installation of a Disconnect Device within the specified twenty-four (24) months following the Closing will require a Field Survey.

4.2.3. **Connection Point.** The Connection Point shall have the meaning ascribed to it in the Purchase and Sale Agreement, as further defined herein and as the Parties understand such to be where the street light Facility is energized from the electric distribution system or similarly referenced as the point of ownership demarcation. The Company shall own the electric distribution system up to and including the Connection Point. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Company, at its sole discretion, shall define the Connection Point.

4.3. **Make-Ready Work.**

4.3.1. **Authorization of Make-Ready Work.** In the event that the Company determines in the Field Study that a Pole or Structure is physically inadequate or

that the reconfiguration of the existing electric distribution system equipment or other Facilities is required, the Company will indicate on the Authorization for Make-Ready Work (APPENDIX II, Form B-2) its estimate of its Cost of completing the design for the Make-Ready Work and for performing the required Make-Ready Work and forward such completed authorization form to the Customer.

4.3.2. **Performance of Make-Ready Work.** The Company will schedule and perform the required Make-Ready Work following its receipt of the executed Authorization for Make-Ready Work form and Customer's advance payment of the estimated amount specified by the Company. Customer shall pay the Company for all the Costs of all Make-Ready Work in accordance with the provisions of Section 7.2.2 of this Agreement, and shall also arrange with the owner(s) of other attachment(s) on the Pole or within the Structure or other Facility for the transfer or rearrangement of such facilities to accommodate the installation, reconfiguration or removal of the Attachment(s).

4.3.3. **No Reimbursement.** Customer shall not be entitled to reimbursement of any amounts paid to the Company for Pole and/or Structure replacements, capacity upgrades, or for the reconfiguration or rearrangement of other attachment(s) on its Poles or within its Structures by reason of the use by the Company or other authorized user(s) of any additional space or capacity resulting from such Make Ready Work.

4.3.4. **Costs for Additional Equipment and Changes.** If the Company or a Joint Owner needs to attach additional equipment or make changes to existing Facilities within or upon which Customer has an Authorized Attachment, Customer agrees to be responsible to perform or to reimburse the Company for all Costs either: (i) to reconfigure its Authorized Attachment(s) in or on such Structure(s), as such reconfiguration shall be determined by the Company; or (ii) to transfer its Authorized Attachment(s) to an alternate location designated by the Company so that the additional Facilities of the Company may be attached where either an agency of government, whether local, state or federal, requires the removal, relocation, or modification of a Structure affecting Customer's Authorized Attachment; or a Structure must be repaired or replaced for any reason (as determined by the Company).

4.3.5. **Scheduled Workload.** The Company will endeavor to perform all Make-Ready Work to accommodate Customer's Authorized Attachments as a part of its normal, scheduled workload.

4.3.6. **Costs for Reconfiguration, Transfer, or Removal.** When reconfiguration, transfer or removal of Facilities of the Company is required to facilitate attachments of Other Customers or third parties on or within Structures, Customer shall be responsible for all costs incurred in connection with such reconfiguration, transfer or removal of Customer's Attachments as a result. Customer has sole responsibility for the recovery of the costs of the reconfiguration, transfer or removal of Attachments from such Other Customer(s) or third party(ies).

4.4. **Installation Requirements for New Authorized Attachments and Material Changes.**

4.4.1. **Disconnect Device.** Customer shall install a Disconnect Device within each Authorized Attachment. The Disconnect Device shall be located as close as feasibly practical to the energizing source or Connection Point and shall be readily accessible to both the Company and the Customer. The Disconnect Device shall, at a minimum, be dual pole to completely separate the Customer's energized conductors from the Company's distribution system.

4.4.2. **No Joint Use of Ducts.** Joint use of the Company's Ducts by Customer for the installation of new Equipment is not permitted.

4.4.3. **Authorization Required.** The installation of Customer Equipment is to be external of Company Structures except to facilitate access to the Connection Point as specified by the Company. If unique circumstances cause the Customer to request the installation of Equipment, such as splice boxes and coiled cables to be within Structures, the installation will only be allowed if specifically authorized by the Company in writing and such Equipment complies in all respects with Article 2 of this Agreement. Where splice boxes are allowed, cable slack shall be installed to allow the Equipment to be moved clear of the Structure, which will allow for the Company to perform facility maintenance and/or Facility repairs.

4.4.4. **Identification Labels.** Customer shall place or have placed by the Company (at Customer's sole cost and expense) as Make-Ready Work, Identification

Labels on all of Customer's Equipment including, but not limited to, cables located within or in close proximity to the Company's underground Structures and Customer handholes containing circuit Disconnect Devices. The Company shall have the right to approve or reject Customer Identification Labels that are significantly different than those described in APPENDIX II, Form E.

4.4.5. **Tree Trimming.** All tree trimming made necessary to accommodate initial construction, reconstruction, relocation, or Material Change of Authorized Attachments shall be performed by qualified contractors approved by the Company and Customer, at the sole cost and expense of Customer. The Customer and not the Company shall be solely responsible for the performance of such work and shall also be responsible for obtaining permission for such work from the owner(s) of such tree(s) and from any other governing authorities regulating such work.

5. **UNAUTHORIZED ATTACHMENTS**

5.1. **Failure to Comply with Tariffs.** In the event that Customer converts, replaces or otherwise uses a lighting or illumination source other than those provided in the Lighting Tariff in any Authorized Attachment, or operates such Equipment in a manner other than as stated in the Lighting Tariff, the Electric Tariff, or in this Agreement, such action shall cause the Authorized Attachment to become an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.2. **Backbilling.** If any Equipment is found on the Facilities within the Customer's municipal boundaries at any time after the third month following the Closing as set forth in the Purchase and Sale Agreement that is not covered by a License or a Preliminary License, the Company shall provide Customer with written notice thereof and may, without prejudice to its other rights or remedies under this Agreement, submit a backbill to the Customer for service to such Unauthorized Attachments as authorized by the Lighting Tariff and the PSC's rules.

5.3. **Application.** If Customer wishes to retain such Equipment, Customer shall submit to the Company a written Application For Street and Area Lighting Attachment License (Form A-1) within thirty (30) days after receipt of the Company's written notice of the existence of such Unauthorized Attachment(s). If such application is not received

by the Company within the specified time period or is rejected by the Company, the Equipment shall be deemed to be an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.4. **Company Modification or Removal of Structures.** If the Company elects, in its sole discretion, to modify, change or replace any Structure on which Equipment is located or is directly impacted, including, without limitation, to upgrade such Structure or any Facilities located on or near that Structure, the Company shall provide Customer with written notice of such work ("Company Notice") and Customer agrees to remove and relocate the Customer's Equipment located on or adjacent to such Structure to an alternate location designated by the Company within six (6) months following the date of the Company Notice, at Customer's expense and in compliance with all applicable laws, rules, regulations, codes and standards, as provided in Section 4.3.4 of this Agreement. Any Equipment not removed by Customer in accordance with a Company Notice shall be deemed to be Unauthorized Attachments.

6. REMOVAL RIGHTS

6.1. Removal of Authorized Attachments.

6.1.1. **Costs, Fees and Charges; Company's Right to Remove and Dispose.** Customer, at its sole expense, shall remove or have removed in accordance with this Agreement any Attachment(s) from any Facilities within thirty (30) days of its receipt of a notice from the Company requiring removal of such Attachment(s). If Customer fails to remove such Attachment(s) from the Company's Facilities within such time, the Company shall have the right to remove those Attachment(s) without any liability for damage or injury thereto, and Customer shall pay all Costs incurred by the Company in connection therewith. If the Company exercises its Removal Rights as described herein, the Company shall have the option to sell or otherwise dispose of the removed Attachment(s) provided that the Company shall credit any amounts received to Customer's account. Customer shall be liable for and pay all fees and charges pursuant to the Lighting Tariff and the terms of this Agreement to the Company until such Attachment(s) are removed.

6.2. **Removal of Unauthorized Attachments.**

6.2.1. **Right to Remove; No Notice.** The Company may de-energize and remove any Unauthorized Attachments without the need to provide any further notice to the Customer and without liability to Customer of any kind.

6.2.2. **Liability.** The Customer shall be liable to the Company for its charges under the Lighting Tariff and the Electric Tariff for electric service furnished to any Unauthorized Attachment within Customer's municipal boundaries through and until the date of its de-energization or removal and for all Costs incurred by the Company in removing the Unauthorized Attachment, and the Company shall have no liability to Customer for loss of service provided by Customer or any damage or injury to Customer's Unauthorized Attachment(s).

7. FEES, CHARGES AND PAYMENTS

7.1. **Fees for electric service.**

7.1.1. **Applicable Tariff.** Charges for electric energy supplied to the Equipment and for the attachment of the Equipment to the Facilities shall be as specified in the Lighting Tariff unless such equipment is not specified in the Lighting Tariff, in which instances the charges set forth in the Electric Tariff shall apply.

7.1.2. **Calculation and Payment of Fees and Charges.** Electric service charges and fees for individual Equipment not specified in the Lighting Tariff are in addition to any fee for outdoor lighting service associated with the Equipment and shall be either: (i) metered and billed per the applicable provision of the Electric Tariff; or (ii) an unmetered estimate in accordance with the terms of the Electric Tariff, with the kWh use calculation based on the cumulative maximum energy consumption value of each individual piece of Equipment at a location applied continuously over a 24 hours per day, 7 days per week, 365 days per year operation schedule, unless otherwise defined by the Company in its sole discretion. Customer will pay the electric service fees to the Company in accordance with the Electric Tariff and the Company's established monthly billing period and conditions as stated upon the rendered bill.

7.1.3. **Right to Convert to Metered Service.** Customer agrees that the Company reserves the right to convert any unmetered electric service to a metered electric

service in its sole discretion, with all conversion costs from unmetered electric service to metered electric service borne by Customer, except as otherwise provided in the Electric Tariff or the Lighting Tariff. Electric service fees shall be assessed continuously, inclusive of periods of inactive service, temporary inoperable condition, replacement, or relocation, until written notice is provided by Customer to the Company of the permanent removal of the Licensed Equipment.

7.2. **Costs for Modifying/Relocating Facilities.** Customer shall reimburse the Company for all Costs incurred in modifying and/or relocating Facilities owned by the Company to accommodate any Customer-desired service or Attachment in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing Relocation of Existing Facilities.

7.2.1. **Field Surveys.** The Company's obligation to perform any Field Survey requested by the Customer pursuant to Section 4.2 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of that Field Survey determined by the Company, which shall be sufficient to cover the Company's Costs of performing the required Field Survey. The estimated amount shall include the standard Field Survey charge as found in APPENDIX I, Schedule of Fees and Charges, and any other required ancillary service costs incurred in the performance of the Field Survey. The estimated ancillary service costs shall include but not be limited to; applicable permits, work zone and police detail protection and other safety and environmental functions which shall be required to perform the Field Survey at a specific location. The Parties agree that upon completion of the Field Survey by the Company, no adjustment of the Field Survey costs paid by Customer shall be made to reflect the Company's actual costs to perform the Field Survey, whether or not the Company's actual costs are more or less than the estimated costs paid by Customer. The current standard charge assessed to Customer and all Other Customers for the Field Survey can be found in APPENDIX I, Schedule of Fees and Charges, and is based on the Company's current estimated cost to perform and complete the Field Survey. The Company reserves the right to change such standard Field Survey charge assessed to Customer and all Other Customers from time to time and to provide written notice as stated in Section 7.4 of this Agreement.

7.2.2. **Make-Ready Work.** The Company's obligation to perform any Make-Ready Work requested by the Customer in accordance with Section 4.3 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of such Make-Ready Work as determined by the Company. The Parties agree that upon completion of the Make-Ready Work by the Company, no adjustment of the Make-Ready Work amount paid by Customer shall be made to reflect the Company's actual Costs of performing the Make-Ready Work, whether or not the Company's actual Costs are more or less than the estimated costs paid by Customer.

7.2.3. **Fees for New Attachments or Material Changes.** Customer shall pay to the Company the fees and charges for any other services performed by the Company in conjunction with any request by Customer for License(s) for new Attachments or for Material Change to existing Attachments. Such charges will be established in accordance with the terms and conditions of APPENDIX I, attached hereto and are incorporated into this Agreement by reference.

7.3. **Costs for Failure to Comply with Agreement.** Customer shall also reimburse the Company for all Costs incurred by the Company in disconnecting, removing or performing any other required work on the Equipment necessitated by Customer's failure to install, operate and maintain such Equipment in compliance with the requirements of this Agreement, provided, however, that any such action by the Company shall be without prejudice to any other remedies that the Company may have as a result of such failure by Customer to comply with the requirements of this Agreement.

7.4. **Changes to Fees and Charges.** The Company may change the amount of fees and charges specified in APPENDIX I, Schedule of Fees and Charges by giving Customer no fewer than sixty (60) days' written notice prior to the date the change becomes effective or as otherwise approved and made effective by the PSC. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement at the end of such sixty (60) day notice period if the change in fees and charges is not acceptable to Customer, provided that Customer gives the Company no fewer than thirty (30) days' written notice of its election to terminate this Agreement prior to the end of such sixty (60) day period. Upon termination of the Agreement, the Customer shall be responsible for the removal of all of its Attachments as provided in Section 16.3.3 of this Agreement.

8. LEGAL REQUIREMENTS

8.1. **Obligation to Obtain Authorizations.** Customer shall be responsible for obtaining from the appropriate public and/or private authority any authorizations required to construct, operate and/or maintain its Attachments on the public and private property at the location of Poles and/or Structures for which Customer has obtained License(s) under this Agreement and shall submit to the Company evidence of such authorizations before making Attachments on such public and / or private property.

8.2. **Obligation to Comply with Applicable Law.** The provisions of this Agreement are subject to, and the Parties hereto shall at all times observe and comply with, all laws, ordinances, regulations, and rulings that in any manner affect the rights and obligations of the Parties, so long as such laws, ordinances, regulations or rulings remain in effect.

8.3. **No Forfeiture of Rights.** No Preliminary License or License granted under this Agreement shall extend to any Facilities or Equipment outside of the Customer's municipal boundaries or where the placement of Attachments would result in a forfeiture of the rights of any of the Company, Joint Users, or Other Customers to occupy the property on which such Facilities are located. If placement of Customer's Attachments would result in a forfeiture of the rights of the Company, Joint User(s), or Other Customers to occupy such property, Customer agrees to remove its Attachments forthwith; and Customer agrees to pay the Company, Joint User(s), or Other Customers all losses, damages, and Costs incurred as a result thereof.

8.4. **Not Evidence of Usable/Unusable Space.** Neither this Agreement nor the payment of any fees under this Agreement shall be used by any Party as evidence that the space occupied by Customer's Attachments is either usable or unusable space.

9. LIMITATION OF LIABILITY

9.1. **Limitation on Type of Damages.** The Company, the Company's affiliates and their respective officers, directors, agents, employees, parents, affiliates, successors or assigns, shall not be liable to Customer or to its officers, directors, agents, employees, successors or assigns for any claims, suits, actions or causes of action or otherwise for

incidental, punitive, special, indirect, multiple or consequential damages (including, without limitation, attorneys' fees or litigation costs) connected with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including, without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty or strict liability.

9.2. **Limitation on Amount of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Company and the Company's affiliates and their respective officers, directors, agents, and employees to Customer and anyone claiming by or through Customer, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Agreement from any cause or causes shall not exceed the total compensation received by the Company under this Agreement, or the total amount of \$100,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9.3. **No Warranty.** The Company is not responsible or liable and gives no warranty, expressed or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, for the adequacy, safety or other characteristics of any Structures, Equipment or wires purchased by the Customer under this Agreement or owned, installed, operated or maintained by Customer or leased by Customer from third parties.

9.4. **Survival.** The provisions of this Article 9 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion, or expiration of this Agreement.

10. **REPRESENTATIONS AND WARRANTIES; COVENANTS**

10.1. **Representations and Warranties.** On the Effective Date, each Party represents and warrants to the other Party that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it;
- (iii) This Agreement and each other document executed and delivered in accordance with this Agreement constitutes the legally valid and binding obligation enforceable against it in accordance with its terms;
- (iv) It is not bankrupt or insolvent, and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- (v) There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceeding that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vi) It is acting for its own account, has made its own independent decision to enter into this Agreement, and, as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (vii) It is in compliance with all relevant and applicable laws, tariffs, and regulations.

10.2. **General Covenants.** Each Party covenants that throughout the term of this Agreement:

- (i) it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it shall maintain (or obtain from time to time as required, including through renewal, if applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions of its governing

documents, any contracts to which it is a party, or any law, rule, regulation, or order applicable to it.

11. INDEMNITY

11.1. **Requirement to Indemnify.** Customer shall at all times indemnify, defend, and save harmless, as applicable, the Company and its affiliates and their respective officers, directors, agents, and employees, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from:

- (i) Any work or action done upon the Facilities licensed hereunder or any part thereof performed by Customer or any of its agents, contractors, servants, or employees;
- (ii) Any use, occupation, condition, operation of the Facilities or any part thereof by Customer or any of its agents, contractors, servants, or employees;
- (iii) Any act or omission on the part of Customer or any of its agents, contractors, servants, or employees, for which the Company may be found liable;
- (iv) Any accident, injury (including, but not limited to, death) or damage to any person or property occurring upon the Facilities or any part thereof or arising out of any use thereof by Customer or any of its agents, contractors, servants, or employees, except where such work is performed by the Company;
- (v) Any failure on the part of Customer to perform or comply with any of the representations, warranties, covenants, agreements, terms or conditions contained in this Agreement;
- (vi) Any payments made under any Workers' Compensation Law or under any plan for employee disability and death benefits arising out of any use of the Poles, Structures, or Facilities by Customer or any of its agents, contractors, servants, employees;
- (vii) Any installation, operation, maintenance, presence, use, occupancy or removal of the Equipment by Customer or any of its agents, contractors, servants or employees, including without limitation, taxes, special charges by others, and all claims and demands for infringement of patents with respect to the manufacture, use, and

operation of the Attachments in combination with Poles, Structures, Facilities, or otherwise; or

- (viii) The proximity of the Equipment to the property of the Company or of any third party.

11.2. FAILURE TO INDEMNIFY. IF THE COMPANY IS ENTITLED TO INDEMNIFICATION UNDER THIS ARTICLE 11 AS A RESULT OF A CLAIM BY A THIRD PARTY, AND CUSTOMER FAILS, AFTER NOTICE AND REASONABLE OPPORTUNITY TO PROCEED UNDER SECTION 11.3 OF THIS AGREEMENT, TO ASSUME THE DEFENSE OF SUCH CLAIM, THE COMPANY MAY AT CUSTOMER'S EXPENSE, SETTLE OR CONSENT TO THE ENTRY OF ANY JUDGMENT WITH RESPECT TO, OR PAY IN FULL, SUCH CLAIM. IF CUSTOMER IS OBLIGATED TO INDEMNIFY AND HOLD THE COMPANY HARMLESS UNDER THIS ARTICLE 11, THE AMOUNT OWING TO THE COMPANY SHALL BE THE AMOUNT OF THE COMPANY'S ACTUAL LOSS, NET OF ANY INSURANCE OR OTHER RECOVERY.

11.3. Indemnity Procedures.

11.3.1. **Notification.** Promptly after receipt by the Company of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article 11 may apply, the Company shall notify Customer of such fact. Any failure of or delay in such notification shall not affect Customer's indemnification obligation unless such failure or delay is materially prejudicial to Customer.

11.3.2. **Right to Assume Defense; Right to Participate.** Except as stated below, Customer shall have the right to assume the defense thereof with counsel designated by Customer and reasonably satisfactory to the Company. If the defendants in any such action include the Company and Customer and if the Company reasonably concludes that there may be legal defenses available to it which are different from or additional to those available to the Customer, the Company shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. The Company shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by Customer.

11.3.3. Notwithstanding the foregoing, Customer:

- (i) Shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Company and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Company, or there exists a conflict or adversity of interest between the Company and Customer, in which event the Customer shall pay the Company's reasonable expenses; and
- (ii) Shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Company, which shall not be unreasonably withheld, conditioned or delayed.

12. EXCLUSION OF WARRANTIES

12.1. **No Representations Regarding Condition of Poles, Structures, or Facilities**. The Company makes no warranties, representations, guarantees or promises, whether statutory, oral, written, express, or implied as to the present or future strength, condition, or state of any Poles, Structures, Facilities, wires, apparatus or otherwise in connection with any Attachment, Equipment or any other facilities or equipment in connection with this Agreement. To the extent applicable, the Customer, or its contractors, agents and representatives performing any Attachment work, shall be responsible and liable for observations, assessments and non-destructive testing of the Poles and/or Structures to determine whether the Poles and/or Structures are safe to utilize, support, access or ascend. If the Customer questions the integrity or safety of any Pole, Structure or Facility or if any Pole, Structure or Facility is marked as unsafe, the Customer shall refrain from utilizing, accessing, ascending, or handling the Pole, Structure or Facility in any manner whatsoever and shall notify or confirm such condition with the Company. Should the Customer, or its contractor, agent or representative decide, in its sole judgment, to utilize or access a Pole, Structure or Facility (including, without limitation, Poles, Structures or Facilities that are marked unsafe or appear to be unsafe), the Customer, not the Company or its affiliates, shall assume all risk of loss, liability and damages (including injury to any person(s) (including death) or property), and Customer shall indemnify, defend, release and hold harmless the Company, its affiliates, and the Company's and its

affiliates' successors, assigns, officers, agents, representatives from all claims arising in whole or in part from use of such Poles, Structures, or Facilities in accordance with the provisions of Article 11 of this Agreement.

12.2. **No Warranties**. Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose, to the Customer or its contractors, agents or representatives performing any Attachment work as to the adequacy, safety or other characteristics of any Poles, Structures or Facilities owned by the Company or by any third party or of any Equipment, wires, appliances or other devices owned, installed or maintained by Customer or leased by Customer from third parties. It is understood that any Field Survey or other assessment of the condition of any Facilities of the Company made pursuant to this Agreement is performed solely for the protection of the Company and its other customers and not for the benefit of the Customer, its contractors, agents, employees or representatives.

12.3. **Survival**. The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement or any license issued under this Agreement.

13. **INSURANCE**

13.1. **Customer's Obligation to Insure**. Customer shall procure and maintain, at its own expense, insurance issued by an insurance carrier(s) satisfactory to the Company to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury, or damage as covered in Article 11 of this Agreement. Such insurance shall be primary and non-contributory, with no right of contribution by any other coverage available to the Company, its affiliates, and the Company's and its affiliates' successors, assigns, officers, agents, and representatives.

13.2. **Comprehensive/Commercial Liability Insurance**. Comprehensive or Commercial General Liability Insurance, including Contractual Liability and Product/Completed Operations Liability covering all insurable operations required under

the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion or collapse with the following minimum limits of liability:

Bodily Injury Liability	\$5,000,000
Property Damage Liability	\$5,000,000

If a combined single limit is provided, the limit shall not be less than \$5,000,000 per occurrence. Customer's insurance requirements for General Liability or Automobile Liability may be satisfied through any combination of excess liability and/or umbrella. Coverage shall include contractual liability with this Agreement and all associated agreements with respect to the Customer's ownership of the street lights being included. In the event the Customer is a governmental entity and such entity's liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the "Law"), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an insured entity.

13.3. **Worker's Compensation.** Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act and the Jones Act.

13.4. **Automobile.** Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury & Property Damage
Combined Single Limit - \$1,000,000

13.5. **Self-Insurance:** Customer may elect to self-insure any or all the requirements herein, provided the Company consents, and Customer provides written notice and evidence of self-insurance to the Company prior to the Closing as set forth in the Purchase and Sale Agreement. With respect to the Workers' Compensation, such

evidence shall consist of a copy of a current self-insured certificate or other acceptable form of proof of self-insurance. Any deductible or self-insured retention shall be at Customer's expense.

13.6. **Waiver.** The Customer and its insurance carrier(s) shall waive all rights of recovery against the Company and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision. To the extent the Customer's insurance carriers will not waive their right of subrogation against the Company, the Customer agrees to indemnify the Company for any subrogation activities pursued against them by the Customer's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Company or its employees, subcontractors or agents.

13.7. **Insurance Required Before Attachments Made; Changes to Insurance.** All insurance must be effective before the Company will authorize Customer to make Attachments to any Pole and/or Structure to the Equipment and shall remain in force until such Attachments have been removed from all such Poles and/or Structures. Customer accepts the obligation to inform the Company of changes in insurance or insurance carrier and/or policy on a prospective basis.

13.8. **Certificates of Insurance.** Customer shall submit to the Company certificates of insurance including renewal thereof, by each company insuring Customer to the effect that it has insured Customer for all liabilities of Customer covered by this Agreement; and that such certificates will name the Company as an additional insured under the General Liability, Automobile Liability, and Umbrella/Excess Liability policies (when applicable) and provide that the insurance company will not cancel or change any such policy of insurance issued to Customer except after the giving of not less than thirty (30) days' written notice to the Company. Customer shall also notify and send copies to the Company of any policies maintained under this Article 13 written on a "claimsmade" basis. The following language shall be used when referencing the additional insured status of the Company: National Grid USA, its direct and indirect parents, subsidiaries and affiliates, shall be named as additional insureds.

13.9. **Contractor Insurance.** Customer shall require all of its contractors to carry insurance which meets the requirements specified under this Article 13, and to name

the Company and Customer as additional insureds, utilizing the language provided in Section 13.1 above. Customer shall also require its contractors to provide a waiver of subrogation under all policies in favor of the Company.

14. **ASSIGNMENT OF RIGHTS**

14.1. **No Right to Assign.** Customer shall not assign or transfer this Agreement, or any rights or authorization granted hereunder, and this Agreement shall not inure to the benefit of Customer's successors, without the prior written consent of the Company. In no event shall any assignment of this Agreement extend the territory to which this Agreement applies beyond the Customer's municipal boundaries or permit any entity that is not eligible under the Lighting Tariff to receive street lighting service from the Company in such location, to assume any of the rights or obligations of Customer hereunder.

14.2. **Successors Bound.** In the event such consent or consents are granted by the Company, this Agreement shall extend to and bind the successors and assigns of the Parties.

14.3. **No Right to Lease.** Pole and Structure space licensed to Customer hereunder is for Customer's exclusive use only and is licensed to Customer for the sole purpose of permitting Customer to place or retain Authorized Attachments. Customer shall not lease, sublicense, share with, convey, or resell to others any such space or rights granted hereunder. Customer shall not allow a third party, including affiliates, to place attachments or any other Equipment anywhere on its Attachments or on the Facilities, Poles or within Structures, including, without limitation, the space on Facilities, Poles or within Structures licensed to Customer for Authorized Attachments, without the prior written consent of the Company.

14.4. **Maintenance Not an Assignment.** No contract between the Customer and any other party limited solely to the operation, maintenance, modification, or repair of the Equipment shall be considered an assignment or transfer under this Article.

15. **TERM OF AGREEMENT**

15.1. This Agreement shall be co-terminus with the Customer's Service Agreement(s) for service to its Street Lights under either Service Classification No. 3

(energy only) of the Company's Lighting Tariff, or under the applicable provisions of the Company's Electric Tariff, or applicable successor tariffs, as may be amended from time to time, unless this Agreement is terminated earlier in accordance with Article 16 of this Agreement.

15.2. Termination of this Agreement or any licenses issued hereunder shall not affect: (i) Customer's liabilities and obligations incurred hereunder prior to the latter of the effective date of such termination or the date on which Customer's Attachments are removed from the Facilities; or (ii) the Company's and Customer's rights pursuant to the laws, ordinances, regulations, and rulings governing the subject matter of this Agreement; or (iii) any provisions of this Agreement that shall survive expiration or earlier termination of this Agreement, including Articles 9, 11 and 12 of this Agreement.

16. TERMINATION RIGHTS

16.1. Termination of Service to Authorized Attachments.

16.1.1. **Termination for Past-Due Bills.** The Company's bills for service under this Agreement are due when issued and are past due if not paid within twenty (20) days of issue. If Customer fails to pay such bills within such twenty (20) day period, the Company may serve Customer with a written Final Notice of Termination of Service in conformance with Section 13.3(b) of the PSC's rules, 16 N.Y.C.R.R. § 13.3(b) (a "Final Termination Notice") and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules.

16.1.2. **Final Termination Notice.** The Company may also issue a Final Termination Notice to Customer if Customer fails to comply with any of the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules. Any such notice shall identify the specific Attachments that are not in compliance with the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and the specific requirements that those Attachments do not meet.

16.1.3. **No Restriction on Removal Rights.** Nothing in this Agreement shall be construed as restricting in any way the Company's Removal Rights under Article

6 of this Agreement or the Company's right to terminate service to Authorized Attachments without notice in the event of an emergency as authorized by Section 3.4.5 of this Agreement and Section 13.13 of the PSC's rules.

16.2. **Termination of Individual Licenses.**

16.2.1. Any License(s) issued pursuant to this Agreement shall automatically terminate when Customer ceases to have authority to construct, operate, and/or maintain its Attachments on the public or private property at the location of the Facilities covered by the License.

16.2.2. Customer may at any time terminate a License for a specific Attachment provided written notice of such termination is received by the Company no less than fifteen (15) days prior to the proposed removal of the Attachment from the specific Facilities (APPENDIX II, Form D), in accordance with Article 6 of this Agreement. Following such removal, Customer shall not make any new Attachment to such Facilities until Customer has first complied with the provisions of this Agreement as though no Attachment had ever been made to such Facilities.

16.2.3. The Company may terminate a License for specific Attachment(s) on fifteen (15) days' written notice to the Customer. The Company may exercise its Removal Rights under Article 6 of this Agreement upon the expiration of this fifteen (15) day notice period.

16.3. **Termination of Agreement.**

16.3.1. **Termination for Failure to Comply with Agreement.** If Customer fails to materially comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement, or if the Attachments or Equipment is maintained or used in violation of any law and Customer shall fail within thirty (30) days after written notice from the Company to correct such default or noncompliance, the Company may, at its option, terminate this Agreement in whole or in part, along with all Licenses granted hereunder or the Licenses covering the Facilities as to which such default or noncompliance shall have occurred.

16.3.2. **Termination for Failure to Adequately Insure.** If, at any time, an insurance carrier notifies the Company that any policy or policies of insurance, acquired pursuant to Article 13 of this Agreement, will be canceled or changed so that the

requirements of Article 13 of this Agreement will no longer be satisfied and, prior to the effective date of the cancellation or change in the insurance policy(ies), Customer fails to furnish to the Company new certificates providing evidence of insurance, or other sufficient documentation that Customer meets the requirements for self-insurance in accordance with the provisions of Article 13 of this Agreement, then the Company shall have the right, at its option, to either: (i) purchase insurance at the required coverage and to include all Costs incurred by the Company in connection therewith in the Company's bills for service under this Agreement; or (ii) terminate this Agreement.

16.3.3. **Schedule for Removal; Costs.** In the event of any termination of part or all this Agreement by the Company, Customer shall submit a plan and schedule to the Company pursuant to which Customer (or its agents) will remove the Attachments affected by such termination from the Facilities within six (6) months from the date of termination, unless otherwise agreed to by both Parties in writing, provided, however, that Customer shall be liable for and pay all fees, charges and associated Costs due to the Company pursuant to the terms of this Agreement until its Attachments are removed from the Company's Poles, Structures, and Facilities.

17. **DISPUTE RESOLUTION**

17.1 Any claim which the Customer may have against the Company arising out of the Agreement shall be presented in writing to the Company no later than 30 days after the first occurrence of the circumstance which gave rise to the claim. The claim shall contain a concise statement of the question or dispute and the relevant facts and data (including the applicable Agreement provision) which support the claim. The Customer shall furnish any additional information which the Company may require to enable it to evaluate and decide the claim. Failure to submit any claim in such 30-day period shall constitute a waiver on the Customer's part for entitlement to either additional reimbursement or additional time for performance under the Agreement.

Any dispute between the Company and the Customer with respect to the Agreement that cannot be resolved in the normal course by the respective representatives of the Parties, shall be referred to the responsible officers of the Company and the Customer for resolution. Notwithstanding the existence of a dispute, the Customer shall be obligated to

maintain payments not in dispute to the Company and the Company shall be obligated to proceed (or to continue) with the provision of services.

If the dispute remains unresolved, after 60 days, either Party may pursue any legal remedies available to it by law.

18. **CONSTRUCTION**

18.1. **AUTHORIZATION NOT EXCLUSIVE.** Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Customer. The Company shall have the right to grant, renew and extend rights and privileges to others that are not parties to this Agreement, by contract or otherwise, to use any Pole, Structure, or Facility subject to this Agreement.

18.2. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles contained therein. Only the courts in the State of New York shall have jurisdiction over this Agreement and any controversies arising out of or relating to this Agreement and/or provisions hereunder. Each Party respectively waives personal service by manual delivery and agrees that service of process in any action arising out of this Agreement may be made by registered or certified mail, return receipt requested, and directed to each Party.

18.3. **SEVERABILITY.** In the event that any provision or part of this Agreement or the application thereof to any Party or circumstance is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions or parts hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18.4. **NO THIRD-PARTY BENEFICIARIES.** The terms and provisions of this Agreement are intended solely for the benefit of Customer, the Company and their permitted successors and assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

18.5. **FAILURE TO ENFORCE.** Failure of the Company to enforce or require compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not

constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

18.6. **ENTIRE AGREEMENT.** The Parties have freely entered into this Agreement and agree to each of its terms without reservation. Section headings are for the convenience of the Parties only and are not to be construed as binding under this Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the matters addressed herein, and all previous representations either oral or written (including, but not limited to any and all previous Attachment Agreements and/or license agreements for overhead poles/structures or underground structures insofar as Customer is concerned except as to liabilities accrued, if any), are hereby annulled and superseded.

18.7. **REMEDIES UNDER THE TARIFFS.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of the Lighting Tariff and the Electric Tariff and, accordingly, that the Company and the Customer expressly reserve all of their rights and remedies under the Lighting Tariff and the Electric Tariff, including the Company's right to terminate electric service to the Customer under the Lighting Tariff or the Electric Tariff in conformance with Section 13.3 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3 (2016), in the event of the Customer's failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under the Lighting Tariff, the Electric Tariff, or the PSC's Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions of this Agreement and the provisions of the Lighting Tariff and the Electric Tariff, the applicable provisions of the Lighting Tariff and the Electric Tariff shall apply.

18.8. **AMENDMENT.** This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by authorized representatives of both Parties.

19. NOTICES

All written notices required under this Agreement shall be given by posting the same via first class mail as follows:

- (i) **To Customer:** All correspondence related to Customer’s street and area lighting including but not limited to; this Agreement, Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License to Customer’s office at:

City of Batavia, Corporation Counsel

Attention: _____

Address: _____

Email: _____

Phone number: _____

24-hour Emergency Situation contact:

Name: _____

Title: _____

Phone: _____

Email: _____

- (ii) **To the Company:** Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License, and all certificates of Insurance to the Company’s district office, based on region of municipality to:

WEST

Niagara Mohawk Corporation d/b/a National Grid
Attention: Director, Community & Customer Management
144 Kensington Avenue
Buffalo, NY 14214

EAST

Niagara Mohawk Corporation d/b/a National Grid
Attention: Director, Community & Customer Management
1125 Broadway
Albany, NY 12204

CENTRAL

Niagara Mohawk Corporation d/b/a National Grid
Attention: Director, Community & Customer Management
7496 Round Pond Road
North Syracuse, NY 13212

A copy of all applications, notices, authorizations and certificates to:

Niagara Mohawk Power Corporation d/b/a/ National Grid
Attention: Outdoor Lighting and Attachments
300 Erie Boulevard West
Syracuse, NY 13202

For Notification of Planned Work or Unsafe Conditions:

Name: Customer Service (24 hours per day)
Email: customerservice@nationalgrid.com
Phone number: 800-642-4272

- (iii) Each Party has the right to add, modify, change or remove contact information as presented herein provided such corrections are communicated in writing to the other party and made part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate as of the Effective Date.

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID

CITY OF BATAVIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

APPENDIX I
SCHEDULE OF FEES AND CHARGES
STREET LIGHT ATTACHMENTS

(A) Design and Engineering Fees

Design and engineering fees will be equivalent to the lighting service charge found in the Lighting Tariff, as such charge may be modified or amended from time to time.

(B) Field Survey

Whenever a Field Survey is required under this Agreement, Customer shall pay the Company for the Cost thereof. The current standard charge assessed to Customer and all Other Customers for the Field Survey is \$130.00 per Attachment and is based on the Company's current estimated Cost to perform and complete the Field Survey, but may be adjusted, as necessary, by the Company to account for estimated Costs at the time the survey is performed. Specific to each occurrence, any actions required by the Company to remedy a Pole or Structure ingress or egress condition in compliance with applicable laws, regulations, codes and company policies and procedures is considered to be in addition to the Field Survey function. The Customer shall be responsible for the associated Costs which will be predefined as an estimate in addition to the aforementioned fee.

(C) Make-Ready Work

Whenever Make-Ready Work is required under this Agreement, Customer shall pay the Company for the Costs thereof. Make-Ready Work may include, but is not limited to, the modification or replacement of the Pole, Structure, or Facility within or upon which Customer's Attachments will be placed, to safely accommodate Customer's Attachments, and such other changes in the existing facilities within or upon such Pole, Structure, or Facility as accommodating Customer's Attachments may require. Make-Ready Work Costs charged by the Company may also include the following:

- (1) The net loss to the Company on the replaced Pole, Structure, or Facility based on its reproduction cost less depreciation, plus cost of removal;
- (2) Transferring the Company's attachments from the old Pole, Structure, or Facility to the new Pole, Structure, or Facility; and
- (3) Any other rearrangements and changes necessary by reason of Customer's proposed or existing Attachments.

(D) Other Charges and Fees

Customer shall be subject to and responsible for all other applicable charges and fees under the Lighting Tariff and the Electric Tariff.

(E) Payment Date

Bills are due and payable when rendered. Full payment must be received on or before the date shown on the bill to avoid a late payment charge of one and one-half percent (1-1/2%) per month pursuant to subpart C of the Rules on Determination of Billing established in Rule IV of the Lighting Tariff.

APPENDIX II

ADMINISTRATIVE FORMS AND NOTICES

INDEX OF ADMINISTRATIVE FORMS

APPLICATION FOR STREET & AREA LIGHTING ATTACHMENT LICENSE	A-1
STREET LIGHT ATTACHMENT DETAILS	A-2
ESTIMATE FOR FIELD SURVEY / AUTHORIZATION FOR FIELD SURVEY	B-1
MAKE-READY WORK ESTIMATE / AUTHORIZATION FOR MAKE-READY WORK	B-2
ITEMIZED MAKE-READY WORK	C
NOTIFICATION OF DISCONTINUANCE OF USE FOR STREET LIGHT ATTACHMENT	D
IDENTIFICATION TAGS	E
LIGHTING SOURCE IDENTIFICATION LABELS	F

Agreement No.: _____

Form A-1

Application No.: _____ (to be provided by the Company)

APPLICATION FOR
STREET LIGHT ATTACHMENT LICENSE

DATE _____

CUSTOMER _____

Street Address _____

City, State, Zip Code _____

In accordance with the terms and conditions of the Street Light Attachment License Agreement between the Company and Customer, dated _____, _____ application is hereby made for a license to make _____ as Attachments to Poles or Structures as indicated on the attached Form A-2.

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

STREET LIGHT ATTACHMENT LICENSE

Street Light Attachment License(s) is hereby granted to make the Attachments described in this application, identified as License No(s): _____ as Attachments to Poles or Structures as indicated on the attached Form A-2.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

NOTES:

1. Applications shall be submitted to the Company.
2. Applications to be numbered in ascending order by municipality.
3. The Company will process in order of application numbers assigned by Customer.

Agreement No.: _____

Form A-2

Application No.: _____

STREET LIGHT ATTACHMENT DETAILS

CUSTOMER _____

Municipality _____

(Note: Provide separate sheets for each municipality)

Location
Reference

Pole or Structure Type
Reference

Attachment Description

_____ (Yes/No) CUSTOMER HEREBY REQUESTS THE COMPANY TO
PROVIDE AN ITEMIZED ESTIMATE OF MAKE READY
WORK REQUIRED AND ASSOCIATED CHARGES
(APPENDIX II FORM C).

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

\Telephone No. _____

Agreement No.: _____

Form B-1

Application / Request No.: _____

ESTIMATE FOR FIELD SURVEY

(Customer)

In accordance with the Street Light Attachment License Agreement, dated _____, _____, the following is a summary of the charges which will apply to complete a field survey covering Application / Request Number _____.

<u>Unit Quantity</u>	<u>Rate / Unit</u>	<u>Total</u>	
Field Survey	_____	_____	\$ _____
Ancillary Services	_____	_____	\$ _____
Administrative Compensation	_____ %		\$ _____
TOTAL			\$ _____

If you wish us to complete the required field survey, please sign this copy below and return with an advance payment in the amount of \$ _____.

Date _____

Company _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

AUTHORIZATION FOR FIELD SURVEY

The required field survey covering Application / Request Number _____ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to Street Light Attachment License Agreement.

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

Agreement No.: _____

Form B-2

Application / Request No.: _____

MAKE-READY WORK ESTIMATE

(Customer)

Field survey work associated with your Application / Request Number _____ dated _____, _____, for Attachment to Poles or Structures has been completed. The following is a summary of the charges which will apply to complete the required Make-Ready Work.

TOTAL MAKE-READY CHARGES \$ _____

Attached as requested, is an itemized description (Form C) of required Make-Ready Work. A cost estimate of associated Make-Ready Work is also attached. If you wish us to complete the required Make-Ready Work, please sign this copy below and return with an advance payment in the amount of \$_____.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

AUTHORIZATION FOR MAKE-READY WORK

The Make-Ready Work associated with Application / Request Number _____ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to License Agreement.

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

Agreement No.: _____

Form D

Application / Request No.: _____

**NOTIFICATION OF DISCONTINUANCE OF
STREET LIGHT ATTACHMENT**

CUSTOMER _____

Street Address _____

City, State, Zip Code _____

In accordance with the terms and conditions of the Street Light Attachment License Agreement dated _____, notice is hereby given that specific Attachments to Poles or Structures, as listed below, in the municipality of _____, covered by permit number _____ were removed on _____.

<u>Attachment License No.</u>	<u>Location Reference Street Address</u>	<u>Pole or Structure Ref. Type</u>	<u>Attachment Description</u>	<u>Removal Date</u>
-----------------------------------	--	--	-----------------------------------	-------------------------

Total quantity of Attachments to Poles or Structures to be discontinued is _____.

DATE _____

By
(Print Name) _____

Signature _____

Title _____



**ACKNOWLEDGMENT OF DISCONTINUANCE OF
STREET LIGHT ATTACHMENT**

Use of Poles or Structures has been discontinued as above.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

IDENTIFICATION LABELS

(A) **GENERAL**

This Appendix describes identification tags to be installed and maintained by Customer on its cables and other apparatus to allow the Company to readily identify the owner of such cables and apparatus.

(B) **DESCRIPTION OF IDENTIFICATION LABELS**

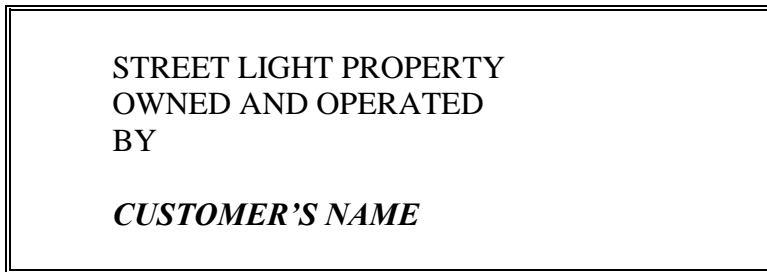


FIGURE 1: Identification Label

The tags shall be white or yellow with black lettering. Customer shall be responsible for maintaining the legibility of identification tags at all times.

The Identification Tag shall be placed on Customer's facilities including, but not limited to, cables guys, terminals, terminal closures, and cabinets. The Identification Label shall read as follows: "STREET LIGHT PROPERTY OWNED AND OPERATED BY" and clearly display CUSTOMER's name. Customer's name may be printed on the tag using indelible ink.

(C) **PROCUREMENT OF TAGS**

It shall be the responsibility of Customer to obtain, place, and maintain Identification tags.

(D) **INSTALLATION OF IDENTIFICATION TAGS**

When required by Section 5.5, Identification Labels shall be installed at the following locations:

- (1) On cables at each manhole or handhole, on the top of the cable so that it is visible from outside the manhole or handhole.
- (2) At terminal or Connection Point locations.
- (3) Within cabinets or other equipment where appropriate.

LIGHTING SOURCE IDENTIFICATION LABELS

The Customer is required to provide and affix to each luminaire a clear, legible and comprehensive lighting source identification label consistent with ANSI-NEMA Standards for Roadway and Area Lighting Equipment – Field Identification of High Intensity Discharge Lamps and Luminaires, (ANSI/NEMA C136.15-2009, latest revision) or other industry standard compliant with the specific lamp or lighting source, as applicable.

APPENDIX III

ACKNOWLEDGMENT FOR THE USE OF QUALIFIED ELECTRICAL WORKERS

The City of Batavia hereby acknowledges and agrees to the following:

1. Niagara Mohawk Power Corporation d/b/a National Grid (hereinafter “National Grid”) expects the use of electrically-qualified personnel as required by OSHA in 29 CFR 1910.269 for all work associated with the LICENSE AGREEMENT FOR ATTACHMENTS TO UTILITY POLES AND STRUCTURES FOR STREET AND AREA LIGHTING BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID and CITY OF BATAVIA DATED _____, ____ (hereinafter “CITY OF BATAVIA LICENSE AGREEMENT”).
2. The City of Batavia hereby agrees that any work being done pursuant to the CITY OF BATAVIA LICENSE AGREEMENT will be done by qualified electrical workers as defined by OSHA in 29 CFR 1910.269 and in accordance with all relevant laws, regulations, codes, and industry standards.
3. The City of Batavia understands and agrees that any injuries to persons or property arising out of or related to this work, including without limitation as a result of a failure to comply with this ACKNOWLEDGMENT, will be the sole responsibility of the City of Batavia

CITY OF BATAVIA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS (this “Agreement”) is made as of the last date appearing on the signature page of this Agreement (the “Effective Date”), between **NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (“Seller”), and the City of Batavia, a municipal corporation organized and existing under the laws of the State of New York with its principal place of business at 1 Batavia City Centre, Batavia, New York 14020 (“Buyer”). Buyer and Seller are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Seller owns, operates and maintains an electric transmission and distribution system, including certain street lights used to provide lighting service under bill account number 19952-93109 to Buyer within its municipal boundaries under Service Classification (“S.C.”) No. 2 of Seller’s Outdoor Lighting Tariff (defined below);

WHEREAS, Buyer desires to purchase the Street Lights (as defined below in Section 1) from Seller as provided in Section F.8 of S.C. No. 2 of Seller’s Outdoor Lighting Tariff (defined below), and Seller is willing to sell the Street Lights to Buyer.

NOW THEREFORE, in consideration of the commitments made herein and intending to be legally bound thereby, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings defined throughout this Agreement or as specified below in this Section 1.

“**Agreement**” means this Agreement for Purchase and Sale of Street Lights, together with the exhibits and schedules attached hereto, as the same may be amended from time to time.

“**Attachment Agreement**” means the License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures executed by Buyer and Seller and hereto as Exhibit A.

“**Bill of Sale**” means the Quit Claim Bill of Sale, substantially in the form of Exhibit B hereto, to be executed and delivered by the Parties at the Closing, to evidence the transfer by Seller to Buyer of Seller’s right, title and interest in and to the Street Lights.

“**Breaching Party**” has the meaning set forth in Section 17.1(e).

“**Business Day**” means any day other than Saturday, Sunday, and any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

“Buyer’s Required Approvals” means: (i) all required approvals of Buyer’s governing board to authorize Buyer (by an authorized representative) to enter into this Agreement, the Bill of Sale, the Attachment Agreement and the Service Agreement; and (ii) those other approvals, if any, listed on Exhibit C.

“Closing” has the meaning set forth in Section 6.1.

“Closing Date” has the meaning set forth in Section 6.1.

“Commercially Reasonable Efforts” means efforts which are designed to enable the performing Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume any liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

“Commission” means the New York State Public Service Commission.

“Estimated Purchase Price” has the meanings set forth in Section 6.2.

“Excluded Assets” has the meaning set forth in Section 5.

“Final Purchase Price” has the meanings set forth in Section 6.2.

“Joint-Owned Pole” means a pole in which a person, firm, or corporation shares an ownership interest with the Company.

“Letter(s) of Credit” means an irrevocable, unconditional and nontransferable standby Letter of Credit, in the form attached hereto as Appendix S-1, which is issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least: (a) “A-” by Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successors (“S&P”) and “A3” by Moody’s Investor Services Inc. or its successor (“Moody’s”), if such entity is rated by both S&P and Moody’s; or (b) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both.

“Outside Date” has the meaning set forth in Section 17.1(b).

“Permitted Lien” means: (a) any lien for taxes not yet due or delinquent; (b) any lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000; (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller; (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any governmental authority to regulate any asset, and all matters of public record; and (e) any lien released prior to Closing.

“Purchase Price” has the meanings set forth in Section 6.2.

“Reconfiguration Work” means that work requested by Buyer and performed by Seller in order

to continue to provide safe and reliable electric service to Buyer after the Street Lights have been acquired by Buyer.

“**Seller’s Electricity Tariff**” means Seller’s P.S.C. No. 220 – Electricity Tariff, as modified and in effect from time to time.

“**Seller’s Outdoor Lighting Tariff**” means Seller’s P.S.C. No. 214 – Outdoor Lighting Tariff, as modified and in effect from time to time.

“**Seller’s Required Approvals**” means: (a) approval of an authorized officer of Seller to sell the Street Lights; (b) pursuant to Section 70 of the New York State Public Service Law, approval of the sale of the Street Lights by operation of law or an order of the Commission approving the sale of the Street Lights pursuant to the terms of this Agreement; and (c) those other approvals, if any, listed on Exhibit D.

“**Separation Work**” means that work required to install electric disconnection equipment and identification labels complying with Seller’s standards associated with the Street Lights and also includes removal of Seller’s existing labeling from such facilities.

“**Service Agreement**” means that service agreement to be executed and delivered by Buyer to Seller at Closing providing for the supply of electricity to be used for such Street Lights under the applicable provisions of Rate Schedule S.C. No. 3 of Seller’s Outdoor Lighting Tariff (in the case of unmetered service) or Seller’s Electricity Tariff (in the case of metered service).

“**Street Lights**” means those certain street lights and related facilities owned solely by Seller and used to provide lighting service to Buyer under bill account number 19952-93109, located within Buyer’s geographical boundaries, used solely for street lighting purposes, and which consist of luminaires, lamps, brackets, associated wiring, convenience outlets, electrical connections and appurtenances, as described in Exhibit E, which description shall be revised under Exhibit E-1 in accordance with Section 2 below, and will not include Excluded Assets.

“**Surety Bond(s)**” means the form attached hereto as Appendix S-2, which shall be considered as security for the performance of all of the Buyer’s contractual obligations contained in this Agreement, issued by a major insurance carrier (“Surety”) with a credit rating of at least: (a) “B+” by A.M. Best & Company; or (b) “A-” by S&P.

“**Transaction Costs**” consist of transfer taxes and recording fees associated with the sale of the Street Lights.

“**Transition Costs**” consist of costs related to the Seller’s internal system inventory updates, billing data changes, and data updates associated with the sale of the Street Lights.

2. **Transfer of Street Lights**. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer, and deliver to Buyer, and Buyer shall purchase, assume, acquire, and receive from Seller, all of Seller’s right, title, and interest in and to the Street Lights.

The Buyer understands and agrees that the list of the Street Lights on Exhibit E (“Preliminary Description of Street Lighting Assets”), provided by the Seller as of the Effective Date, is a preliminary list of Street Lights which might not include all of the Street Lighting facilities that the Buyer is purchasing under this Agreement. The Buyer further understands and agrees that on the Closing Date, the Seller shall deliver to the Buyer a final list of Street Lights which shall be provided as Exhibit E-1 (“Final Closing Description of Street Lighting Assets”) under this Agreement. The Seller agrees to perform such task and deliver Exhibit E-1 to the Buyer on the Closing Date. The Parties agree that the Street Lights listed on Exhibit E-1 will be the final description of the Street Light facilities provided by the Seller under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Buyer maintains sole responsibility for the accuracy and completeness of the Street Lights listed in Exhibit E and Exhibit E-1.

After the Closing Date, the purchase of any street lights and related facilities (“Additional Facilities”) not included in Exhibit E and Exhibit E-1 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 an additional purchase price in consideration for the Additional Facilities.

3. **Demarcation of Ownership.** From and after Closing, Buyer shall own the Street Lights as follows:

3.1 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 Street Lights from Seller’s electric distribution structures or systems. Accordingly, the Parties agree that the point of ownership demarcation shall be deemed to be the existing connection point where the applicable Street Light 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 Street Light.

3.2 The Buyer shall own Street Lights supplied from overhead conductors from the Connection Point at Seller’s secondary conductor to the street light and including the luminaires, lamps, brackets, and associated wiring, with Seller retaining ownership of the electrical distribution system up to that Connection Point; and

3.3 The Buyer shall own Street Lights supplied from underground conductors from the Connection Point at Seller’s secondary conductor to the underground conductor supplying such street light, including the foundation, standard, luminaires, lamps, brackets, and associated wiring, and conduits in which any underground conductors transferred to Buyer under this Agreement may be located.

3.4 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.

4 **Convenience Outlets.** After the Closing, the Customer shall own convenience outlets located on Street Lights they purchase. Customer's usage of such convenience outlets shall be billed as an unmetered estimate in accordance with the terms of Seller’s Electricity Tariff.

Convenience outlets located on distribution poles, Joint-Owned Poles, or any poles or street lights not purchased by Customer shall continue to be owned by the Company. With regard to such convenience outlets, customer shall continue to pay an annual facility charge pursuant to Seller's Outdoor Lighting Tariff, and its usage of such outlets shall be billed as an unmetered estimate in accordance with the terms of Seller's Electricity Tariff.

5 **Excluded Assets.** Seller is not assigning, conveying, transferring, or delivering to Buyer and Buyer is not purchasing, assuming, acquiring or receiving from Seller any of Seller's right, title, and interest in and to the following, all of which are being retained by Seller following the Closing (collectively, the "Excluded Assets"):

5.1 Any and all of Seller's right, title, and interest in and to any poles, structures, facilities, or facilities attached or appurtenant to, but not comprising, the Street Lights, with the exception of those certain lighting poles identified in Exhibit F, if any;

5.2 Any and all of Seller's right, title, and interest in and to any and all spare parts or spare components relating to the Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.3 Any and all of Seller's right, title, and interest in and to any and all vehicles, facilities, tools, and supplies relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.4 Any and all of Seller's right, title, and interest in and to any and all agreements and contracts with third parties relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.5 Any and all of Seller's right, title, and interest in and to any and all franchise grants, license, permits, and interests in real property pertaining in any way to any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights; and

5.6 Any and all of Seller's right, title, and interest in and to any and all intellectual property rights associated with the street lights, including but not limited to engineering standards, facility information, warranty information, maps and asset records.

6 **Closing and Purchase Price.**

6.1 **Closing.** The closing of the purchase and sale of the Street Lights (the "Closing") shall take place at the offices of Seller at 10:00 a.m. (Eastern Time) on the tenth Business Day after the conditions to Closing set forth in Sections 13 and 14 (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived by the Party entitled to waive such condition, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing. The date of Closing is hereinafter referred to as the "Closing Date." The Closing shall be effective for all purposes as of 12:01 a.m. (Eastern Time) on the Closing Date.

6.2 **Purchase Price.** The total “Estimated Purchase Price” for the Street Lights is TWO HUNDRED TWENTY-SIX THOUSAND THIRTY-EIGHT Dollars (\$226,038.00). The Estimated Purchase Price consists of the estimated Net Book Value (“NBV”) of the Street Lights of TWO HUNDRED THREE THOUSAND FIVE HUNDRED THIRTY Dollars (\$203,530.00), plus estimated Transition Costs and Transaction Costs totaling TWENTY-TWO THOUSAND FIVE HUNDRED EIGHT Dollars (\$22,508.00). The Company will calculate the actual NBV and associated impact on the Transition Costs and Transaction Costs at the date of the Closing and will adjust (up or down) the Estimated Purchase Price to arrive at the “Final Purchase Price.” Seller will provide Buyer written notice of the amount of the Final Purchase Price no less than ten (10) days prior to the Closing Date.

6.3 **Security for Separation Work.** At Closing, Buyer shall provide financial security assurance, in a form acceptable to Seller, for the performance of the Separation Work and Additional Separation Work (as defined in Section 8.1) and for any costs incurred by Seller to repair damages or site alterations to Seller’s facilities caused by Buyer’s employees, contractors or subcontractors in performing the Separation Work and Additional Separation Work, in the amount of FOUR HUNDRED FORTY-TWO THOUSAND FOUR HUNDRED Dollars (\$442,400.00) pursuant to either a Letter of Credit or a Surety Bond. The form of Letter of Credit is attached hereto as Appendix S-1, and the form of Surety Bond is attached hereto as Appendix S-2. The Parties’ rights and obligations with respect to such security are set out in Section 8.1.

6.4 **Payment of Final Purchase Price and Posting of Security.** The Final Purchase Price shall be payable at Closing in immediately available U.S. funds by wire transfer to the account designated by Seller.

7 **Condition; Disclaimers; Indemnification.**

7.1 **Condition and Liability.** The Street Lights are being sold, assigned, conveyed, transferred, and delivered to Buyer “as is, where is” without warranties or representations of any kind and subject to all faults of whatever nature, except Seller represents and warrants that to Seller’s knowledge, it has good and marketable title to the Street Lights and that they shall be conveyed to Buyer, at the time of Closing, free and clear of all liens and encumbrances except for Permitted Liens. All liabilities, obligations, and claims in connection with the Street Lights that arise or are incurred after the Closing Date shall not be deemed liabilities or obligations of Seller and shall be the full responsibility of Buyer. As of the Closing Date, Buyer shall assume all responsibility and obligations associated with ownership of the Street Lights, including without limitation any repair, maintenance, replacement and operation responsibilities. Seller will conduct stray voltage testing of the Street Lights in conformance with the requirements of the Commission’s Electric Safety Standards (established in Case 04-M-0159 and any other applicable requirements). In the event Seller identifies a stray voltage condition, Seller will make the condition safe and immediately notify Buyer of its responsibility to take all steps necessary to safeguard, mitigate, and permanently repair the stray-voltage condition. Buyer shall indemnify, defend, and hold Seller, its affiliates, and their respective, officers, directors, employees, representatives, and contractors, harmless for all injuries, damages, losses, or claims resulting from the failure of Buyer, or any of its agents, employees, or contractors, to exercise reasonable care in permanently repairing such stray-voltage condition. Buyer will report to Seller when it has completed the permanent repairs.

7.2 **Warranty Disclaimer.** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT SELLER SHALL IN NO WAY BE DEEMED OR HELD TO BE OBLIGATED, LIABLE, OR ACCOUNTABLE UPON OR UNDER ANY GUARANTEES OR WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE STREET LIGHTS, THEIR DESIGN, MANUFACTURE, CONSTRUCTION, FABRICATION, CONDITION OR PERFORMANCE, INCLUDING IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH ANY LAWS OR STANDARDS, INCLUDING THE NATIONAL ELECTRIC SAFETY CODE (“NESC”), THE NATIONAL ELECTRICAL CODE (“NEC”), THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, “THE ELECTRIC POWER GENERATION, TRANSMISSION, AND DISTRIBUTION” STANDARD, THE OCCUPATIONAL SAFETY AND HEALTH ACT AND ANY RULES OR REGULATIONS THEREUNDER, WHETHER OR NOT SELLER KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

7.3 **Liability Disclaimer.** FROM AND AFTER THE CLOSING DATE, THE SELLER, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS SHALL NOT BE LIABLE TO BUYER OR ITS OFFICERS, OFFICIALS, EMPLOYEES, REPRESENTATIVES, OR CONTRACTORS FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL PUNITIVE, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CONDITION, DESIGN, ENGINEERING, INSTALLATION, MAINTENANCE, CONSTRUCTION, LOCATION, OPERATION OF, OR FAILURE OF OPERATION OF, THE STREET LIGHTS, UNDER ANY THEORY OF LAW THAT IS NOW OR MAY IN THE FUTURE BE IN EFFECT, INCLUDING WITHOUT LIMITATION: CONTRACT, TORT, N.Y. GEN. BUS. LAW ARTICLE 22A, STRICT LIABILITY, OR NEGLIGENCE. 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.

7.4 **Indemnification.** The Buyer agrees that from and after the Closing Date, to the extent permitted by law and to the full extent of the Buyer’s insurance coverage, it shall defend, pay, protect, indemnify, and save harmless the Seller, its direct and indirect parent companies, subsidiaries and affiliates against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys’ fees), costs, and expenses arising out of or in connection with this Agreement and/or the ownership, maintenance, and operation or the failure to maintain or operate the Street Lights resulting from any act, failure, or omission on

the part of the Buyer or any of its agents, employees, or contractors. The Seller, and not the Buyer, shall remain responsible for claims in connection with the Street Lights that accrued prior to the Closing Date, including costs and damages resulting from pending claims in litigation relating to the Street Lights, if any, to the extent such claims arose from events occurring prior to the Closing Date.

7.5 **Operability of the Street Lights.** Seller has maintained and currently maintains, the operability of the Street Lights in a manner consistent with Seller's Outdoor Lighting Tariff. Until Closing, Seller shall continue its regular program of operating and maintaining the Street Lights.

7.6 **Survival.** The obligations set forth in this Section 7 shall survive the termination or expiration of this Agreement.

8 **Separation Work; Reconfiguration Work.**

8.1 **Separation Work.**

(a) Buyer elects to perform all of the Separation Work and shall perform all such Separation Work. Buyer further agrees that it shall provide Seller with financial security assurance, as set forth in Section 6.3 above, in the form of a Letter of Credit or Surety Bond (the choice of which is in Buyer's sole discretion) and shall cause such Separation Work to be completed within twenty-four (24) months of the Closing or such other period as Buyer and Seller shall agree in writing. Seller agrees to work in good faith, at Buyer's request, to timely provide the information necessary to help Buyer perform such Separation Work. If Buyer further requests Geographical Information System ("GIS") data or maps of the Street Lights, Seller will work in good faith, at Buyer's sole cost, to reasonably develop and provide such information.

(b) In the case that a Letter of Credit has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration of the Letter of Credit, the credit rating of the bank issuing any Letter of Credit falls below the level set forth in the definition of Letter of Credit above, or (ii) the bank repudiates its obligations under, or fails to honor or pay against, the Letter of Credit before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement (a "Substitute Letter of Credit") within two (2) weeks after the occurrence of such event. If the Letter of Credit is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may drawdown on the entire Letter of Credit.

(c) In the case that a Surety Bond has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration date of the Surety Bond, the credit rating of the Surety issuing any Surety Bond falls below the level set forth in the definition of Surety Bond above, or (ii) the Surety repudiates its obligations under, or fails to honor or pay against, the Surety Bond before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Surety Bonds from a Surety meeting the credit rating level set

forth in this Agreement (a “Substitute Surety Bond”) within five (5) business days after the occurrence of such event. If the Surety Bond is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. If the Surety is declared bankrupt or becomes insolvent, or if its right to do business is terminated, or if its status for any other reason is rendered inadequate for the Buyer to meet its obligations hereunder, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement within fifteen (15) days after the occurrence of such event. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may make a claim against the entire Surety Bond. To the extent Seller makes a claim against the Surety Bond for any performance obligation under this Agreement and in the event the Surety does not honor it, either in whole or in part (the “Rejected Claim”), then Buyer understands and agrees that Buyer shall remain financially responsible for such Rejected Claim. In addition, Buyer’s right to reduce the Surety Bond amount pursuant to this Agreement shall be suspended until Buyer satisfies the Rejected Claim.

(d) To the extent that the Separation Work is performed by Buyer or Buyer’s contractor, and is not performed by Seller, Buyer represents and warrants to Seller that any personnel that perform work on the Street Lights will be qualified by complying with established regulations and standards associated with the work to be conducted. To identify requirements related to safety or the construction, repair, or maintenance of the street lighting system, Buyer should consult among other documentation, the Occupational Health and Safety Administration (“OSHA”) requirements, including but not limited to OSHA 1910.269, “The Electric Power Generation, Transmission, and Distribution” standard, the NEC, the NESC, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, and requirements by the New York State Department of Transportation. In addition to that which is provided in Section 7.4, Buyer shall indemnify, defend, and hold harmless Seller from any injury, damage, loss or claims resulting from any breach by Buyer of this representation and warranty.

(e) Within thirty (30) days of Buyer’s completion of the Separation Work, Buyer shall provide written notice to Seller that such Separation Work has been fully performed in accordance with this Agreement. Upon such notice from Buyer, Seller may perform any necessary inspections, at Seller’s cost, to determine that all Separation Work has been completed. If such inspections reveal that, in Seller’s sole and reasonable discretion, the required Separation Work has not been performed or adequately performed, Seller shall: (i) notify Buyer of the need for additional Separation Work (the “Additional Separation Work”); and (ii) allow Buyer until twenty-four (24) months after Closing to perform or cause to be performed by a third party the necessary Additional Separation Work. Upon completion of the Additional Separation Work, Buyer shall provide written notice to Seller that such Additional Separation Work is complete.

(f) If Buyer has not completed all Separation Work and Additional Separation Work, within twenty-four (24) months of the Closing in accordance with this Section 8.1, Seller may at its option elect to notify Buyer of its intention to perform such work on Buyer’s behalf. Seller shall provide such notice within thirty (30) days of the end of the twenty-four (24) month period set forth above. In such event, upon completion of such work by Seller, Seller shall determine its actual costs

of performing such work, inclusive of all applicable overheads and adders, and shall invoice Buyer for that amount. If Buyer fails to pay any invoice issued by Seller for the cost of performing such work within thirty (30) days of the date of such invoice, Seller may draw on the financial security amount provided by Buyer for such purposes under Section 6.3 of this Agreement. In the event that the financial security amount is in excess of Seller's invoice for the Separation Work, Seller shall release the financial security amount in excess of such amount. In the event that the financial security amount is insufficient to satisfy Seller's invoice for the Separation Work, Seller may, at its option, include all or any part of the remaining invoice balance for the Separation Work in Seller's bills or invoices to Buyer for street lighting electric service. Notwithstanding the foregoing, Seller shall release the financial security assurance provided by Buyer for the Separation Work within ninety (90) days of Seller's reasonable determination that all necessary Separation Work and Additional Separation Work has been adequately completed by Buyer in accordance with this Agreement; or (b) if applicable, Buyer's full payment of any invoices for Seller's performance of the Separation Work.

(g) Nothing in this Agreement shall be construed to require Seller to perform any Separation Work or Additional Separation Work beyond that which is expressly agreed to herein, to perform any other work on facilities owned by Seller at the request of Buyer, or to maintain, repair or replace any equipment owned by Buyer.

8.2 **Reconfiguration Work.** Buyer elects not to have Seller perform any Reconfiguration Work, and Seller shall not perform any such Reconfiguration Work.

9 **Taxes and Assessments.**

9.1 Real property taxes and assessments and any other applicable fees, taxes and charges assessed or imposed on Seller, by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lights, will be prorated and adjusted as of 11:59 p.m. of the day before the Closing Date, with Seller bearing the expense of the item applicable to the period before the Closing Date and Buyer bearing the expense of the item applicable to the period on or after the Closing Date. In consideration of Seller's agreement hereunder, Buyer agrees that it shall exercise Commercially Reasonable Efforts to obtain, and cooperate with Seller in obtaining, a reduction from New York State, prior to the next tax status date, in the assessed valuation of its real property facilities located within the Buyer's municipal boundaries that accurately reflects the removal of the Street Lights from the real property owned by Seller within the Buyer's municipal boundaries.

9.2 All transfer and sales taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Buyer. Buyer shall prepare and file in a timely manner any and all tax returns or other documentation relating to such taxes; provided that, to the extent required by applicable law, Seller will join in the execution of any such tax returns or other documentation relating to any such taxes. Buyer shall provide to Seller copies of each such tax return at least thirty (30) days prior to the date such tax return is required to be filed.

10 **Bill of Sale and Risk of Loss.** The sale, assignment, conveyance, transfer, and delivery of the Street Lights will be effected by the Bill of Sale. On the Closing Date, Seller shall deliver to Buyer the Bill of Sale, fully executed and acknowledged and sealed and, simultaneously with such

delivery, Seller shall take all such steps as may be necessary to put Buyer in actual possession of the Street Lights as and where presently located. Seller shall bear the risk of loss of and damage to the Street Lights during the period from the Effective Date up to but not including the Closing Date, and Buyer shall bear the risk of loss of and damage to the Street Light from and after the Closing Date.

11 **Representations of Seller.** Seller represents and warrants to Buyer that as of the Closing Date:

11.1 **Organization and Good Standing.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted.

11.2 **Absence of Conflicts.** Subject to obtaining Seller's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby, nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Seller's Certificate of Incorporation or any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Seller, which has not already been obtained.

11.3 **Authorization.** Subject to obtaining Seller's Required Approvals, Seller has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary corporate action; and this Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Within 30 days of the execution of this Agreement, Buyer agrees to provide to Seller its resolutions of the governing board for Buyer certified by the Secretary, Assistant Secretary, or other officer of Buyer authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

12 **Representations of Buyer.** Buyer represents and warrants to Seller that as of the Closing Date:

12.1 **Organization and Good Standing.** Buyer is a municipality duly constituted, authorized and validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted

12.2 **Absence of Conflicts.** Subject to obtaining Buyer's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby,

nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Buyer's organizational documents or any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Buyer, which has not already been obtained.

12.3 **Authority.** Subject to obtaining Buyer's Required Approvals, Buyer has all requisite municipal power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary municipal action; and this Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

12.4 **Availability of Funds.** Buyer has sufficient funds available to it to enable Buyer to pay the Final Purchase Price to Seller at the Closing.

13 **Conditions Precedent to Buyer's Obligations.** All obligations of Buyer under this Agreement are subject to the fulfillment at or before the Closing of each of the following conditions:

13.1 **Seller's Representations and Warranties.** The representations and warranties made by Seller in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing Date; provided that Seller shall have no liability to Buyer for any such representation not being materially true and correct as of the Closing Date due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

13.2 **Seller's Performance.** Seller shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

13.3 **Buyer's Required Approvals.** On or before the Closing Date, Buyer shall have obtained Buyer's Required Approvals, and they shall be in full force and effect.

13.4 **Seller's Deliverables.** On the Closing Date, Seller shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Seller;
- (b) a counterpart of the Attachment Agreement duly executed by Seller; and

(c) a counterpart of the Service Agreement duly executed by Seller.

14 **Conditions Precedent to the Seller's Obligations.** All obligations of Seller under this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions:

14.1 **Buyer's Representations and Warranties.** The representations and warranties made by Buyer in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing; provided that Buyer shall have no liability to Seller for any such representation not being materially true and correct as of the Closing due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

14.2 **Buyer's Performance.** Buyer shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Buyer at or before the Closing.

14.3 **Seller's Required Approvals.** On or before the Closing Date, Seller shall have obtained Seller's Required Approvals and they shall be in full force and effect.

14.4 **Buyer's Deliverables.** On the Closing Date, Buyer shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Buyer;
- (b) a counterpart of the Attachment Agreement duly executed by Buyer;
- (c) a counterpart of the Application for Service and Service Agreement duly executed by Buyer; and
- (d) the financial security assurance as outlined in Section 6.3.

15 **Expenses.** Except to the extent expressly provided to the contrary in this Agreement, and whether or not the transactions contemplated herein are consummated, all costs and expenses incurred by a Party in connection with the negotiation, execution, and consummation of the transactions contemplated hereby, including attorneys' fees and the cost of filing for and prosecuting applications for Seller's Required Approvals and Buyer's Required Approvals, shall in all instances be borne by the Party incurring such costs and expenses.

16 **Further Assurances.** Subject to the terms and conditions of this Agreement, at either Party's request and without further consideration, the other Party shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting Party may reasonably request in order to consummate the transactions contemplated by this Agreement; provided that the other Party shall not be obligated to execute or deliver any instruments, provide any materials or information, or take any actions that modify the rights, remedies, obligations, or liabilities of such other Party pursuant to this Agreement or applicable law.

17 **Termination.**

17.1 **Termination Prior to Closing.**

(a) This Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if: (i) any governmental authority of competent jurisdiction (other than the Buyer) issues an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree is final and non-appealable; or (ii) any statute, rule, order or regulation is enacted or issued by any governmental authority which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the Closing contemplated by this Agreement has not occurred on or before one year after the Effective Date (the "Outside Date"); provided that the right to terminate this Agreement under this Section 17.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date.

(c) This Agreement may be terminated at any time prior to the Closing by Buyer upon written notice to Seller if any of Buyer's Required Approvals shall have been denied.

(d) This Agreement may be terminated at any time prior to the Closing by Seller upon written notice to Buyer if any of Seller's Required Approvals shall have been denied.

(e) This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if the other Party (the "Breaching Party") has materially breached or violated a representation, warranty, covenant or agreement hereunder so as to cause the failure of a condition to the Closing set forth in Section 13 or Section 14, as applicable, and such breach (other than a breach of Buyer's obligation to pay the Final Purchase Price in accordance with the terms of Section 6, for which no cure period shall be allowed) has not been cured by the earlier of thirty (30) days following written notice thereof or the Outside Date, provided that if such violation or breach is not capable of being cured within such thirty (30) day period and such thirty (30) day period shall have ended before the Outside Date, the Breaching Party shall have an additional period to cure the breach that expires on the earlier of thirty (30) days thereafter or the Outside Date.

17.2 **Remedies Upon Termination Prior To Closing.**

(a) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 17.1(a), (b), (c), or (d) hereof, neither Party shall have any liability to the other Party arising from this Agreement.

(b) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 16.1(e) hereof, such Party may pursue any remedies against the Breaching Party available under this Agreement or applicable law, subject to the provisions of Sections 13 and 14 and subject to the limitation of liability set forth in Section 7 hereof.

18 **Mutual Releases.**

18.1 In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of such which is hereby acknowledged, Buyer for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives and contractors of all of them (“Buyer Releasers”), shall and hereby does release, remise, acquit, and forever discharge Seller, its successors, assigns, and affiliates, and the officers, directors, employees, representatives, agents, and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Buyer Releasers now have or hereafter can, shall, or may have arising in any way out of, or with respect to, any and all street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.2 In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives, and contractors of all of them (“Seller Releasers”), shall and hereby does release, remise, acquit and forever discharge Buyer, its successors, assigns, and affiliates, and the officers, directors, employees, representatives agents and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Seller Releasers now have or hereafter can, shall, or may have arising in any way out of, or with respect to, street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.3 Each Party agrees not to take a position in any proceedings before the Commission or any court in these matters contrary to the agreements set forth in this Section 18, and agrees not to assist another participant in taking such a contrary position.

19 **Miscellaneous.**

19.1 **Entire Agreement.** Seller and Buyer agree that this Agreement (together with its exhibits) constitutes the entire agreement between the Parties.

19.2 **Notices, Etc.** All notices, requests, demands, and other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered, when received by mailing, by certified mail, postage prepaid, return receipt requested, when delivered by a reputable overnight courier, or when sent by facsimile with electronic confirmation of receipt, to:

Buyer: City of Batavia
Attn:
Address:

Seller: Niagara Mohawk Power Corporation d/b/a National Grid
300 Erie Boulevard West
Syracuse, New York 13202
Attn: Outdoor Lighting Manager

or to such other address as shall be subsequently designated by notice to the Parties.

19.3 **Counterparts; Facsimile and Electronic Copies.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

19.4 **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.

19.5 **Survival.** The terms and provisions of this Agreement, to the extent necessary or contemplated, shall survive the Closing. In particular, but not by way of limitation, all limitations on liability and indemnities contained in Section 7 and Buyer's obligation to reduce Seller's real property assessment shall survive the termination or expiration of this Agreement.

19.6 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect or limit in any way the meaning or interpretation of this Agreement.

19.7 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter jurisdiction of the courts of the State of New York for the purpose of interpretation and enforcement of this Agreement. Venue in any action or proceeding shall be in the State of New York.

19.8 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

19.9 **Amendment.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by authorized representatives of each Party.

19.10 **No Third-Party Beneficiaries.** Except for the provisions of Section 7 (which are intended to be for the benefit of the persons identified therein), the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

19.11 **Assignment; Binding Effect.** This Agreement and the rights and obligations

set forth herein shall not be assigned by either Party without the written agreement of both Parties; provided, however, that Seller shall be permitted to assign this Agreement to any of its affiliates without the written agreement of Buyer.

19.12 **Remedies Under Seller’s Tariffs.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of Seller’s Outdoor Lighting Tariff (in the case of unmetered service) or the Seller’s Electricity Tariff (in the case of metered service) and, accordingly, that Seller and Buyer expressly reserve all of their rights and remedies under the tariffs, including Seller’s right to terminate electric service to Buyer under such tariffs in conformance with Section 14.3 of the Commission’s Rules and Regulations, 16 N.Y.C.R.R. § 13.3, in the event of the Buyer’s failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under such tariffs or the Commission’s Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions of this Agreement and the provisions of the tariffs, the applicable provisions of such tariffs shall apply.

19.13 **Conflicts.** In the event of any conflict between the terms of this Agreement, the Service Agreement, and the Attachment Agreement, the agreements shall prevail in the following order: (i) the Service Agreement; (ii) the Attachment Agreement, and (iii) this Agreement.

19.14 **Supersedes Previous Agreements.** This Agreement revokes and supersedes all prior or contemporaneous agreements (whether written or oral), negotiations, commitments, and writings that pertain to the subject matter hereof. All such agreements, negotiations, commitments, and writings will be of no further force or effect, and the parties to any such other agreement, negotiation, commitment, or writing will have no further rights or obligations thereunder.

IN WITNESS WHEREOF, intending to be legally bound, the Parties’ duly authorized representatives have executed this Agreement as of the Effective Date.

NIAGARA MOHAWK POWER CORPORATION
“Seller”

CITY OF BATAVIA
“Buyer”

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
ATTACHMENT AGREEMENT

EXHIBIT B

FORM OF QUIT CLAIM BILL OF SALE

Reference is made to that certain Agreement for Purchase and Sale of Street Lights dated as of the ____ day of _____, 20__ between the [BUYER] and NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “*Transaction Agreement*”). Pursuant to the Transaction Agreement, the undersigned, NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “*Seller*”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, and transfers, all of its right, title, and interest in and to the assets described on Exhibit A attached hereto and incorporated herein by reference and made a part hereof (collectively, “*Assets*”) to the [__BUYER__], a municipal corporation organized and existing under the laws of the state of New York having its principal office and place of business located at [__ADDRESS__] (the “*Buyer*”).

It is the intent of the Seller and Buyer that this instrument transfers all of Seller’s right, title, and interest in and to the Assets. Seller hereby represents to Buyer that Seller has the right to transfer all of Seller’s right, title, and interest in and to the Assets.

Seller hereby covenants and agrees for the benefit of Buyer that Seller will defend, at Seller’s sole cost and expense, the right, title, and interest of Buyer in and to the Assets against the lawful claims and demands of all persons.

Buyer acknowledges that it has examined the Assets as fully as desired and Buyer waives and disclaims any right to seek recovery from Seller based on the current condition of the Assets. BUYER AGREES THAT ALL OF THE ASSETS ARE SOLD “AS IS” AND “WHERE IS” AND WITHOUT ANY ORAL, STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, USE AND WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE). SELLER SPECIFICALLY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND GUARANTEES. Buyer shall take title to the Assets upon execution of this document, and Buyer assumes any and all liability of any kind for claims or damages in connection with the Assets arising from acts, omissions, or events occurring after the date hereof. Buyer agrees to take the Assets with knowledge that they have been used for a period of time by Seller in its business. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Buyer agrees to defend with counsel satisfactory to Seller and to pay, protect, indemnify, defend, release and save harmless Seller and its parents and affiliates and their successors and assigns and any of the officers, directors, employees, and shareholders of any of them, from and against, any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all attorneys’ fees), causes of action, suits, claims, damages, obligations, demands or judgments of any nature in connection with the Assets to the extent arising from acts, omissions, or events occurring after the Closing (hereinafter referred to as “*Claims*”) including, without limitation, all Claims

brought by third parties for personal injury and property damage, economic damage, or environmental damage or harm (including, without limitation, for investigation, response, removal, clean-up, and/or remediation). The Seller, and not the Buyer, shall remain responsible for claims, other than Buyer's claims, in connection with the Assets that accrued prior to the Closing, including costs and damages resulting from pending claims in litigation relating to the Assets, if any, to the extent such claims arose from events occurring prior to the Closing. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

In no event, whether as a result of breach of contract, tort (including negligence and strict liability), or otherwise shall Seller be liable for any or all special, indirect, incidental, penal, punitive or consequential damages of any nature in connection with, or arising from, the transactions contemplated by this Bill of Sale, including, without limitation, delays, lost profits, business interruptions, loss of use, lost business opportunities, loss of revenue, losses and other damages by reason of facility shutdown, equipment damage, cost of replacement power or substitute or temporary facilities or services, cost of capital, loss of goodwill, and claims of suppliers and customers, whether or not: (i) such damages were reasonably foreseeable, or (ii) Seller was advised or aware that such damages might be incurred. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any third party any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and Seller and their respective successors and assigns.

This instrument and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

To the extent that any provision of this instrument shall be held to be invalid, illegal or unenforceable, it shall be modified so as to give as much effect to the original intent of such provision as is consistent with applicable law and without affecting the validity, legality or enforceability of the remaining provisions of this instrument. Each party represents and warrants to the other that the signatory identified beneath its name below has full authority to execute this instrument on its behalf.

This instrument shall be governed by and construed in accordance with the laws of the state of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws). Venue in any action with respect to this instrument shall be in the state of New York; the parties agree to submit to the personal jurisdiction of courts in the state of New York with respect to any such actions.

This instrument may be executed in multiple counterparts, each of which shall be considered an original.

[Signatures are on the following page.]

IN WITNESS WHEREOF, intending to be legally bound, the Parties' duly authorized representatives have executed this Quit Claim Bill of Sale as of the dates written below.

NIAGARA MOHAWK POWER CORPORATION
Seller

By: _____

Name: _____

Title: _____

Date: _____

CITY OF BATAVIA
Buyer

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
to
FORM OF QUIT CLAIM BILL OF SALE
FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS

EXHIBIT C
BUYER'S APPROVALS

EXHIBIT D
SELLER'S APPROVALS

EXHIBIT E

PRELIMINARY DESCRIPTION OF STREET LIGHTING ASSETS

STREET LIGHT INVENTORY

EXHIBIT E-1

FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS

STREET LIGHT INVENTORY

EXHIBIT F
EXCLUDED LIGHTING POLES

N/A

Appendix S-1

SPECIMEN LETTER OF CREDIT

_____ Bank

(address)

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: _____
AMOUNT U.S. \$[_____]]
EFFECTIVE DATE: _____

Our No. _____

Beneficiary:

**Niagara Mohawk Power Corporation
d/b/a National Grid**
300 Erie Boulevard West, D-1
Syracuse, NY 13202

Attn:
Commercial Credit & Collections Manager

Applicant:

[Buyer]
[ADDRESS]
[ADDRESS]
City/Town, NY [ZIP]

At the request of:

Reference: This Letter of Credit supports the “Agreement for Purchase and Sale of Street Lights by and between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer],” by and between Applicant and Beneficiary dated _____.

LADIES AND GENTLEMEN:

We hereby establish this irrevocable, and unconditional, except as stated herein, Letter of Credit Number _____(this “Letter of Credit”), by order of, for the account of, and on behalf of the [Buyer] (the “Applicant”) in favor of **Niagara Mohawk Power Corporation d/b/a National Grid** (the “Beneficiary”) for drawings, in one or more drafts, up to an aggregate amount not exceeding U.S \$[_____] effective immediately. The term “Beneficiary” includes any successor of the named Beneficiary.

This Letter of Credit cannot be amended, modified or revoked without the prior written consent of both the Bank and the Beneficiary. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless an officer of the Beneficiary shall have signed a written waiver expressly referencing the right to be waived. No such waiver shall be effective as to any transaction that occurs subsequent to the date of the waiver, or with respect to any continuance of a breach after the waiver.

We hereby undertake to promptly honor your draft(s) drawn on us, indicating our Letter of Credit number _____, for all or any part of this Letter of Credit. This Letter of Credit is issued, presentable and payable and we guaranty to the drawers, endorsers, and bone fide holders of this Letter of Credit, that drafts under and in compliance with the terms of this Letter of Credit will be honored. This Letter of Credit may not be transferred or assigned by us.

Partial drawings are permitted.

Subject to the express terms and conditions herein, funds under this Letter of Credit are available to you by presentation at our offices located at [_____] of Beneficiary's drawing certificate issued substantially in the form of Annex 1 attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary. Presentation of any drawing certificate under this Letter of Credit may be made in person to us or may be sent to us by overnight courier or by facsimile transmission to facsimile telephone number [_____].

All commissions and charges will be borne by the Applicant.

If documents, in compliance with the terms of this Letter of Credit, are received before 10:00 am (Eastern Time) on a Banking Day (as such term is defined in the uniform customs defined below), payment will be effected on or before 5:00 pm (Eastern Time) on the next Banking Day. If documents, in compliance with the terms of this Letter of Credit are received after 10:00 am on a Banking Day, payment will be effected on or before 5:00 pm on the second Banking Day following such date of receipt.

Presentation of document(s) that are not in compliance with the applicable anti-boycott, anti-money laundering, anti-terrorism, anti-drug trafficking, export denial or economic sanctions laws, regulations or orders (collectively "the Regulations") is not acceptable. Applicable laws vary depending on the transaction and may include United Nations, United States and/or local laws.

In the event that a drawing certificate fails to comply with the terms of this Letter of Credit including the regulations, we shall provide the Beneficiary prompt notice thereof stating the reasons that the certificate was determined to be non-compliant and shall upon Beneficiary's instructions hold any non-conforming drawing certificate and other related documents at Beneficiary's disposal or return any non-conforming drawing certificate and other related documents to the Beneficiary by delivery in person or facsimile transmission (with originals thereof sent by overnight courier). Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiary may attempt to correct such non-conforming drawing certificate in accordance with the terms of this Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. This Letter of Credit does not incorporate, and shall not be deemed modified or amended by reference to any document, instrument or agreement (a) that is referred to herein (except for the Uniform Customs, as defined below), or (b) in which this Letter of Credit is referred to or to which this Letter of Credit relates.

Our obligation under this Letter of Credit shall be our individual obligation and is in no way contingent upon the reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

This Letter of Credit expires with our close of business on three hundred sixty four (364) days from the effective date; however, it is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for 364 days from the present or any future expiration date hereof, unless at least sixty (60) days before any such expiration date we notify you by registered mail / courier addressed to the address noted above, that we elect not to extend this Letter of Credit for such additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 revision) International Chamber of Commerce, Publication No. 600 (the "Uniform Customs"), provided, however, that: (a) we specifically agree that a "reasonable time" within the meaning of Article 14(b) of the Uniform Customs shall not exceed three (3) Banking Days following the day of receipt of the relevant documents, and (b) if this Letter of Credit expires during the Interruption of Business as described in Article

36 of the Uniform Customs then the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the resumption of business and we hereby specifically agree to effect payment if the Letter of Credit is drawn against within thirty (30) days after the resumption of business.

Sincerely yours,

[_____ bank name _____]

By: [insert name and title of authorized bank representative]

Authorized signature of Bank representative

**ANNEX 1 TO
IRREVOCABLE LETTER OF CREDIT NO. _____
ISSUED BY _____ [BANK NAME]**

DATE: _____

[BANK NAME]
[ATTENTION]
[BANK ADDRESS1]
[BANK ADDRESS2]

APPLICANT: [BUYER]

Ladies and Gentlemen:

The undersigned _____, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the "Beneficiary"), hereby certifies to _____ (the "Bank"), with reference to irrevocable Letter of Credit no. _____ dated _____ (the "Letter of Credit"), issued by the Bank on behalf of the Applicant and in favor of the Beneficiary, as follows, as of the date hereof:

1. Beneficiary is making a drawing under the Letter of Credit in the amount of \$[_____] because [check applicable provision]:

[_____] (A) Applicant has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Beneficiary and Applicant ("the [Buyer]"), dated _____.

[_____] (B) [Bank name]'s has failed to maintain a corporate long term debt rating of at least "A-" from Standard & Poor's or "A3" from Moody's Investors Service and Beneficiary has made written demand on Applicant to deliver a replacement Letter of Credit issued by a third party bank satisfying the requirements of the Beneficiary, and Applicant has failed to deliver such replacement Letter of Credit to Beneficiary prior to the close of business on the tenth (10th) day following such written demand.

[_____] (C) the Beneficiary has received notice from the Bank of its intention to cancel this Letter of Credit before its normal expiration date and Applicant has failed, prior to the close of business on _____ [insert date which is not more than thirty (30) days before the present expiration date], to deliver to Beneficiary one or more replacement Letter of Credits satisfying the requirements of the agreement titled "Agreement for Purchase and Sale of Street Lights between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer]," dated _____.

[_____] (D) Applicant has failed to reimburse Beneficiary for any costs incurred by Beneficiary to repair damages or site alterations to Beneficiary's facilities caused by Applicant's employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Applicant and Beneficiary dated _____.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. dollars _____ and ____/100ths (U.S. \$_____).

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

In witness whereof, this certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting officer as of this _____ day of _____, _____.

Beneficiary: **Niagara Mohawk Power Corporation**

By: _____ (signature)

Name: _____ (print name)

Title: _____

Appendix S-2

Performance (Surety) Bond

Bond No. _____

WITNESSETH:

The [Buyer], having an address at [ADDRESS], and [Surety Provider], having an address at _____, a corporation organized under the laws of the State of _____ and being duly authorized to transact the business of indemnity and suretyship in this State of New York, as **Surety**, do hereby acknowledge our indebtedness to, and are jointly and severally bound unto Niagara Mohawk Power Corporation d/b/a National Grid, as **Obligee**, in the aggregate sum of \$[_____] (the “*Maximum Obligation*”) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors, assigns or other legal representatives, jointly and severally.

The condition of this obligation is such, that:

WHEREAS, the Principal has entered into an agreement called “AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID AND THE [BUYER],” by and between Principal and Obligee dated _____, the “*Agreement*”); and

WHEREAS, as a condition precedent to the commencement and/or continuation of the Agreement, the Principal agrees to furnish Obligee with this surety bond, issued by the Surety in the amount above mentioned for the purpose of establishing credit and securing their performance obligations under the Agreement; and

NOW, THEREFORE, if Principal shall timely perform or cause to be performed any and all of its contractual obligations under the Agreement that may at any time be due and owing to the Obligee from Principal, then this obligation shall be null and void, otherwise it shall remain in full force and effect as a continuing obligation and shall not be extinguished. Should the Principal fail to perform or cause to be performed all obligations that may at any time be due and owing to the Obligee by the Principal in connection with the Agreement, then the Surety holds itself bound hereunder for the payment of all such amounts, and such amounts shall become immediately due from the Surety upon demand by the Obligee. Any liability which accrues while this bond is in force and is in effect shall remain and shall not be extinguished, regardless of the cancellation or termination of this bond, as set forth herein. Partial payment(s) shall not be deemed to extinguish this bond.

Surety hereby waives all defenses with respect to (i) notice of default of performance, (ii) notice of amounts owed by Principal to the Obligee, (iii) demand and diligence, (iv) notice of any extension of time granted by the Obligee to Principal, (v) any forbearance by the Obligee in favor of Principal, and (vi) any errors or inaccuracies with respect to the current formal corporate name of Principal as appearing on any documents established by Obligee in connection with the Agreement. Surety further waives any right to require that the Obligee institute suit against Principal for any amount owed or obligation to be performed by Principal to or for the benefit of the Obligee in connection the Agreement, it being the intent of this bond, and Surety hereby agrees, that if Principal fails or refuses to pay any such amount or perform any obligation due and owing to the Obligee under the Agreement, Surety shall pay such amount to the Obligee upon demand by the Obligee.

Amounts paid by Surety to the Obligee hereunder shall be credited against Surety's Maximum Obligation but shall not otherwise affect Surety's obligations under this bond. Principal and Surety agree that, subject to the Maximum Obligation, in any suit successfully prosecuted on this bond by the Obligee, the Obligee shall be entitled to recover, in addition to any other amount recovered by the Obligee, the reasonable attorneys' fees incurred by the Obligee in prosecuting said suit. Principal and Surety further agree that the Obligee does not, whether by accepting this bond or accepting any payment from Surety under this bond, waive its right to discontinue, in whole or in part and without prior notice, the Agreement in the event Principal fails or refuses to pay any amount and/or perform any obligation owed by Principal to the Obligee in connection with the Agreement, provided, however, the Obligee shall be under no duty to exercise such rights.

This bond is subject to the following additional terms, limitations and conditions:

1. The term of this bond shall commence [_____] and shall be continuous.
2. The Surety shall have the right to terminate its liability hereunder, but only as to amounts owed by Principal as a result of nonperformance as required under the Agreement after the effective date of such termination, at any time by giving notice in writing by registered mail to the Obligee and the Principal and stating therein the effective date of such termination which date shall not be less than thirty (30) days after receipt of said notice by the Obligee. Such notice shall not limit or terminate this bond in respect to any liability for acts, omissions, or indebtedness occurring or arising prior to the effective date of such termination by the Surety. Written notice must be by certified letter, return receipt requested, and mailed to the Obligee at Niagara Mohawk Power Corporation d/b/a National Grid, 300 Erie Boulevard West, D-1, Syracuse, NY 13202 (Attn: Commercial Credit and Collections Dept.), and to Principal at the [BUYER], [ADDRESS].
3. It is understood and agreed between the Principal and the Obligee that, upon receipt of Surety's thirty-day written notice of cancellation as provided above, the Obligee may demand from the Principal a replacement surety bond, in the amount corresponding to the existing amount of this Surety Bond at the time of such cancellation notice, by written notice to Principal and Principal shall deliver the replacement Surety Bond to the Obligee at least ten (10) days prior to the effective date of termination or expiration of this bond. In the event that a replacement Surety Bond is not provided in compliance with this paragraph, the Obligee shall have the right, but not the obligation, to pursue all legal rights afforded to Obligee under the Agreement, either in whole or in part and without prior notice.
4. No proceeding in law or in equity may be brought under this bond unless the same shall be commenced and process served prior to the expiration of one (1) year from the effective date of cancellation of this bond.
5. Obligee may make a claim on this bond by mailing the completed and signed Annex 1, along with a copy of this bond, to the following address of Surety: [ADDRESS] .
6. It is understood and agreed that any person(s) having a claim under the conditions of this bond may initiate suit in any court of competent jurisdiction upon this bond.
7. Surety agrees that no change, extension of time, alteration or addition to the Agreement shall in any way affect the obligation of this bond and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further agrees that any changes in, to, or under any contractual documents relating to the Agreement, and any compliance or non-compliance with formalities connected with such documents or changes, shall not affect Surety's obligation under this bond, and it does hereby waive notice of any such changes, compliance or non-compliance.

8. In this bond, (i) words denoting the singular include the plural and vice versa, and (ii) words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of similar import shall, unless the context requires otherwise, refer to this bond as a whole and not to any particular article, section, subsection, paragraph or clause hereof.

9. In no event shall the Surety’s obligation exceed the Maximum Obligation.

IN WITNESS WHEREOF, the Principal and Surety have executed and delivered this bond this _____ day of _____, 20____.

(Seal) _____, as Principal

By: _____
Name:
Title:

(Seal) _____, as Surety

By: _____
Name:
Title:

Annex 1

1. This Annex 1 shall be considered part of the following Performance (Surety) Bond (the “Surety Bond”).

Bond # _____
Surety: _____ [Surety Provider] _____
Obligee: Niagara Mohawk Power Corporation d/b/a National Grid
Principal: [BUYER]

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Surety Bond.

DATE: _____

[Surety Name] _____
[Attention] _____
[SuretyAddress1] _____
[Surety address2] _____

Principal: [BUYER]
Ladies and Gentlemen:

The undersigned _____, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the “Obligee”), hereby certifies to

_____ (the “Surety”), with reference to Surety Bond No. _____ dated _____ (the “Surety Bond”), issued by the Surety on behalf of the Principal and in favor of the Obligee, as follows, as of the date hereof:

1. Obligee is making a claim under the Surety Bond in the amount of \$ _____ because [check applicable provision]:

[_____] (A) Principal has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Obligee and Principal dated _____

[_____] (B) Surety has failed to maintain a corporate long term debt rating of at least “A-” from Standard & Poor’s or a “B+” rating from A.M. Best and Company and Obligee has made written demand on Principal to deliver a replacement Surety Bond issued by another Surety satisfying the requirements of the Obligee, and Principal has failed to deliver such replacement Surety Bond to Obligee prior to the close of business on the tenth (10th) day following such written demand.

[_____] (C) the Obligee has received notice from the Surety of its intention to cancel this Surety Bond before its normal expiration date and Principal has failed, prior to the close of business on _____ [insert date which is not more than thirty (30) days before the present Expiration Date], to deliver to Obligee one or more replacement Surety Bonds satisfying the requirements of the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated _____.

[_____] (D) Principal has failed to reimburse Obligee for any costs incurred by Obligee to repair damages or site alterations to Obligee’s facilities caused by Principal’s employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated _____.

2. Based upon the foregoing, the Obligee hereby makes a claim under the Surety Bond for payment of U.S Dollars _____ and ____/100ths (U.S. \$ _____).

3. To the extent possible, funds paid pursuant to the provisions of the Surety Bond shall be wire transferred to the Obligee in accordance with the following instructions:

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Obligee by its duly elected and acting Officer as of this _____ day of _____, _____.

Obligee: **Niagara Mohawk Power Corporation**

_____ (signature)

Name: _____ (print name)

Title: _____

#-2022

**A RESOLUTION TO DECLARE SEQR TYPE II ACTION FOR SALE AND
SUBSEQUENT REPLACEMENT OF STREET LIGHTING FACILITIES WITHIN THE
CITY OF BATAVIA**

Motion of Councilmember

WHEREAS, this notice is issued pursuant to 6 NYCRR Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law; and

WHEREAS, Niagara Mohawk Power Corporation d/b/a/ National Grid ("National Grid") and the City of Batavia, New York (the C/T/V) have entered into an Agreement for the Purchase and Sale of Street Lights; and

WHEREAS, under the terms of the Agreement, National Grid agreed to transfer ownership of the street lighting facilities, including luminaries, lamps, mast arms, the associated wiring, electrical connections and appurtenances, used to provide municipal lighting service to the C/T/V; and

WHEREAS, the transfer of ownership does not involve any new construction, changes in land use, or changes in the service provided to the public; and

WHEREAS, pursuant to Public Service Law Section 70, National Grid is required to notify the New York State Public Service Commission of the transfer.

WHEREAS, The City Council of the City of Batavia will act as lead agency pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, the proposed action described below is a Type II action, pursuant to 6 NYCRR 617.5(c)(2), and will not have a significant adverse effect on the environment; and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(2) this project is a replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4.

NOW, THEREFORE, BE IT RESOLVED, that based on City Councils review, and in consideration of the criteria set forth in 6 NYCRR 617.5 identifying Type II Actions under SEQRA, the transfer of ownership of the street lights and connected replacement of existing luminaries, lamps, mast arms, the associated wiring, electrical connections and appurtenances is a Type II action under SEQR pursuant to 6 NYCRR Part 617.5(c)(2) and requires no further review.

**Second by Councilmember
and on roll call**

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<u>Part 1 – Project and Sponsor Information</u>			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. <u>Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?</u>		NO	YES
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		<input type="checkbox"/>	<input type="checkbox"/>
2. <u>Does the proposed action require a permit, approval or funding from any other government Agency?</u>		NO	YES
If Yes, list agency(s) name and permit or approval:		<input type="checkbox"/>	<input type="checkbox"/>
3. a. <u>Total acreage of the site of the proposed action?</u>		_____ acres	
b. <u>Total acreage to be physically disturbed?</u>		_____ acres	
c. <u>Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?</u>		_____ acres	
4. <u>Check all land uses that occur on, are adjoining or near the proposed action:</u>			
5.	Urban	Rural (non-agriculture)	Industrial
	<input type="checkbox"/> Forest	Agriculture	Aquatic
	<input type="checkbox"/> Parkland		Commercial
			Residential (suburban)
			Other(Specify):

5. Is the proposed action,	NO	YES	N/A
a. <u>A permitted use under the zoning regulations?</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <u>Consistent with the adopted comprehensive plan?</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. <u>Is the proposed action consistent with the predominant character of the existing built or natural landscape?</u>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. <u>Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?</u> If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. <u>Will the proposed action result in a substantial increase in traffic above present levels?</u>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. <u>Does the proposed action meet or exceed the state energy code requirements?</u> If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. <u>Will the proposed action connect to an existing public/private water supply?</u> If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. <u>Will the proposed action connect to existing wastewater utilities?</u> If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. <u>Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?</u>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. <u>Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?</u>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

<p>14. <u>Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:</u></p> <p><input type="checkbox"/> Shoreline <input type="checkbox"/> Forest Agricultural/grasslands Early mid-successional</p> <p>Wetland <input type="checkbox"/> Urban Suburban</p>		
<p>15. <u>Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?</u></p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>16. <u>Is the project site located in the 100-year flood plan?</u></p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>17. <u>Will the proposed action create storm water discharge, either from point or non-point sources?</u></p> <p>If Yes,</p> <p> a. Will storm water discharges flow to adjacent properties?</p> <p> b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?</p> <p>If Yes, briefly describe:</p> <p>_____</p> <p>_____</p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
<p>18. <u>Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?</u></p> <p>If Yes, explain the purpose and size of the impoundment: _____</p> <p>_____</p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>19. <u>Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?</u></p> <p>If Yes, describe: _____</p> <p>_____</p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>20. <u>Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?</u></p> <p>If Yes, describe: _____</p> <p>_____</p>	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
<p>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor/name: _____ Date: _____</p> <p>Signature: <u> <i>K. J. Z</i> </u> Title: _____</p>		

Project:	Street light facility sale
Date:	8/18/22

**Short Environmental Assessment Form
Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Project: **Street light facility sale**

Date: **8/18/22**

**Short Environmental Assessment Form
Part 3 Determination of Significance**

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Batavia City Council

Name of Lead Agency
Eugene Jankowski Jr.

Date
City Council President

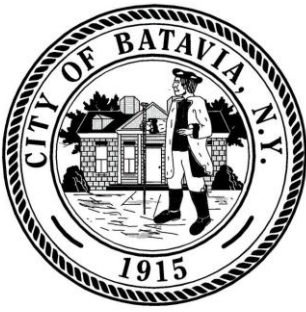
Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

X _____
Signature of Responsible Officer in Lead Agency

[Signature] _____
Signature of Preparer (if different from Responsible Officer)

PRINT FORM



City of Batavia

Memorandum

To: Honorable Council Members

From: Erik Fix, Assistant City Manager

Date: September 6, 2022

Subject: Restore NY Grant

The City of Batavia will be submitting a round 6 Restore NY grant to support the rehabilitation and repurposing of the long-vacant Carr's department store in the center of downtown into a mixed-use anchor. Three existing connected buildings totaling approximately 27,000 sq. ft. will be rehabilitated for first-floor commercial space and upper-floor apartments. The Carr's Department store closed in 2001 and most of the building has been vacant for two decades. Revitalization of the DRI priority project will be transformational and propel Batavia's ongoing downtown revitalization momentum. In addition to being selected as a DRI priority project, the Carr's buildings are within the boundaries of both a BOA and former Empire Zone. The proposed project is also adjacent to three other DRI projects that have been completed or will be completed within the next year.

The total cost for the project is estimated at \$4,000,000 and the City is seeking \$2,000,000 in Restore NY grant funding. The planned renovation will include parcels at 101,103,105 & 107 Main Street as well as 5-7 Jackson Street. At full build out, the first floor will include mix-use commercial space, with retail and office suites. The second and third floor will be between 10-16 market rate 2&3 bedroom apartments.

I recommend, City Council set a public hearing for September 26, 2022, and consider advancing the resolution to apply for the Restore NY Grant to the September 26, 2022 business meeting.

RESOLUTION TO SCHEDULE A PUBLIC HEARING FOR THE ROUND 6 RESTORE NY COMMUNITIES INITIATIVE MUNICIPAL GRANT PROGRAM

Motion of Councilmember

WHEREAS, the Empire State Development Corporation is requesting funding proposals for the sixth round of the Restore NY Municipal Grant program; and

WHEREAS, grant funds are available for projects to demolish/deconstruct and/or rehabilitate/reconstruct vacant, abandoned, surplus and/or condemned residential, commercial and/or mixed-use buildings; and

WHEREAS, an important goal of Restore NY is to revitalize urban centers, rural areas, and disadvantaged communities. It is anticipated that upon completion, the projects funded by Restore NY grants will attract individuals, families, and industry and commercial enterprises to the municipality. It is further anticipated that the improved community and business climate will result in an increased tax base thereby improving municipal finances and the wherewithal to further grow the municipality's tax and resource base, lessening its dependence on state aid; and

WHEREAS, cities with populations less than 40,000 can apply for up to \$2,000,000 in grant funding;

WHEREAS, a public hearing on the application and properties involved in the application is required prior to submission,

NOW THEREFORE, LET IT BE RESOLVED by the City of Batavia Council that it hereby schedules a public hearing for the Round 6 Restore NY application for September 26, 2022 at 7 p.m. at City Hall, One Batavia City Centre, Batavia, NY, 14020.

BE IT FURTHER RESOLVED, that a Notice of said hearing will be published for three consecutive days in the Batavia Daily News.

BE IT FURTHER RESOLVED, that it will include the following property assessment list:

<i>Site</i>	<i>Size (sq. ft)</i>	<i>Building Type</i>	<i>Project Type</i>	<i>Building Category</i>
101-103 Main Street	7,500	Comm./Res.	Rehabilitation	Vacant
105-107 Main Street	12,000	Comm./Res.	Rehabilitation	Vacant
5-7 Jackson Street	7,500	Comm./Res.	Rehabilitation	Vacant

**Seconded by Councilmember
and on the roll call**

#-2022

**RESOLUTION TO SUBMIT AN APPLICATION FOR THE ROUND 6 RESTORE
NY COMMUNITIES INITIATIVE MUNICIPAL GRANT PROGRAM**

Motion of Councilmember

WHEREAS, the Empire State Development Corporation is requesting funding proposals for the sixth round of the Restore NY Municipal Grant program; and

WHEREAS, grant funds are available for projects to demolish/deconstruct and/or rehabilitate/reconstruct vacant, abandoned, surplus and/or condemned residential, commercial and/or mixed-use buildings; and

WHEREAS, an important goal of Restore NY is to revitalize urban centers, rural areas, and disadvantaged communities. It is anticipated that upon completion, the projects funded by Restore NY grants will attract individuals, families, and industry and commercial enterprises to the municipality. It is further anticipated that the improved community and business climate will result in an increased tax base thereby improving municipal finances and the wherewithal to further grow the municipality's tax and resource base, lessening its dependence on state aid; and

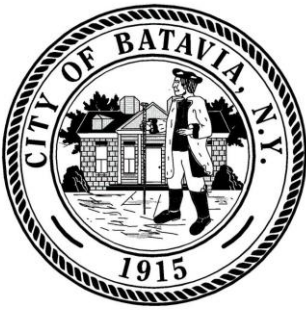
WHEREAS, cities with populations less than 40,000 can apply for up to \$2,000,000 in grant funding;

NOW THEREFORE, LET IT BE RESOLVED by the City of Batavia Council that it hereby authorizes submission of a Restore NY grant application not to exceed \$2,000,000 for the Carr's Reborn project in downtown Batavia.

BE IT FURTHER RESOLVED, that project meets the following objectives:

- (1) The project is consistent with the City of Batavia Comprehensive Plan, Downtown Revitalization Initiative (DRI) Strategic Investment Plan, and Brownfield Opportunity Area (BOA) Plan.
- (2) The proposed financing for the project is appropriate and committed.
- (3) The project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and preservation of community resources.
- (4) The project develops and enhances infrastructure and/or other facilities in a manner that will attract, create and sustain employment opportunities where applicable.

**Seconded by Councilmember
and on the roll call**



Memorandum

To: Rachael Tabelski, City Manager

From: Daniel G. Herberger, Interim Fire Chief

Date: 09/06/2022

Subject: Council Resolution

Rachael, attached is a Resolution to amend the Fire Department 2022-2023 budget to reflect the receipt of an AFG grant through FEMA. The grant is in the amount of \$62,476.19

This amendment will affect the following budget lines:

Increase revenue accounts:

A.00.0000.0000 4389	
Federal Aid, Public Safety	\$ 62,476.19
A.00.0000.0000 0511-2101	
Reserve revenue	\$ 3,123.81

Increase expenditure accounts:

A.05.3410.3410 201-2101	\$ 3,123.81
Appropriated Fire Department Reserves	
A05.3410.3410 435	
Travel & Training	\$ 36,000.00
A.05.3410.3410.201	\$ 26,476.19
Fire Department Small Equipment	



#-2022

A RESOLUTION TO AMEND THE 2022-2023 FIRE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A FEMA ASSISTANCE TO FIREFIGHTERS GRANT (AFG) – IN THE AMOUNT OF \$62,476.19

Motion of Councilmember

WHEREAS, the City of Batavia Fire Department has received a grant in the amount of \$62,476.19 for award period August 29, 2022 through August 28, 2024 from the Federal Emergency Management Agency (FEMA) for new Turn-out Gear and Recruit Firefighter Training in the City of Batavia and Genesee County; and

WHEREAS, this grant requires a local match of 5%; and

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Fire Department Equipment Reserve Fund with an approximate balance of \$370,571.59; and

WHEREAS, to properly account for the expenditure of this money, the use of reserves as a local match and a budget amendment is needed.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendment to the 2022-2023 budget and use the Fire Department Equipment Reserve Fund to cover various details and equipment purchases associated with this grant:

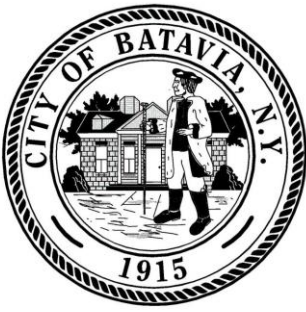
Increase revenue accounts:

A.00.0000.0000 4389	
Federal Aid, Public Safety	\$ 62,476.19
A.00.0000.0000 0511-2101	
Reserve revenue	\$ 3,123.81

Increase expenditure accounts:

A.05.3410.3410 201-2101	\$ 3,123.81
Appropriated Fire Department Reserves	
A05.3410.3410 435	
Travel & Training	\$ 36,000.00
A.05.3410.3410.201	\$ 26,476.19
Fire Department Small Equipment	

**Seconded by Councilmember
and on roll call**



City of Batavia

Memorandum

To: Rachael Tabelski, City Manager

From: Shawn Heubusch, Police Chief

Date: August 24, 2022

Subject: NYS Governor's Traffic Safety Committee - Police Traffic Services Grant 2022-2023

On August 3, 2022, the City Police were awarded \$ 13,464 from the NYS Governor's Traffic Safety Committee for the Police Traffic Safety grant. The goal of the program is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and deaths resulting from traffic crashes.

The funding received will be used to provide for special traffic details throughout the year, to include targeted enforcement efforts in the downtown corridor. The funding covers the period of October 1, 2022 thru September 30, 2023.

Feel free to call with any questions you may have. Thank you.

Attachments: Award Letter
Draft Resolution

Cc: Lisa Neary, Deputy Director of Finance

Police Department
10 Main Street
Batavia, New York 14020



Phone: 585-345-6350
Fax: 585-344-1878
Records: 585-345-6303
Detective Bureau: 585-345-6370
www.batavianewyork.com

#-2022

A RESOLUTION TO AMEND THE 2022-2023 POLICE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A POLICE TRAFFIC SERVICES GRANT

Motion of Councilmember

WHEREAS, the City of Batavia Police Department has received a grant in the amount of \$ 13,464 from the New York State Governor’s Traffic Safety Committee to participate in the statewide Police Traffic Services Program. The goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes; and

WHEREAS, to properly account for the expenditure of this money, a budget amendment needs to be made.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendment to the 2022-2023 budget effective October 1, 2022 to cover various traffic enforcement details:

Increase expenditure accounts:		
A04.3120.3120.0101.199-100003	\$	13,464.00
Increase revenue accounts:		
A.00.0000.0000 4389-100003	\$	13,464.00

**Seconded by Councilmember
and on the roll call**

JIM ALLEN
Director



Department of
Motor Vehicles

(518) 474-5111
(518) 474-5777
Fax: (518) 473-6946

GOVERNOR'S TRAFFIC SAFETY COMMITTEE
6 EMPIRE STATE PLAZA • ALBANY, NY 12228

August 3, 2022

Christopher Camp
Batavia City Police Department
10 West Main St
Batavia, NY 14020-2040

Re: PTS-2023-Batavia City PD-00242-(019)
Police Traffic Services
T006993
CFDA#: 20.600
EFFECTIVE DATE: October 1, 2022

Dear Christopher Camp:

On behalf of the Governor's Traffic Safety Committee, I am pleased to notify you that the Batavia City Police Department has been awarded a total of \$13,464 to participate in the statewide Police Traffic Services Program. Our goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes. A breakdown of your grant award amount is as follows:

Category	Award Amount
Seat Belt Mobilization Enforcement	\$3,264
Regular PTS Enforcement	\$10,200
Other Than Personal Services	\$0
Grand Total	\$13,464

Before incurring any project related expenses, login to eGrants to review your approved budget as it may have been reduced or otherwise changed from what was requested. Crucial documents regarding your grant, the claims process, equipment, and other grant related topics can be found by visiting <https://trafficsafety.ny.gov/highway-safety-grant-program#grant-award>.

Attached to this email are the contract and a signatory page with instructions. Please follow the instructions to facilitate the prompt processing of your contract. The contract will only be effective after the Signature page has been signed by the County, City, Town, or Village, and notarized, then returned to, **and** signed by, the New York State Governor's Traffic Safety Committee.

Thank you for participating in this very important statewide enforcement program. I wish you success in your efforts. If you have any questions, please contact the Governor's Traffic Safety Committee at (518) 474-5111.

Sincerely,

James Allen
Director

CRD:bp
Enclosure
cc: Rebecca Patterson
Shawn Heubusch

CONTRACT INSTRUCTIONS

The project director must make sure that the person reviewing and signing the contract is aware of the following information:

1. Changes **cannot** be made to the contract. Any changes made **will** result in a rejection of the contract.
2. Once the attached Signature page is signed by an authorized representative (**see below**) **and** notarized, **ONLY** the completed Signature page is to be returned to the New York State Governor's Traffic Safety Committee (GTSC). Do **NOT** return the contract.
3. The completed Signature page must be emailed to GTSCContracts@dmv.ny.gov.
4. The Signature page with the original "wet" signatures must be mailed to:
New York State Governor's Traffic Safety Committee
Attn: Contract Coordinator
6 Empire State Plaza, Room 410
Albany, NY 12228
5. When the completed Signature page with the original "wet" signatures is received, the GTSC will upload the completed Signature page into an electronic version of the contract. A copy of that contract was provided with the grant award letter.
6. Once all required approvals are received, a copy of the approved contract will be emailed to your organization for your records.

Authorized Representative:

Having the project director role on the grant does **NOT** give someone the authority to sign the contract. Although a specific department may have submitted the grant, the contract is not with that specific department; it is with the City, County, Town or Village. For example, the Town of Smith's Police Department submits the grant. The Contractor is the Town of Smith, not the police department. The person signing the contract must have the legal authority to bind the Town to a contract. Please contact your County, City, Town or Village Legal Department to determine who has the authority to sign the contract.

This page was intentionally left blank.

Signature page follows on next page.

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:
BATAVIA CITY OF

STATE AGENCY:
New York State Governor's Traffic Safety Committee

By: _____

By: _____

Printed Name

Mary Arthur

Printed Name

Title: _____

Title: Program Manager

Date: _____

Date: _____

STATE OF NEW YORK

County of _____

On the ___ day of _____, ____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>STATE AGENCY (Name & Address):</p> <p>New York State Governor's Traffic Safety Committee 6 Empire State Plaza, Room 410B Albany, NY 12228</p>	<p>BUSINESS UNIT/DEPT. ID: DMV01/3700393</p> <p>CONTRACT NUMBER: T006993</p> <p>CONTRACT TYPE:</p> <p><input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME:</p> <p>BATAVIA CITY OF</p>	<p>TRANSACTION TYPE:</p> <p><input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p>	<p>PROJECT NAME:</p> <p>Police Traffic Services - PTS</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS Vendor ID Number: 1000004308 Federal Tax ID Number: 166002535 DUNS Number (if applicable): 080338734</p>	<p>AGENCY IDENTIFIER:</p> <p>PTS-2023-Batavia City PD -00242-(019)</p> <p>CFDA NUMBER (Federally Funded Grants Only): 20.600</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>ONE BATAVIA CITY CENTRE BATAVIA, NY 14020</p> <p>CONTRACTOR PAYMENT ADDRESS:</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address ONE BATAVIA CITY CENTRE BATAVIA, NY 14020</p> <p>CONTRACT MAILING ADDRESS:</p> <p><input type="checkbox"/> Check if same as primary mailing address 10 WEST MAIN ST BATAVIA, NY 14020</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: 180204000 000 <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:</p> <p>Exemption Status/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>CURRENT CONTRACT TERM:</p> <p>From: 10/01/2022 To: 09/30/2023</p> <p>CURRENT CONTRACT PERIOD:</p> <p>From: 10/01/2022 To: 09/30/2023</p> <p>AMENDED TERM:</p> <p>From: To:</p> <p>AMENDED PERIOD:</p> <p>From: To:</p>	<p>CONTRACT FUNDING AMOUNT:</p> <p><i>(Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):</i></p> <p>CURRENT: \$13,464</p> <p>AMENDED:</p> <p>FUNDING SOURCE(S)</p> <p><input type="checkbox"/> State</p> <p><input checked="" type="checkbox"/> Federal</p> <p><input type="checkbox"/> Other</p>
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FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT PERIOD AND FUNDING AMOUNT:
 (Out years represent projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

ATTACHMENTS PART OF THIS AGREEMENT:

- Attachment A:
 - A-1 Program Specific Terms and Conditions
 - A-2 Federally Funded Grants and Requirements Mandated by Federal Laws

- Attachment B:
 - B-1 Expenditure Based Budget B-2 Performance Based Budget
 - B-3 Capital Budget B-4 Net Deficit Budget
 - B-1(A) Expenditure Based Budget (Amendment)
 - B-2(A) Performance Based Budget (Amendment)
 - B-3(A) Capital Budget (Amendment)
 - B-4(A) Net Deficit Budget (Amendment)

- Attachment C: Work Plan
- Attachment D: Payment and Reporting Schedule
- Other:

**STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

¹ To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a) by certified or registered United States mail, return receipt requested;
 - b) by facsimile transmission;
 - c) by personal delivery;
 - d) by expedited delivery service; or
 - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term “litigation” shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

³ As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

To the extent that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
- (i) personal messenger service; or
 - (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

(ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

(iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

(iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

(v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

- e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
- f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
- g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
- a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
- b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash

disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such

manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P 08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S 08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S 08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project

is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

- a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and

4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

a) to require updates or clarifications to the Questionnaire upon written request;

b) to inquire about information included in or required information omitted from the Questionnaire;

c) to require the Contractor to provide such information to the State within a reasonable timeframe; and

d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and

e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State

⁹ Not applicable to not-for-profit entities.

Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

ATTACHMENT A-1 PROGRAM SPECIFIC TERMS AND CONDITIONS

DATE OF PROJECT - Projects are funded for one year and must coincide with the federal fiscal year, with a start date of October 1 and an end date of September 30.

GRANT MODIFICATIONS - Grant modifications must be requested through the eGrants system **and** approved by the GTSC **BEFORE** the activity takes place or the item is ordered / purchased. Grant modifications cannot increase the dollar amount of the grant award. The GTSC's Instruction Guide for Grant Modifications, Payment Requests and Progress Reports provides information on how to submit a grant modification request. This guide is available on the New York State Governor's Traffic Safety Committee website at <https://trafficsafety.ny.gov/highway-safety-grant-program>.

PAYMENTS - This is a reimbursement program. Grant recipients incur the costs of the project according to their approved budget and then submit a request for reimbursement to the GTSC.

Claim for payment reimbursement requests must be for exact expenditures. The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt enforcement mobilization claim must be submitted within 30 days after the end of the mobilization period. The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt mobilization claim cannot be paid until the associated progress report is submitted in eGrants. All other claims for this project must be submitted on a quarterly basis. Payment is issued through the New York State Comptroller's Office. All costs must be documented and the claim for payment reimbursement request must be submitted through the eGrants system. The Claim for Payment form with an original signature and all supporting documentation described in the Claim for Payment Instruction Guide must be uploaded in eGrants in the attachments section of the claim. The claim for payment reimbursement request must be submitted through the eGrants system with all required documentation by the due dates listed in the Attachment D (Payment and Reporting Schedule) section of this contract.

The deadline for submitting a final claim for payment reimbursement request for all costs incurred during the grant year, October 1 to September 30, is October 30. The claim for payment reimbursement request must be submitted through the eGrants system, and the signed and dated Claim for Payment form with supporting documentation must be uploaded in eGrants in the attachment section of the claim by October 30, as the National Highway Traffic Safety Administration (NHTSA) will not reimburse late claims. While we do not intend that costs go un-reimbursed, grantees must claim costs promptly or be subject to non-reimbursement.

Reimbursement and documentation requirements are outlined in the GTSC's Claim for Payment Instruction Guide, which is available on the New York State Governor's Traffic Safety Committee website at <https://trafficsafety.ny.gov/highway-safety-grant-program>. All contractors, prior to initiating project activity, must read the GTSC's Claim for Payment Instruction Guide.

Items mentioned in the Attachment C (Work Plan Summary) section of this contract are **not** eligible for reimbursement unless they are listed and approved in the Attachment B-1 (Expenditure Based Budget Summary) section of this contract.

ATTACHMENT A-1 PROGRAM SPECIFIC TERMS AND CONDITIONS

Items approved in the budget should be ordered by July 31 and must be received by September 30.

Equipment that costs \$5,000 or more per item needs **prior** written approval from the GTSC and the NHTSA. The item being approved in the grant does not mean it has been approved by the NHTSA. You must contact the GTSC to obtain the written approval **before** the item is purchased.

All Educational materials developed for this project must have prior written approval from the GTSC for content and text or be subject to non-reimbursement. Educational materials should include the following acknowledgement: "Funded by the National Highway Traffic Safety Administration with a grant from the New York State Governor's Traffic Safety Committee". The information provided in these materials must be directly related to the initiatives approved in the grant and the materials, including the content and text, must be pre-approved every year, regardless of whether they have been approved in the past.

REPORTING - The Attachment D (Payment and Reporting Schedule) section of this contract outlines the reporting requirements for the Police Traffic Services grant program. If an agency did not conduct grant funded activity during the reporting period, a progress report stating so is still required. Progress reports are submitted through the eGrants system. The GTSC may request agencies to participate in special enforcement activities or statewide mobilizations and may provide a format to report these activities outside of the regular reporting format. This reporting would be in **addition** to the reports outlined in Attachment D.

The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt enforcement mobilization report is due on June 18, 2023, two weeks after the conclusion of the Click It or Ticket seat belt enforcement mobilization. Claims for payment for Click It or Ticket enforcement cannot be submitted in eGrants until the associated progress report is submitted.

MONITORING - The GTSC has the right to conduct on-site monitoring of grant funded projects, during the project period or within 3 years after the end of the project period. The GTSC staff will schedule on-site visits at the mutual convenience of the GTSC and the project director or designee.

Contracts are for a one-year period.

Executive Order No. 177, Prohibiting State Contracts that Support Discrimination – The following applies to all contracts, and contract renewals, entered into on or after June 1, 2018 by GTSC for goods, services, technology, or construction, directly or indirectly.

ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS

New York State is dedicated to ensuring that all individuals are treated equally, regardless of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis. Pursuant to Executive Order No. 177 of the Governor of the State of New York, GTSC will not do business with entities that promote or tolerate discrimination or infringement on civil rights of New Yorkers and direct State entities.

Contractor must ensure that it is free from institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected status.

Failure to conform to this requirement may, in GTSC's discretion, be treated as a material breach of contract for which GTSC shall be entitled to terminate the Contract without incurring liability for breach thereof upon the part of the State of New York or GTSC.

ADMISSIBILITY OF REPRODUCTION OF CONTRACT - Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Notices to the Contractor shall be addressed to:

Christopher Camp
Batavia City Police Department
10 West Main St
Batavia, NY 14020

Notices to the State shall be addressed to:

New York State Governor's Traffic Safety Committee
Attn: Program Manager
6 Empire State Plaza, Room 410B
Albany, NY 12228

ATTACHMENT A-1 PROGRAM SPECIFIC TERMS AND CONDITIONS

POLICE TRAFFIC SERVICES GRANT PROGRAM CONDITIONS:

The contractor must provide occupant protection roll-call video training to all patrol officers working on grant related activities. For a copy of the video, contact the Governor's Traffic Safety Committee.

Participation in the Buckle Up New York (BUNY), "Click It or Ticket (CIOT)" seat belt enforcement mobilization campaign is a requirement of the Police Traffic Services grant program. Lack of participation will result in the end of funding for the remainder of the grant year.

During the Buckle Up New York (BUNY), "Click It or Ticket (CIOT)" seat belt enforcement mobilization campaign, grant funding can **only** be used to conduct occupant restraint enforcement.

Contractors are expected to enforce seat belt and child restraint laws throughout the grant cycle.

GTSC funded PTS projects may include dangerous driving related enforcement activities in the following areas:

- seat belt and child restraint violations
- speeding violations
- aggressive driving violations
- distracted driving violations
- No Empty Chair enforcement initiatives (all five days of enforcement campaign)
- pedestrian safety violations
- motorcycle safety violations
- passing stopped school buses violations and Operation Safe Stop participation
- participation in other special enforcement campaigns identified by the GTSC.
- routine commercial vehicle traffic enforcement violations. (Only routine traffic violations such as speeding, following too closely, failure to yield right of way, unsafe lane change and other related infractions).

GTSC funding may **NOT** be used for the following types of enforcement:

- Motorcycle only details
- Impaired driving details (with the exception of the last day of the No Empty Chair enforcement initiative)
- Commercial vehicle inspection operations, weight details or any other activity relating solely to commercial vehicles

End of Attachment A-1 - Program Specific Terms and Conditions

ATTACHMENT A-2
FEDERALLY FUNDED GRANTS AND REQUIREMENTS MANDATED BY FEDERAL LAWS

FEDERAL POLICY – Policies and procedures of the following federal regulations may be applicable:

23 CFR Part 1300 - Uniform Procedures for State Highway Safety Grant Programs;

2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Contractors must also be aware of the following certifications and assurances that are imposed upon them as part of the above regulations:

NONDISCRIMINATION

The contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, grantees and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The contractor:

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
- Will administer the program in a manner that reasonably ensures that any of its grantees, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the NonDiscrimination Authorities identified in this Assurance;
- Agrees to comply (and require any of its grantees, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these NonDiscrimination Authorities and this Assurance;
- Insert in all contracts and funding agreements with other government or private entities the following clause: "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time; b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein; c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA; d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/ or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and e. To insert this clause, including paragraphs a through e, in every subcontract and sub-agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program."

POLITICAL ACTIVITY (HATCH ACT)

The contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The contractor shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a contractor whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Instructions for Primary Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and coverage sections of 2 CFR part 180. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1300.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR part 180. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1300.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

The contractor will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a contractor, to purchase only steel, iron and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

The contractor will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

End of Attachment A-2 - Federally Funded Grants and Requirements Mandated by Federal Laws

**ATTACHMENT B-1
EXPENDITURE BASED BUDGET
SUMMARY**

PROJECT NAME: Police Traffic Services - PTS

CONTRACTOR SFS PAYEE NAME: BATAVIA CITY OF

CONTRACT PERIOD: From: 10/01/2022
To: 09/30/2023

Personal Services:

Number of Seat Belt Mobilization Enforcement Hours (During May 22 through June 4), and hourly pay rate.¹

Number of Hours	Hourly Rate	Total Personal Services
64	\$51.00	\$3,264.00

Number of regular PTS Enforcement Hours and hourly pay rate.¹

Number of Hours	Hourly Rate	Total Personal Services
200	\$51.00	\$10,200.00

¹Hourly pay rate - Estimate of average pay rate of eligible officers for budgeting purposes, rounded to the nearest dollar. However, agency must request reimbursement for actual officer pay rates. GTSC does not reimburse fringe benefits costs on overtime.

Other Than Personal Services

Other costs must be related to grant activity. Each item must be listed separately and justified, or it will not be considered for funding.

Item	Justification	Item Cost

Total Other Than Personal Services: \$0.00

Total Funding Request: \$13,464.00

**ATTACHMENT C
WORK PLAN
SUMMARY**

PROJECT NAME: Police Traffic Services - PTS

CONTRACTOR SFS PAYEE NAME: BATAVIA CITY OF

CONTRACT PERIOD: From: 10/01/2022
To: 09/30/2023

General:

Police Traffic Services (PTS) grants are intended to provide funding for supplemental, overtime enforcement hours to police agencies to conduct traffic enforcement details based on the crash data of their local patrol area with the goal of impacting motorist behavior and improving traffic safety within their jurisdiction. The goal of this program is to reduce motor vehicle crashes and their resulting injuries and deaths.

Special conditions relating to the Police Traffic Services grant program are provided in the Attachment A-1 (Program Specific Terms and Conditions) section of this contract.

Items mentioned in the Attachment C (Work Plan Summary) are **not** eligible for reimbursement unless they are listed and approved in the Attachment B-1 (Expenditure Based Budget Summary) section of this contract.

Buckle Up New York (BUNY), “Click It or Ticket (CIOT)” Campaign:

Buckle Up New York (BUNY), “Click It or Ticket (CIOT)”, is a statewide enforcement campaign designed to save lives and reduce the severity of injuries by increasing safety restraint use.

Contractor must participate in the Buckle Up New York (BUNY), “Click It or Ticket (CIOT)” seat belt enforcement mobilization that will take place May 22 – June 4, 2023. No other enforcement activities will be funded during the two-week mobilization period.

Lack of participation in the required Buckle Up New York (BUNY), “Click It or Ticket (CIOT)” seat belt enforcement mobilization will result in the end of funding for the remainder of the grant year.

The Click It or Ticket section of the Work Plan is what the Contractor identified as their planned seat belt enforcement strategies during the Buckle Up New York (BUNY), “Click It or Ticket (CIOT)” seat belt enforcement mobilization.

Regular PTS Enforcement:

The Regular PTS section of the Work Plan is what the Contractor identified as their jurisdictions crash problems, enforcement strategies, and their agency’s crash reduction goals.

CLICK IT OR TICKET

Buckle Up New York (BUNY), "Click It or Ticket" (CIOT), is a statewide enforcement campaign designed to save lives and reduce the severity of injuries by increasing safety restraint use. The Governor's Traffic Safety Committee (GTSC) has set a strategic goal to increase the observed statewide seat belt use rate and to decrease unrestrained occupant fatalities in passenger vehicles. The strategies identified for accomplishing these goals include high visibility enforcement; public information and education.

Lack of participation in the required Click It or Ticket seat belt enforcement mobilization will result in the end of funding for the remainder of the grant year.

No other enforcement activities will be funded during the two-week mobilization period.

1. This agency will participate in the Click It or Ticket seat belt enforcement mobilization that will take place May 22 – June 4, 2023.
2. Agency agrees to submit the Click It or Ticket seat belt enforcement mobilization progress report by June 18, 2023—two weeks after conclusion of the Click It or Ticket mobilization.
3. Agency agrees to submit the Click It or Ticket seat belt enforcement mobilization claim for payment by July 5, 2023.
4. How many dedicated seat belt details does your agency plan to staff during the Click It or Ticket enforcement period? **5**
 - a. Which of the following enforcement strategies will your agency employ?
Check all that apply: Checkpoints Roving patrols Bicycle patrols
Other Please explain:
5. This agency will plan inter-agency enforcement details: Yes No
If yes, list at least one partner agency:
6. This agency will conduct a pre- or post-mobilization seat belt compliance survey: Yes No
7. This agency will conduct at least one enforcement detail between the hours of 4:00 pm and 8:00 pm:
Yes No
8. In the space below, provide additional information about your planned seat belt enforcement operations, such as locations to be used, tactics, creative approaches, etc.
This Agency will use roving patrols in unmarked and marked vehicles to locate violators. We also have bicycle patrols that we will utilize to assist with spotting violators. We will target our downtown area which contains our main commuter routes (SR5 and SR63). We will also target the intersection of SR98/SR5. These areas listed appear to have the most crashes according to our data.
Earned media refers to publicity gained through promotional efforts other than paid media advertising. This includes outreach to local news outlets and/or social media to promote the use of occupant restraints. **Media kits are available on line at <https://www.trafficsafetymarketing.gov/get-materials/seat-belts>**
9. This agency will conduct earned media efforts prior to or during the 2023 Click It or Ticket enforcement mobilization Yes No

List outreach:

Social Media (Facebook) and local media (TheBatavian, Video News Service, WBTA and the Batavia Daily News).

10. Conduct occupant protection roll-call video training for all patrol officers working on grant related activities. For a copy of the video, contact the Governor's Traffic Safety Committee.

YES, we will incorporate this

End of Click It or Ticket Work Plan

REGULAR PTS

1. Please name/identify specific locations where crashes are occurring in your jurisdiction. (If multiple, please list your top 3 locations). Provide details.

Location 1 The West Main Street corridor that runs between Ellicott St (state route 63) to Lewiston Rd (state route 63) on the west side of the city. The portion of roadway consists of state routes 5 and 63 with portions of state route 33 and 98. This area sees a lot of vehicle traffic due to it being the main roadway to reach the west side of Batavia where a large retail area is located. This section of roadway saw 73 PD and 13 PI crashes (roughly 18.5 % PD crashes and 16.5% PI crashes respectively, time period 04/01/21-03/31/22) .

Location 2 The East Main Street corridor that runs between Ellicott St (state route 63) to Cedar St. This section of roadway consists of state routes 5 and 33 and contains a portion of our downtown businesses district. A portion of this area sees a lot of pedestrian traffic due to the small businesses located downtown. There were 48 PD and 14 PI crashes in this area between the time frame of 04/01/2021 and 03/31/2022 (roughly 12% PD crashes and 18% PI crashes respectively).

Location 3 Ellicott Street (state route 63) between West Main Street and Swan Street. This area contains the southern portion of our downtown business district as well as a designated bicycle lane/trail way. Significant pedestrian traffic is also in this area as residents frequently travel on foot to the local businesses. Between 04/01/2021 and 03/31/2022 there were 19 PD (5%) and 7 PI (9%) crashes in this area.

2. What is/are the primary contributing factor(s) causing these crashes? Provide crash data.

Location 1 Of the 86 crashes in this area the 3 most frequent primary contributing factors were: following too closely (38%), Failure to yield right-of-way (20%) and unsafe lane changing (12%).

Location 2 Of the 62 crashes in this area the 3 most frequent primary contributing factors were: following too closely (23%), failure to yield right-of-way (18%) and traffic control disregarded (18%).

Location 3 Of the 26 crashes in this area the 3 most frequent primary contributing factors were: following too closely (31%), failure to yield right-of-way (19%) and turning improperly (11%).

3. When are these crashes occurring (time of day, day of week and/or month(s) of year)? Provide crash data.

Location 1 78% of these crashes occur between 11am and 7pm. 95% of these crashes occur Monday thru Saturday.

Location 2 56% of these crashes occur between 11am and 7pm. 84% of these crashes occur Tuesday thru Saturday.

Location 3 54% of these crashes occur between 11am and 7pm. 58% of these crashes occur on Tuesday, Thursday and Friday.

4. Enforcement Strategy: How will you deploy agency resources to address this problem? Provide details.

Location 1 This agency will utilize roving and stationary patrols in marked and unmarked patrol vehicles to seek out drivers who are driving aggressively and/or are distracted. We will hire overtime details to run between the hours of 11am and 7pm Monday thru Saturday.

Location 2 This agency will utilize roving and stationary patrols in marked and unmarked patrol vehicles to seek out drivers who are driving aggressively and/or are distracted. We will be covert in an attempt to identify drivers who are disregarding traffic control devices. We will hire overtime details to work between 11am and 7pm Tuesday through Saturday.

Location 3 This agency will utilize roving and stationary patrols in marked and unmarked patrol vehicles to seek out drivers who are driving aggressively and/or are distracted. We will also utilize our bicycle patrol Officers and spotters to assist with observing traffic violations. We will hire overtime details to work between the hours of 11am and 7pm on Tuesdays, Thursdays and Fridays.

5. The overarching mission of the PTS grant program is to reduce personal injury and fatal crashes. Provide your agency's crash reduction goal in percentage or total number.

Location 1 A reduction of total crashes by 6% with a specific reduction of 2 PI crashes in this area.

Location 2 A reduction of total crashes by 6% with a specific reduction of 2 PI crashes in this area.

Location 3 A reduction of total crashes by 6% with a specific reduction of 1 PI crashes in this area.

Supporting data used above was obtained from (check all that apply):

Crash Ticket Data Table from ITSMR;

TSSR;

TraCS;

Agency Data;

Other: Crash Logic/MV-104A Reports

Check **voluntary** enforcement initiatives your agency plans to participate in from the list below.

Distracted Driver Campaigns;

Operation Safe Stop;

No Empty Chair;

Pedestrian Safety Enforcement Mobilization;

Speed Awareness Enforcement Mobilization;

Regional or multi-agency enforcement waves that support GTSC goals (must not be an impaired wave (with the exception of the last day of the No Empty Chair enforcement initiative), commercial motor vehicle inspection or motorcycle only checkpoint.)

End of Regular PTS Work Plan

**ATTACHMENT D
PAYMENT AND REPORTING SCHEDULE**

I. PAYMENT PROVISIONS

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Advance Payment, Initial Payment and Recoupment Language (if applicable):

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of 0 percent (0.00%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of 0 percent (0.00%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than 0 days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period _____	Amount _____	Due Date _____
Period _____	Amount _____	Due Date _____
Period _____	Amount _____	Due Date _____
Period _____	Amount _____	Due Date _____

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (0.00%) of subsequent claims and such claims will be reduced until the advance is fully recovered within the contract period.

B. Interim and/or Final Claims for Reimbursement

Claiming Schedule (*select applicable frequency*)

Quarterly Reimbursement

Due Date 1/30/2023, 04/30/2023, 07/30/2023 and 10/30/2023

Monthly Reimbursement

Due Date _____

Biannual Reimbursement

Due Date _____

Fee for Service Reimbursement

Due Date _____

- Rate Based Reimbursement
Due Date _____
- Fifth Quarter Reimbursement
Due Date _____
- Milestone/Performance Reimbursement
Due Date/Frequency _____
- Scheduled Reimbursement
Due Date/Frequency _____
- Interim Reimbursement as Requested by Contractor _____

II. REPORTING PROVISIONS

A. Expenditure-Based Reports *(select the applicable report type):*

- Narrative/Qualitative Report
The Contractor will submit, on a quarterly basis, not later than _____ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract.
- Statistical/Quantitative Report
The Contractor will submit, on a quarterly basis, not later than _____ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.
- Expenditure Report
The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.
- Final Report
The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than _____ days after the end of the contract period.
- Consolidated Fiscal Report (CFR)¹
The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

¹The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by the Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until _____ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is _____. The agency shall complete its audit and notify vendor of the results no later than _____. The Contractor shall submit the report not later than _____ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

TABLE 1 - REPORTING SCHEDULE

PROGRESS REPORT #	PERIOD COVERED	DUE DATE
1	10/01/2022 - 03/31/2023	04/15/2023
2	05/22/2023 - 06/04/2023	06/18/2023
3	10/01/2022 - 09/30/2023	10/15/2023

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

Claims for Reimbursement:

This is a reimbursement program. Grant recipients incur the costs of the project according to their approved budget and then submit a request for reimbursement to the GTSC.

Claim for payment reimbursement requests must be for exact expenditures. The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt enforcement mobilization claim must be submitted within 30 days after the end of the mobilization period. The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt mobilization claim cannot be paid until the associated progress report is submitted in eGrants. All other claims for this project must be submitted on a quarterly basis. Payment is issued through the New York State Comptroller's Office. All costs must be documented and the claim for payment reimbursement request must be submitted through the eGrants system. The Claim for Payment form with an original signature and all supporting documentation described in the Claim for Payment Instruction Guide must be uploaded in eGrants in the attachments section of the claim. The claim for payment reimbursement request must be submitted through the eGrants system with all required documentation by the due dates listed in the Attachment D (Payment and Reporting Schedule) section of this contract.

The deadline for submitting a final claim for payment reimbursement request for all costs incurred during the grant year, October 1 to September 30, is October 30. The claim for payment reimbursement request must be submitted through the eGrants system, and the signed and dated Claim for Payment form with supporting documentation must be uploaded in eGrants in the attachments section of the claim by October 30, as the National Highway Traffic Safety Administration (NHTSA) will not reimburse late claims. While we do not intend that costs go un-reimbursed, grantees must claim costs promptly or be subject to non-reimbursement.

Reimbursement and documentation requirements are outlined in the GTSC's Claim for Payment Instruction Guide, which is available on the New York State Governor's Traffic Safety Committee website at <https://trafficsafety.ny.gov/highway-safety-grant-program>. All contractors, prior to initiating project activity, must read the GTSC's Claim for Payment Instruction Guide.

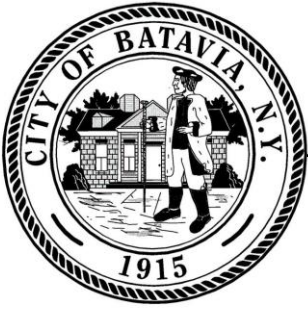
Reports:

This Attachment D (Payment and Reporting Schedule) outlines the reporting requirements for the Police Traffic Services grant program. If an agency did not conduct grant funded activity during the reporting period, a progress report stating so is still required. Progress reports are submitted through the eGrants system. The GTSC may request agencies to participate in special enforcement activities or statewide mobilizations and may provide a format to report these activities outside of the regular reporting format. This reporting would be in **addition** to the reports outlined in Attachment D.

The Buckle Up New York (BUNY), Click It or Ticket (CIOT) seat belt enforcement mobilization report is due on June 18, 2023, two weeks after the conclusion of the Click It or Ticket seat belt enforcement mobilization. Claims for payment for Click It or Ticket enforcement cannot be submitted in eGrants until the associated progress report is submitted.

The GTSC's Instruction Guide for Grant Modifications, Payment Requests and Progress Reports provides step-by-step instructions on how to initiate and submit a claim for reimbursement and /or progress report through the eGrants system. This guide is available on the New York State Governor's Traffic Safety Committee website at <https://trafficsafety.ny.gov/highway-safety-grant-program>.

End of Attachment D - Payment and Reporting Schedule



Memorandum

To: Rachael Tabelski, City Manager
From: Brett Frank, Director of Public Works
Date: September 4, 2022
Subject: 111 Tracy Avenue Permanent Easement

The owner(s) of 111 Tracy Avenue and the City of Batavia desire to remove a tree that poses a threat to City of Batavia infrastructure as well as numerous surrounding properties on Tracy Avenue and Bank Street. At this time, there is no existing easement for the City of Batavia to perform maintenance on the "Big Ditch" on property located at this residence.

The removal of the aforementioned tree located at 111 Tracy Avenue will be performed by AJ's Tree Removal Service in the amount of \$10,750.00. Concluding the project, a permanent easement will be entered into between the property owners and City of Batavia allowing access to maintain City infrastructure located at 111 Tracy Avenue.

#-2022

A RESOLUTION APPROVING AN EASEMENT FOR PROPERTY AT 111 TRACY AVENUE

Motion of Councilmember

WHEREAS, there is no existing easement for the City of Batavia to perform maintenance on the “Big Ditch” on property located at 111 Tracy Avenue; and

WHEREAS, the property owner and the City of Batavia desire to remove a tree that poses a threat to City of Batavia infrastructure as well as numerous surrounding properties on Tracy Avenue as well as Bank Street; and

WHEREAS, the City of Batavia has agreed to hire AJ’s Tree Removal Service to remove the aforementioned tree located at 111 Tracy Avenue for the amount of \$10,750 and a permanent easement will be entered into between the property owners and City allowing access to City infrastructure located at 111 Tracy Avenue.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Batavia hereby authorizes the City Council President to execute a document granting the easement for property located at 111 Tracy Avenue.

**Seconded by Councilmember
and on roll call**

PERMANENT EASEMENT

THIS INDENTURE made this ___ day of _____, 2022 between TERRANCE M. SHEARIN; JOAN H. SHEARIN, ADAM M. SHEARIN and BENJAMIN J. SHEARIN, residing at 111 Tracy Avenue in the City of Batavia, County of Genesee and State of New York, hereinafter referred to as the "Grantors" and the CITY OF BATAVIA, a municipal corporation existing under and by virtue of the laws of the State of New York, with its principal office at One Batavia City Centre in the City of Batavia, County of Genesee and State of New York, hereinafter referred to as the "Grantee".

WITNESSETH:

That the Grantor, in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, to them in hand paid by the Grantee, and other good and valuable consideration, to wit, the Grantee, assuming sole responsibility for the maintenance of the Easement Area and/or storm sewer line hereinafter described, does hereby remise, release and forever Quit Claim unto the Grantee, its successors and assigns, a permanent and perpetual easement over, under, across and through premises owned by the Grantor for the purpose of reconstructing, maintaining, repairing and replacing a storm sewer over, under, through and across all lands more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND extending for ten (10) feet in either direction at right angles to the centerline of an existing storm water culvert, commonly known as "The Big Ditch" passing on a southwesterly course through the building lot commonly known as 111 Tracy Avenue.

TOGETHER with all the rights and privileges incident and necessary to the enjoyment of this grant.

IN FURTHER CONSIDERATION, of the premises herein, and of the covenants set forth:

1. The duration of the easement and grant herein shall be permanent and shall run with title to the real property hereinabove described. Grantor will warrant and defend the grant and easement herein, against all claims and demands.

2. Grantee shall have the right of ingress and egress over the lands of the Grantor in the area of the easement hereinabove described for the purposes of reconstructing, maintaining, repairing and replacing the storm sewer line aforesaid.

3. Grantors expressly understand and agree that they shall not erect any building or structure for any purpose, or commit any act which may cause damage to the

said Easement Area and/or Sewer or prevent access or interfere with access by the Grantee to the area of the easement for purposes of reconstructing, maintaining, replacing or repairing of said storm sewer.

4. Whenever Grantee does work, it covenants to restore the area of easement to the conditions as nearly as possible as it existed on the day and date said work commenced.

5. The Grantee specifically agrees that in any reconstructing, maintaining, replacing or repairing of the said storm sewer, it shall be solely liable for any damage and shall indemnify and hold the Grantors harmless for all injuries, losses and damages that Grantors may sustain, suffer or be required to pay as a result of reconstruction, maintenance, replacement or repair by the Grantee.

6. This Agreement shall be binding upon and shall inure to the benefit of the respective parties, their heirs, executors, administrators, successors and assigns.

7. The entering into this Agreement by the City of Batavia has been duly authorized by a resolution adopted by the Batavia City Council at a regular meeting held by it on _____, 2022.

IN WITNESS WHEREOF, the parties hereto have hereby signed this Agreement and set their seals on the day and year first above written.




Terrance M. Shearin



Joan H. Shearin



Adam M. Shearin



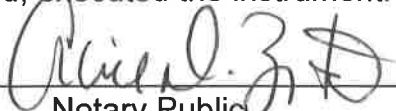
Benjamin J. Shearin

CITY OF BATAVIA, NEW YORK

By: _____
Eugene Jankowski, Jr. Council President

STATE OF NEW YORK)
) ss:
COUNTY OF GENESEE)

On this 19th day of August, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Terrance M. Shearin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

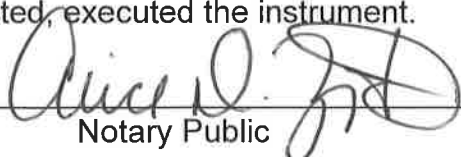


Notary Public

ALICE D. ZITO
Notary Public, State of New York
Commission #01Z16169769
Qualified in Wyoming County
Commission Expires July 2, 20 23

STATE OF NEW YORK)
) ss:
COUNTY OF GENESEE)

On this 19th day of August, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Joan H. Shearin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

ALICE D. ZITO
Notary Public, State of New York
Commission #01Z16169769
Qualified in Wyoming County
Commission Expires July 2, 20 23

STATE OF NEW YORK)
) ss:
COUNTY OF GENESEE)

On this 19th day of August, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Adam M. Shearin personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

ALICE D. ZITO
Notary Public, State of New York
Commission #01Z16169769
Qualified in Wyoming County
Commission Expires July 2, 20 23

STATE OF)

COUNTY OF)

) ss:

Please see attached for Notary!

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Benjamin J. Shearin personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

COUNTY OF GENESEE)

) ss:

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Eugene Jankowski, Jr. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

This certificate is attached to a _____ page document dealing with/entitled permanent easement and dated 7/13/22

California ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

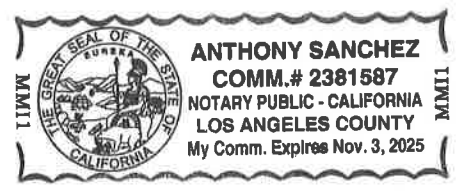
State of California
County of Los Angeles

On August 13, 2022 before me,
Anthony Sanchez, Public Notary (here insert name and title of the officer),

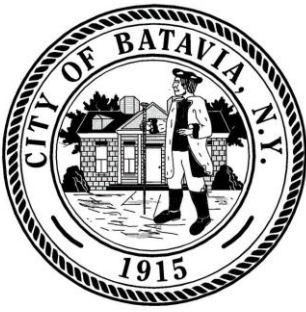
personally appeared Benjamin J. Shearin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Anthony Sanchez* (Seal)



City of Batavia

Memorandum

To: Honorable City Council Members

From: Rachael J. Tabelski, City Manager

Date: September 1, 2022

Subject: Creation of an Employee Payroll/Insurance Clerk

As the City continues to search for a qualified Human Resources Director, and as part of the transition plan for the Human Resources Director's retirement, it will be necessary to create an Employee Payroll/Insurance Clerk. The goal in creating this position, is to ensure that the knowledge, skills and abilities are transferred to this position in order to maintain the day-to-day operations of the department.

The job responsibilities of this position include conducting employee orientations, enrolling employees in the NYS Retirement System, health insurance, and other benefits, maintains employee personnel files, assists employees with answering employee related benefit questions, enters personnel changes into the City's payroll/HR software systems and Civil Service software system, tracks and enters workers' compensation claims, processes end of the year roll over of employee personnel information, and other employee related items as assigned.

The current FY 22/23 operating budget can support this position.

I recommend that City Council authorize the creation of the Employee Payroll/Insurance Clerk.

#-2022

**A RESOLUTION TO CREATE AN EMPLOYEE PAYROLL/INSURANCE
CLERK**

Motion of Councilmember

WHEREAS, in preparation of the upcoming retirement of the current Human Resources Director, and as part of the transition plan, it will be necessary to create an Employee Payroll/Insurance Clerk position; and

WHEREAS, the creation of this position will ensure that the knowledge, skills, and abilities are transferred to this position in order to maintain the day-to-day operations of the HR department and allow for a smoother transition in planning for the retirement and handling the workload of the department.

WHEREAS, the newly created position of Employee Payroll/Insurance Clerk will be placed in the Non-Union salary schedule, grade VIII.

NOW, THEREFORE, BE IT RESOVLED, that the Council of the City of Batavia hereby authorizes the creation of said position.

**Seconded by Councilmember
and on roll call**