

Lighting Services Agreement



Customer Legal Name City of Smyrna DBA NA

Service Address 0 Windy Hill Blvd Tunnel Lighting Smyrna GA 30080 County Cobb County

Mailing Address PO BOX 1226 Smyrna GA 30081

Email bjones@smyrnaga.gov Tel # 678-631-5430 Alt Tel # 678-758-4353

Tax ID# _____ Business Description Windy Hill Tunnel Lights

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

Selected Components				
Action	Qty	Wattage	Type	Description
INS	24	230	LED	Wall-Pack
INS	256	340	LED	Wall-Pack

Service Cost (\$)	Regulated Cost (\$)*	Monthly Cost (\$)*
\$2,934.40	\$0.00	\$2,934.40

Term (Months)	1
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* The actual Regulated Cost will be calculated using the tariffs approved by Georgia Public Service Commission at the time of billing. The estimate is based on Summer Rates in effect at the time of this proposal. Excludes applicable sales tax.

Project Notes:

Install above tunnel lighting system for the Windy Hill Blvd streetscape project.

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

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

Type	Customer	Tariff	Content
NEC	Gov	Metered	N/A

Pre-Payment (\$)
\$443,926.00

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

Customer Authorization	Georgia Power Authorization
Signature:	Signature:
Print Name:	Print Name: Dustin Young
Print Title:	Print Title: Account Exec
Date:	Date:

TERMS and CONDITIONS (*Lighting – Governmental Lease*)

1. **Agreement Scope.** This Lighting Services and Lease Agreement (“**Agreement**”) establishes the terms and conditions under which Georgia Power Company (“**GPC**”) will provide lighting and related service (collectively, the “**Service**”) to the customer identified on Page 1 (“**Customer**”) at the Service Address shown on Page 1 (the “**Premises**”). GPC may install, update, modify, or replace any GPC-owned pole, base, wiring, conduit, fixture, control, equipment, device, or related item at the Premises (collectively, “**Equipment**”) for any reason related to the Service or to use of Equipment.
2. **Term and Termination.** The initial Agreement term is stated on Page 1, calculated from the date of the first bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party (in accordance with the notice provisions of the *Miscellaneous* section below) at least 30 days before the desired termination date. The initial term and any renewal term or terms are collectively the “**Term**.”
3. **Intent and Title.** This Agreement governs GPC’s lease of Equipment and provision of the Service to Customer and is not a sale or licensing of goods, equipment, property, or assets of any kind. GPC retains the sole and exclusive right, title, and interest in and to all Equipment. Customer acknowledges that Equipment, although attached to real property, always will remain the exclusive personal property of GPC and that GPC may remove Equipment upon Agreement termination. **GPC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this transaction under any federal or state tax law. Customer enters into this Agreement in sole reliance upon its own advisors.**
4. **Payment.** GPC will invoice Customer monthly for the Monthly Cost as described on Page 1. The Service Cost portion of the Monthly Cost will renew at the amount shown on Page 1, but the Regulated Cost portion will be determined by the applicable Georgia Public Service Commission-approved tariff at the time of billing. Customer agrees to pay the total amount billed in full by the invoice due date. If a balance is outstanding past the due date, Customer acknowledges that GPC may require Customer to pay a deposit of up to two times the Estimated Monthly charge in order to continue Service. If applicable, Customer must provide a copy of its Georgia sales tax exemption certificate. Customer must pay costs associated with any Customer-initiated change to the Service after the date of this Agreement.
5. **Premises Activity.** Customer hereby grants to GPC and its contractors, agents, and representatives the right and license to enter the Premises at any time to perform any activity related to the Service or to GPC’s use of the Equipment, including the right to access the Premises with vehicles, Equipment, or other tools, and to survey, dig, or excavate, in order to: (i) install and connect Equipment, provide Service, or provide or install any other service; (ii) inspect, maintain, test, replace, repair, disconnect, or remove Equipment; (iii) install additional equipment or devices on Equipment; or (iv) conduct any other activity reasonably related to the Service or Equipment (collectively, “**GPC Activity**”). Customer represents or warrants that it has the right to permit GPC to provide the Service, to install the Equipment, and to perform the GPC Activity upon the Premises and, if applicable, has obtained express written authority and required permission from all Premises owners, and any other person or entity with rights in the Premises, to enter into this Agreement and to authorize the GPC Activity and the Service.
6. **Installation and Underground Work.** Customer recognizes that the Service may require installation of Equipment. Customer warrants or covenants that: (i) the Premises’ final grade will vary no more than six inches from the grade existing at the time of installation; and (ii) if applicable and required for proper installation, Premises property lines will be clearly marked before installation.
 - A. **Customer Work.** If GPC, upon Customer’s request, allows Customer, itself or through a third party, to perform any activity related to installation of Equipment (including trenching), Customer warrants or covenants that the work will meet GPC’s installation specifications (which GPC will provide to Customer and which are incorporated by this reference). Customer must provide GPC at least 10 days’ prior written notice of its schedule for the work, so that GPC can schedule GPC’s installation work promptly thereafter. Customer will be responsible for any additional costs arising from non-compliance with GPC’s specifications, Customer’s failure to complete Customer’s work by the agreed completion date, or failure to provide GPC timely notice of any schedule change.
 - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because GPC Activity may require excavation not subject to the Georgia Utility Facility Protection Act (O.C.G.A. §§25-9-1 – 25-9-13) (“**Dig Law**”), Customer must mark any private utility or facility (e.g., gas/water/sewer line; irrigation facility; fiber/data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If GPC causes or incurs damage due to Customer’s failure to mark a private facility or obstruction before GPC commences GPC Activity, Customer is responsible for all damages and any loss or damage resulting from any delay.
 - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, or similar condition (“**Unforeseen Condition**”). If GPC encounters an Unforeseen Condition in connection with any GPC Activity, GPC, in its sole discretion, may stop all GPC Activity until Customer either remedies the condition or agrees to reimburse all GPC costs arising from the condition. Customer is responsible for all costs of modification or change to Equipment requested by Customer or dictated by an Unforeseen Condition or circumstance outside GPC’s control.
7. **Equipment Protection and Damage.** Throughout the Term, in the event of any work or digging near Equipment, Customer (or any person or entity working on Customer’s behalf) must: (i) provide notices and locate requests to the Georgia Utilities Protection Center (“**UPC**”) and other utility owners or operators as required by the then-current Dig Law; (ii) coordinate with the UPC and any utility facility owner/operator as required by the Dig Law; and (iii) comply with the High-voltage Safety Act (O.C.G.A. §§46-3-30 – 46-3-40). As between Customer and GPC, Customer is responsible for any damage arising from failure to comply with applicable law or for damage to Equipment caused by anyone other than GPC or a GPC contractor, agent, or representative.
8. **Pole Attachments.** Nothing in this Agreement conveys to Customer any right to attach or affix anything to any Equipment. Customer agrees that it will not, and will not permit others to, rearrange, disconnect, remove, relocate, repair, alter, tamper with, or otherwise interfere with any Equipment. If Customer desires to attach or affix anything to Equipment, Customer must first obtain GPC’s written consent. Customer may call GPC Lighting and Smart Services business unit at 1-888-660-5890 to request consent.
9. **Interruption of Service.** Customer understands that Service is provided on an “as is” and “as available” basis and may be interrupted. If there is a Service interruption, Customer must notify GPC. Following notice, GPC will restore Service, at no cost to Customer. Customer may notify GPC by either calling 1-888-660-5890 or by reporting online at: <https://www.georgiapower.com/community/outages-and-stormcenter/power-outage-overview/street-light-outage.html>.
10. **Maintenance.** During the Term and subject to the other terms and conditions in this Agreement, GPC will maintain Equipment and will bear the cost of routine maintenance for all GPC-installed components. Any non-routine maintenance can be done at Customer’s written request and will be billed to Customer at then-current GPC rates. Customer must notify GPC of any need for Equipment repair by contacting in writing GPC as provided in Section 9 above. If the Equipment damage was caused by Customer or a third party, Customer will reimburse GPC for the repair or replacement cost.
11. **Disclaimer: Damages.** GPC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose, merchantability, or non-infringement) regarding Service, Equipment, or any GPC Activity. Customer acknowledges that, due to the unique characteristics of the Premises, Customer’s needs, or selection of Equipment, the Service may not follow IESNA guidelines. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, interruption of Service, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with loss or interruption of the Service, Equipment, or this Agreement, or arising from damage, hindrance, or delay involving the Service, Equipment, or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable. To the extent GPC is liable under this Agreement, and to the extent allowed by applicable law, GPC’s liability is expressly limited to: (i) with respect to the Service purchased by Customer, the annual amount paid by Customer for the Service; or (ii) with respect to any other liability, to proven direct damages in an amount not to exceed \$100.00. Customer is solely responsible for safety of the Premises; Customer agrees that GPC has no obligation to ensure safety of the Premises and that GPC has no liability for any personal injury, real or personal property damage or loss, or negative impact to Customer or any third party that occurs at the Premises.
12. **Risk Allocation.** Each party will be responsible for its own acts and the results of its acts, except as otherwise described in this Agreement.
13. **Georgia Security, Immigration, and Compliance Act.** Customer is a “public employer” as defined by O.C.G.A. § 13-10-91 and this is a contract for physical performance of services in Georgia. Compliance with O.C.G.A. § 13-10-91 is a condition of this Agreement and is mandatory. GPC will provide to Customer a contractor’s affidavit for installation services as required by O.C.G.A. § 13-10-91. If GPC employs any subcontractor in connection with installation under this Agreement, GPC also will secure from each subcontractor an affidavit attesting to compliance with O.C.G.A. § 13-10-91.
14. **Default.** Customer is in default if Customer: (i) does not pay the entire amount owed to GPC within 45 days after the due date; (ii) terminates this Agreement without proper notice and prior to the end of the then-current Term; or (iii) breaches any material term, warranty, covenant, or representation of this Agreement. GPC’s waiver of a past or concurrent default will not waive any other default. If a default occurs, GPC may: (a) immediately terminate this Agreement; (b) remove any Equipment from the Premises; or (c) seek any available remedy provided by law, including the right to collect any past due amount or any amount due for the Service during the remaining Term.
15. **Miscellaneous.** This Agreement contains the parties’ entire agreement relating to the Service, Equipment, and GPC Activity and replaces any prior agreement, written or oral. Subject to applicable law, GPC may modify the terms of this Agreement by providing 30 days’ prior written notice of such modification to Customer. If Customer uses the Service or makes any payment for the Service on or after the modification effective date, Customer accepts the modification. GPC’s address for notice is 1790 Montreal Circle, Tucker, GA 30084-6801; Customer’s address for notice is stated on Page 1. Either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other. Customer will not assign, in whole or in part, this Agreement or any right or obligation it has under this Agreement; any such assignment without GPC’s prior written consent will be void and of no effect. In this Agreement: (i) “**include(ing)**” means “include, but are not limited to” or “including, without limitation”; (ii) “**or**” means “either or both” (“A or B” means “A or B or both A and B”); (iii) “**e.g.**” means “for example, including, without limitation”; and (iv) “**written**” or “**in writing**” includes email communication. Georgia law governs this Agreement. If a court rules an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.