

CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20___ by and between the City of Overland Park, Kansas, (hereinafter, the "City") and Black & McDonald (hereinafter, the "Contractor").

WITNESSETH:

WHEREAS, the City desires to obtain services in support of a project described as follows:

STREET LIGHT MAINTENANCE SERVICES OF KCPL SYSTEM BUYOUT - 2013

(hereinafter, the "Project"); and

WHEREAS, the City has requested that the Contractor submit an engagement letter to outline services Contractor is proposing to provide; and

WHEREAS, the City and the Contractor desire to enter into an agreement setting forth the terms and conditions of their understanding as regards the services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES

The Contractor agrees to provide consulting services as set forth in Exhibit A attached hereto and incorporated herein by reference, (hereinafter the "Services").

SECTION 2. SUPPLEMENTAL AGREEMENTS

This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by a written supplemental agreement. If notice of any change in Services affecting the general scope of the Contractor Agreement or provisions of this Agreement, including but not limited to, Agreement price or Agreement time, is a requirement of any insurance policy held by Contractor as a requirement of this Agreement, the giving of such notice shall be the Contractor's responsibility.

SECTION 3. STATUS

Contractor is an independent contractor and as such is not an agent or employee of the City.

SECTION 4. COMPENSATION

A. Total Fee: City agrees to pay Contractor an amount not to exceed One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) per annum, including reimbursable expenses. The fee is based on the performance of the Services, and shall be billed using rates and reimbursable expenses as set forth in Exhibit A. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required above and shall be billed at the hourly rates set forth in Exhibit A.

- B. Manner of Payment: Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of undisputed invoice.

SECTION 5. TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Contractor. If the City terminates the Agreement prior to completion of Services, City shall compensate Contractor for all Services satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

SECTION 6. SUBCONTRACTING OF SERVICES

Contractor shall not subcontract any of the Services to be performed under this Agreement without first obtaining the written approval of City regarding the Services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the Services.

SECTION 7. OWNERSHIP OF REPORT

The final report and all documents prepared in connection with the Services shall be the property of the City upon completion of the Services. Contractor will have no responsibility to update its report for events and circumstances occurring after the report is accepted as final and complete by the City. The Contractor shall keep accurate books, records and supporting data in hardcopy or electronic form for at least four (4) years. For time, equipment and materials work, City shall have the right to audit all Contractor books relating to the charges. For Unit Prices, City shall have a right to audit Contractor books relating to the number of units completed. Charges which are more than four (4) years old shall not be subject to audit and are deemed final. If an audit determines that an overpayment or underpayment has occurred, then notice of such overpayment or underpayment shall be given to the Contractor together with that portion of the audit, which supports the determination. If the determination is not disputed, then the payment or refund shall be paid within thirty (30) days of the determination

SECTION 8. INSURANCE

- A. General: The Contractor shall secure and maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- B. Notice of Claim Reduction of Policy Limits: The Contractor, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- C. Commercial General Liability:

Limits –	
General Aggregate:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

- D. Automobile Liability: Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

- E. Umbrella Liability: The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits –	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

- F. Workers’ Compensation: This insurance shall protect the Contractor against all claims under applicable state workers’ compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers’ compensation law. The policy limits shall not be less than the following:

Workers’ Compensation:	Statutory
Employer’s Liability:	
Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee

- G. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is authorized to do business in the State of Kansas;
2. Carries a Best’s policy holder rating of A- or better; and
3. Carries at least a Class VIII financial rating, or
4. Is a company mutually agreed upon by the City and Contractor.

- H. Subcontractors' Insurance: If a part of the Contract is to be sublet, the Contractor shall either:
1. Cover all subcontractors in its insurance policies, **or**
 2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

SECTION 9. INDEMNITY

- A. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

- B. Indemnity: For purposes of this Agreement, Contractor hereby agrees to indemnify, defend and hold harmless the City, its agents and/or employees from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Contractor's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Contractor is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Contractor, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Contractor, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 10. DISPUTE RESOLUTION

City and Contractor agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

SECTION 11. AFFIRMATIVE ACTION/OTHER LAWS

A. During the performance of this Agreement, the Contractor agrees that:

1. Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;
2. in all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission ("Commission");
3. if the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. if the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
5. the Contractor shall include the provisions of Subsections 1 through 4 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Contractor:

- who employs fewer than four employees during the term of such contract, or
- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

B. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION 12. GENERAL PROVISIONS

A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

- C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.
- E. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- F. The City is a tax exempt political subdivision under Section 4221(a) of the Internal Revenue Code and K.S.A. 79-3606(b). Invoices will exclude taxes. The City will supply Contractor with a tax exempt certificate.

SECTION 13. TERM

The initial term of this Agreement is for one (1) year (the "Initial Term") commencing on the date set forth above with the option to extend the term of this Agreement for two (2) additional one (1) year periods. At the end of the Initial Term, this Agreement will automatically renew for another two (2), one (1) year periods unless either party provides notice to the other party in writing of the intent not to renew the Agreement or unless this Agreement is terminated as provided herein.

SECTION 14. CASH BASIS/BUDGET

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify contractor of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the City's then current budget year.

SECTION 15. ORDER OF PRECEDENCE

In the event of any conflict between this Agreement and any Exhibit or Attachment hereto, the terms of this Agreement shall prevail.

SECTION 16. EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed on the day and year first above written.

ATTEST: CITY OF OVERLAND PARK, KANSAS

Marian Cook, City Clerk

Carl Gerlach, Mayor

APPROVED AS TO FORM:

Tammy M. Owens, Deputy City Attorney

BLACK & McDONALD

Signature

Printed name of Authorized Signatory

Title of Authorized Signatory

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, That on this _____ day of _____, 20
_____ before me, the undersigned, a Notary Public in and for the County
and State aforesaid, came _____, (title) _____
of Black & McDonald, a corporation duly organized, incorporated and existing under and by virtue of
the laws of _____, who is personally known to me to be the
same person who executed as such officer the foregoing instrument on behalf of the Corporation,
and such person duly acknowledged the execution of the same to be the act and deed of the
Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day
and year last above written.

My Commission Expires: _____
Notary Public

STREET LIGHT MAINTENANCE AGREEMENT

EXHIBIT A

SCOPE OF WORK

I. GENERAL

The scope of work generally intended under the Agreement is to maintain and keep in good repair approximately 2070 designated street lights which were recently purchased from KCP&L. The specific performed tasks shall include routine and certain non-routine maintenance and/or or repair work as specified herein.

II. CONTRACTOR REQUIREMENTS

- A.** The Contractor shall be authorized to operate in the state of Kansas, if doing business under an assumed name, i.e. an individual, association, partnership, corporation, or otherwise, shall be registered with the appropriate state and local agencies.
- B.** The Contractor shall assume full responsibility for damage to City property caused by the Contractor's employees or equipment as determined by designated City personnel.
- C.** The Contractor shall perform all work in a safe manner and be solely responsible for the safety and well-being of its employees and others relative to the Contractors work, work procedure, material, equipment, transportation, signage, and related activities and equipment. This includes all traffic control measures when working on lights/poles which hang over street areas.
- D.** The Contractor shall possess and keep in force all licenses and permits required to perform the services of this Agreement.
- E.** Upon request, Contractor shall submit its company safety program to the City. The program shall include requirements applicable to the scope of its work and the protection of the Contractor's employees and the public relative to Contractor's work. The safety program shall include the operations of the Contractor's sub-contractors, at any tier, and include environmental protection, safety, occupational health, respiratory protection, hearing protection, fire prevention, and hazardous materials handling requirements as applicable. The safety program documents may be reviewed and approved by the City prior to notice to proceed.

III. WORK DESCRIPTION

The Contractor shall provide to the City customer care service, asset management, maintenance and repair of designated City owned street lights. The responsibilities of the Contractor in each of these areas include, but are not limited to, the following:

- A. Designation of Street Lights and Types**

The City shall designate to the Contractor in writing the specific number and approximate mapped location of street lights covered under this Agreement. Any changes to the original designation shall also be made to the Contractor in writing.

B. Street Light Maintenance (Unit Price Service)

The Contractor shall maintain and keep in good repair each of the designated street lights for an annual unit price service fee of \$44.70 per street light. The unit price service fee shall include the following:

1. Administrative

- a. Labeling:** Contractor will label each designated street light pole with a clear readable asset number tag using numbers provided by the City.
- b. Outage Monitoring:** Contractor shall regularly monitor all of designated street lights for outages. In addition to reports made to the Contractor's call center, and/or that have been inputted to its Computerized Maintenance Management System (CMMS), the Contractor shall conduct a night patrol of designated street lights once per month.
- c. Customer Service Coordination:** Direct interactions with the public and outside agencies will reside with the City. The City shall receive all initial call intakes for problems or issues regarding the designated street lights. Subsequent to receipt of a reportable issue, the City in turn will notify the Contractor through its own Call Center. The Contractor will respond to the reported issue and inform the City with sufficient information and in a format necessary to allow the City to adequately provide a return citizen response. The Contractor and the City will develop a procedural means to record the Contractor's work in the City's work order management system and an after-hours protocol for taking calls and communicating field response needs. The City shall have control over any public communications or statements made by the Contractor on the City's behalf.
- d. Call Center:** Contractor shall have and make available a 24-hour, seven days a week, toll free telephone line (Help Line) to take reports of failures from City personnel to dispatch the Contractor's personnel to investigate and perform any repair, and/or replacement. The Help Line shall include automatic recording machine backup for periods of multiple calls, but Contractor's personnel shall personally return calls to those parties that leave messages due to inability to reach a person on their initial call.
- e. Records:** Contractor shall keep an accurate record of all reported problems, all actions taken to resolve such problems, including dates and times of initial report and final resolution. Pursuant to item 1.c. and 1.d. of this Section the Contractor's records will made available to the City and in a format allowing the records to be integrated into the City's existing work order management system. Where reasonably practical this may include having the Contractor directly enter their work order history into the City's computer data base. Where direct access has been granted, the Contractor shall enter data no later than 24 hours after

work has been completed. Where data must be made available, the information will be submitted to the City no less than once a week.

- 2. Asset Management Electronic Database:** The Contractor shall number each of the designated street light poles as outlined in item 1.a., and supply the information to the City. The City shall have the right to periodically review and adjust the number and/or location of street lights covered under this Agreement. Changes to the number of designated street lights will only be made before the start of a Contractor's monthly billing cycle and will be reflected in adjustments to the fees paid in the new month and subsequent months thereafter. Fee adjustments will be made by multiplying the unit service fee rate times the changed number of designated street lights.

The Contractor shall maintain and manage an electronic database of the designated street lights covered under this Agreement. The Contractor may use its proprietary CMMS asset management software pursuant to the requirements of item 1.e. The CMMS system shall maintain a record for each street light repair that identifies: (a) the number and types of bulbs, ballasts, and/or photocells, and (b) the dates of installation, repair, and/or replacement. The Contractor's CMMS shall be used for electronic work order management and asset reporting. Nothing in this Agreement shall be construed as providing the City with ownership interest in or rights to the Contractor's CMMS program application.

- 3. Material Management:** The Contractor shall purchase and maintain, at its cost, a parts inventory of sufficient quantity to be able to perform the routine service work described herein. All parts and material costs which are part of the performance of routine street light maintenance is considered incidental to the unit price service fee. The Contractor warrants that products furnished conform to the requirements specified, are of good merchantable quality and suitable for the purpose intended.

As part of this Agreement the City, at its option, may purchase up to \$10,000 of street light materials from the Contractor's inventory. City purchase amounts are not guaranteed as the determination for purchases will be discretionary dependent upon the City's day-to-day needs and/or price advantages the Contractor may have to offer in comparison to bids the City received from its vendor resources.

The list of designated street lights will contain poles of various styles. The Contractor shall maintain a sufficient inventory of the various pole styles and/or employ a pole replacement strategy which negates undue delays in making repairs and/or creates a lack of professionalism in the appearance of a repaired pole.

The Contractor shall use and install materials approved by the City. Prior to the commencement of the work under this Agreement the Contractor shall submit its planned list of materials. The City shall provide the Contractor written approval or rejection of the submitted list within twenty (20) days of receipt. Failure to provide such notice within the twenty (20) day time frame shall be deemed as default approval.

- 4. Street Light Maintenance Incidentals:** The Contractor shall perform all necessary maintenance and repair work required to keep the designated street lights safely functioning and in good working order. The incidental work includes at minimum:

Provide all labor, equipment, and materials for the following:

- a.** Cobrahead Street Lights, (repair/ replace to ensure safe functioning and good working order)
 - i.** Heads (fixtures)
 - ii.** Bulbs & spot re-lamping
 - iii.** Glassware cleaning
 - iv.** Photocells
 - v.** Starting Aids
 - vi.** Ballasts
 - vii.** Wire inside pole
 - viii.** Access hole covers
 - ix.** Fuses and circuit breakers in street light poles
- b.** Underground/ Overhead Conductors and Cables, (locate and repair and/or install new conductors as necessary to ensure reliable and safe operation).
- c.** Leaning Poles, (straighten, repair and/or replace leaning poles as necessary to remediate danger to the public).
- d.** Inspection: Whenever a street light and/or pole receives maintenance or repair involving the use of a bucket lift truck the entire street light and pole assemblies shall be visually inspected for deficiencies. Identified deficiencies involving the following maintenance tasks shall be performed by the Contractor during the inspection:
 - i.** Tighten all loose bracket arm hardware
 - ii.** Tighten all loose pole hardware on dedicated street light poles
 - iii.** Remove tree limbs or other detrimental objects physically touching the street light assembly
 - iv.** Tighten all loose anchor bolts
 - v.** Wipe street light lenses clean and remove any foreign material from the street light housing or pole affecting its functionality

- e. **Third Party Damages (knock downs and cable cuts):** The Contractor shall make safe and repair all damages to downed poles and conductor cuts cause by third parties as no additional cost to the City. The Contractor shall be subrogated to the City's interests and right of recovery in all street lights which the Contractor repairs or replaces as a result of any actions by a third party. The City agrees to provide necessary information and assistance to the Contractor for enforcement of its subrogation rights to the extent that such information or assistance is uniquely available to the Contractor only from the City, and to the extent such information is not otherwise privileged.
- f. **Poles and Mast Arms:** Except as otherwise noted in Section III.C. (see below), the Contractor is responsible for maintaining, replacing and/or repairing all parts of the designated street lights including the structural components such as poles and mast arms.
- g. **Make-Safe Services:** Except as otherwise noted in Section III.C. (see below), the Contractor is responsible to secure and make safe situations where maintenance problems with the designated street light problems create a potential danger to the general public. Make-Safe actions may include, but are not limited to; de-energizing street light fixtures that have been knocked down or conductors that have been severed; making repairs or alterations to street light structural components to protect the immediate safety of the public, providing traffic control; removing and disposing of any broken glass or other debris; and, when necessary, notifying and coordinating efforts with local police or fire personnel, and/ or the local electric power provider. Upon securing and making the area safe to the general public, the Contractor will immediately notify the City's Public Works Department:

913-327-6600 (M-F 7:30 – 4:00)
913-493-4144 (Duty Supervisor Pager)

C. Street Light Repair Service (Added Cost Service): The City, at its option, may direct the Contractor to perform work outside the scope of that listed under Section III.B. Work that the Contractor performs beyond that incidental to the Unit Price Service Fee will be considered an Added Cost Service and billable as a separate service cost. See Attachment for the schedule list of prices for Added Cost Services. The schedule of prices shall include all labor, equipment, and materials necessary for the Contractor to perform the work and will only be performed by the Contractor upon receiving written authorization from the City, with the exception of Make-Safe Services as described in Section III.C.5 below. The following work items will be considered an added service cost:

- 1. Overhead and Underground Conductors:** Where the City has requests new conductors be installed or the existing system be upgraded beyond what the Contractor would normally perform as part of their maintenance responsibilities. Work will include all necessary materials, labor and equipment and conform to applicable regulatory standards and specifications.
- 2. Pole & Fixture Painting:** Painting, sanding and/or other repairs to external paint coating of poles and fixtures. Painting and repairs to external coatings will include

all required materials, equipment and labor to fully strip to bare metal the area to be repaired, preparation to receive paint, two coats of primer and two coats of a final paint layer, (all paint both type and color to be approved by the City prior to application).

3. **Leaning Poles:** Where the City requests leaning poles to be straightened which do not constitute an imminent danger of falling and which the request is made for aesthetic reasons.
4. **Storm Damages:** Repairs or replacements to street light poles as a result of damage directly caused from natural weather events. Storm damage repairs will be defined as those resulting from natural weather events where direct damage or failure has occurred to ten (10) or more street lights within a 72 hour period.
5. **Make-Safe Services:** Limited to where street light problems occur as a result of an Added Cost Service repair need. Where such situations result in potential danger to the general public, the Contractor shall be authorized to take certain actions without prior City approval to secure and make the situation safe. Make-Safe actions may include, but are not limited to; de-energizing street light fixtures and/or conductors; making repairs or alterations to street light structural components to protect the immediate safety of the public, providing traffic control; removing and disposing of any broken glass or other debris; and, when necessary, notifying and coordinating efforts with local police or fire personnel, and/ or the local electric power provider. Upon securing and making the area safe to the general public the Contractor will immediately notify the City's Public Works Department. Additional work beyond those activities considered necessary to address the intent of the Make-Safe Services clause will be directed and approved by the City.

IV. WORK PERFORMANCE STANDARDS

A. Service Level Standard for Street Light Maintenance (Unit Price Service)

1. All of the designated street lights will be field checked by the Contractor at least once each month. During the field check each light will be visually inspected for proper operation. Street lights found not functioning during the monthly inspections will be repaired upon discovery if possible. Street light deficiencies requiring repairs beyond the scope of routine maintenance covered under the base unit price service fee will be noted and reported to the City for further action. The Contractor will provide to the City written summary reports of its monthly inspection findings.
2. All installed material items used to perform routine street light maintenance will be new, unless otherwise agreed to by the City and be of a type and brand approved by the City.
3. Replacement of fallen or damaged street lights due to various acts of vandalism or accident, ("Knockdowns") will be completed within ten (10) business days of being aware of the incident.

4. The routine street light maintenance work incidental to the base unit price service fee shall be completed within two (2) working days of either being discovered by the Contractor or having been reported to the Contractor. The Contractor will immediately notify the City at the time it becomes aware that conditions beyond their control may delay completion of the work beyond the two (2) day time frame.

B. Service level Standard for Street Light Repair Service (Added Cost Service)

1. The Contractor shall complete repair service activities listed under Section III.C. within ten (10) business days of being reported to the Contractor and being authorized to proceed. Exceptions to this will be Make-Safe Services, (Section III.C.5. where the Contractor will immediately complete work necessary to ensure public safety. The Contractor will submit to the City a monthly summary of requested work extending beyond the scope of the Unit Price Service Fee.
2. Corrections to failures or faults in underground conductive power to street light poles and any requested surface restoration will be completed within ten (10) business days after receipt of notification and authorization to proceed.
3. Repair services may require non-stocked or unique special order material items. Upon receipt and authorization to proceed with such work the Contractor will have three (3) business days to order any special material items it may need and will have ten (10) business days from its receipt of the special order materials to complete the requested work.

C. Service Level Standards Guarantees

1. Street light Maintenance, Unit Price Service – Failure on the part of the Contractor to meet the service levels of Section IV.A. shall allow the City to deduct from monies owed or becomes owed to the Contractor the amount of twenty-five dollars (\$25) per day for each day past the two (2) work day completion time the work remains uncompleted. Exception to this will be where the Contractor’s completion of the work is delayed due to uncontrollable circumstances such as, Inclement Weather and/or need for special order materials. Deducted monies by the City represents liquidated damages for failure to meet the Agreement’s Service Level Standards and are not a penalty.
2. Street Light Repair, Added Cost Service – Failure on the part of the Contractor to meet the service levels of Section IV.B. shall allow the City to deduct from monies owed or become owed to the Contractor the amount of twenty-five dollars (\$25) per day for each day past the ten (10) work day completion time the work remains uncompleted. Exception to this will be where the Contractor’s completion of the work is delayed due to uncontrollable circumstances such as, Inclement Weather and/or need for special order materials. Deducted monies by the City represent liquidated damages for failure to meet the Agreement’s Service Level Standards and are not a penalty.
3. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Contractor. If the City terminates the Agreement prior to

completion of Services, City shall compensate Contractor for all Services satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

V. FEES & ADMINISTRATION

A. Unit Price Service Fee, (Street Light Maintenance)

The lump sum annual unit price per street light pole to perform the street light maintenance work as set forth in Section III.B. will be \$44.70. The annual unit price will be invoiced in twelve (12) equal monthly installments whereas the amount of each monthly installment will take into account the number of designated street lights within that month. Upon receipt of notification of any change to the number of designated street light poles the Contractor will include the change on the next regularly billing cycle. The Contractor shall be provided by the City with the number and address location of the designated street light poles covered under this Agreement. Thereafter the Contractor shall provide twice annually to the City a summary work report showing the number, location and relative frequency of inspection or repair made to each designated street light. The summary report will be incidental to the asset management information to be supplied as outlined elsewhere in this Agreement.

B. Added Cost Service, (Street Light Repairs)

The lump sum unit prices for Added Cost Services involving repair work as set forth in the scope of work are shown in Attachment. The Contractor will invoice the City upon satisfactory completion of the work separately from the Unit Price Service Fee.

C. Added Cost Service, (Undefined Repair Work)

Costs for work which is not pre-defined within this Agreement will be at the time and materials rate listed in Attachment. The Contractor will provide individual cost estimates for such work requests. Upon satisfactory completion of the work the Contractor will submit an invoice itemizing the unit quantity of work performed and its respective unit price. Invoices maybe submitted separately from the Unit Price Services Fee.

D. Price Escalators

1. Unit Prices:

All Unit Prices on the Attachment and the Unit Price Service Fee shall be fixed at the amount shown during the 12 month term of the Agreement. Beyond the Initial Term, should the unit price be adjusted at the time the Agreement is extended it will additionally remained fixed for each 12 month period the Agreement is renewed up to a total of 36 months from the date the Agreement is first signed.

If the Contractor increases the unit price at the anniversary date, the Contractor shall provide the City ninety (90) days' written notice prior to the expiration of the then current term.

2. Time and Material Pricing:

Time and material pricing shall remain fixed at the amount shown during the 12 month term of the Agreement. The labor rates of positions represented by Local 53 in Attachment may be adjusted up or down to reflect changes in the Union Labor Agreement. Such changes may be made at the time the Agreement may be renewed or, on or around September 1 following the first 12 months of the Agreement.

Material prices will be at the Contractor's invoice cost plus the 10% fee as shown on Attachment. This fee shall not be adjusted and will remain permanently fixed.

E. Billing & Payment

1. Unit Cost Service Fee:

On or around the first day of each month the Contractor shall invoice the City for the previous months received routine maintenance work. The City shall pay the undisputed portion of the invoice within thirty (30) days of receipt.

2. Added Cost Services:

The Contractor shall submit a separate invoice to City for any Added Cost Services received, included Make-Safe Services. The City shall pay the undisputed portion of the invoice within thirty (30) days of receipt.

Where an Added Cost Service represents a large scope of work and subsequent initial out of pocket expense to the Contractor, the parties shall confer on establishing a progress payment schedule.

F. Performance Monitoring

The City will have the right to monitor and inspect the Contractor's work at any time. The City will notify the Contractor of any deficiencies discovered and the Contractor will correct such deficiencies in a timely manner. Failure of the Contractor to correct deficient work or work performance will give cause to the City to not accept the Contractor's work resulting in possible assessment of liquidated damages as outlined in Section IV.

G. Subcontractors Subject to the provisions in Section 6 of the Agreement

1. Employment: The Contractor shall be allowed to employ sub-contractors to perform certain work or provide certain support services. The Contractor shall be responsible for ensuring its hired sub-contractors meeting the provisions of the Agreement. The Contractor will provide the City with the names, company address and all required insurance documents for any sub-contractor it employs for the work covered under this Agreement.

2. Supervision: The Contractor warrants the quality of the work performed by its subcontractors as though they were its own forces. Notice to Contractor shall be

considered notice to any affected subcontractor. Anything to the contrary in this Agreement notwithstanding, there shall be no contractual relationship between any subcontractor of Contractor and City.

3. **Removal:** The Contractor shall immediately remove any subcontractor from City work upon written notice from City that said subcontractor has failed to perform in a manner that is satisfactory to City. Contractor shall be as fully responsible and accountable to City for quality of work of its subcontractors, as it is for the work performed by Contractor itself.

H. Anti-Discrimination

The Contractor shall not discriminate against any employee, applicant for employment or subcontractor because of race, color, religion, sex, age, disability or national origin. The Contractor shall at all times fully comply with all applicable equal opportunity and affirmative action laws, regulations, statutes, ordinances and orders including (but not limited to) Executive Order 11246, Equal Opportunity Clause, as amended, and the rules, regulations and orders of the United States Department of Labor.

I. Labor

1. The Contractor shall employ only workers and subcontractors who are competent to perform the work assigned to them and who are adequately trained, experienced, and qualified. This will include NECA trained Journeyman Lineman and apprentices.
2. The City shall have the right to disapprove, and demand the removal from any work assigned to the Contractor under this Agreement, any craft or management personnel employed by the Contractor or Subcontractor hired by the Contractor. Upon receipt of written request by the City for such removal the Contractor shall then promptly cause such removal.

J. Work Periods

The Contractor shall normally perform assigned work under this Agreement Monday through Friday from 7:00 am to midnight. The Contractor will honor City requests to adjust work hours to specific days or times of day and in general will work the days and times necessary to meet the City's work needs.

K. Access to Maps and Records

The Contractor will be provided with access to available GIS maps and billing records of the City street light system. Contractor acknowledges and agrees that the City maps and the data thereon are the sole property of City and that Contractor may not make any use of the maps or the data thereon for any purpose other than to fulfill its obligations under this Agreement unless otherwise agreed in writing by City.

VI. SPECIAL CONTRACT CLAUSES

A. Uncontrollable Circumstances

Should Contractor be delayed in the final completion of the work required under the Agreement by strike, fire, Inclement Weather or other cause outside the control of Contractor, and which, in the reasonable opinion of City, was not contributed to by Contractor, and could not have been reasonably anticipated or reasonably avoided, then an extension of time sufficient to compensate for the delay, as reasonably determined by City, will be granted provided that Contractor gives City prompt notice, confirmed in writing within forty-eight (48) hours, of the cause of delay in each case provided that Contractor has used all reasonable means to minimize the delay. For Construction/Removal/Relocation Work, Contractor shall be given an extension of time that is no less than the duration of the Uncontrollable Circumstances to complete the work.

The Parties understand that occurrence of Maintenance and Repair work is cumulative in nature, such that a simple extension of time may not be sufficient to eliminate the backlog of work that arises during the Uncontrollable Circumstance. Therefore, the Parties shall mutually develop a recovery schedule for completing the backlog of Maintenance or Repair work arising from Uncontrollable Circumstances. If Contractor completes the recovery schedule on time, the evaluation of Contractor's performance will not be impacted by the Uncontrollable Circumstances. All Maintenance and Repair work arising after the end of the Uncontrollable Circumstances shall be subject to the service repairs times outlined in this Agreement, except in the event that City requests Contractor to divert its workforce to other activities, such as storm restoration, then the Maintenance and Repair work shall be treated as backlog work and subject to a recovery schedule due to Uncontrollable Circumstances.

The following shall not be considered Uncontrollable Circumstances: weather conditions other than Inclement Weather, inadequate construction force or lack of coordination with other contractors, or the failure of Contractor to adequately schedule and supervise the work or obtain the required personnel, equipment or material, or the failure of Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

B. Inclement Weather

For the purposes of this Agreement the term "Inclement Weather" shall be defined as weather conditions under which members of IBEW Local are not required to work pursuant to the then current bargaining agreement.

C. Public Relations

- 1.** The Contractor, its employees and any of its hired subcontractors shall conduct their work respectful to the public. All work actions, comments and formal communications available for public viewing from the Contractor will adhere to the highest degree of professionalism. No formal verbal statements or published

communications shall be made by the Contractor on behalf of the City unless otherwise authorized by the City.

2. Proprietary information of the Contractor shall be considered private. Neither party shall knowingly release private proprietary information to a third party without the prior written approval of the other party, except as may be required under the Freedom of Information Act.

ATTACHMENT

STREET LIGHT MAINTENANCE AGREEMENT

<i>Added Cost Work</i> Unit Price Schedule	<i>Unit Price</i>
Remove & Replace Wood Pole	\$ 975.00
Remove & Replace Steel Pole	\$1,875.00
Reset Existing Pole w/ New Base	\$1,100.00
Surcharge for New Base as Break-A-Way	\$ 250.00
Remove and Reset Pole (Existing Base)	\$ 930.00
Install/ Replace Overhead Conductor (per ft)	\$ 2.28
Remove & Replace Mast Arm	\$ 331.00
Remove & Replace Head (Re-Hang Mast Arm)	\$ 381.00
Re-install Mast Arm and Head (Reuse Material)	\$ 280.00
Straighten Leaning Pole	\$ 445.00
Paint Decorative Pole (per ft)	\$ 195.00
Trench or Bore (per ft)	\$ 12.75
Trench or Bore – Surcharge for Rock (per ft)	\$ 18.50
Note: 1) Excludes sales tax, if applicable	

ATTACHMENT (con't)

Added Cost Work

Time and Material Pricing

1. Labor Rates:

	<u>Straight</u> <u>Time Rate</u>	<u>Overtime</u> <u>Rate</u>	<u>Double</u> <u>time Rate</u>
General Foreman	\$91.33	\$134.11	\$176.89
Foreman Lineman	\$87.61	\$128.53	\$169.45
Journeyman Lineman	\$80.17	\$117.36	\$154.56
1st Apprentice	\$57.85	\$83.89	\$109.93
2nd Apprentice	\$57.85	\$83.89	\$109.93
3rd Apprentice	\$57.85	\$83.89	\$109.93
4th Apprentice	\$61.57	\$89.47	\$117.37
5th Apprentice	\$65.29	\$95.06	\$124.82
6th Apprentice	\$69.00	\$100.61	\$132.22
7th Apprentice	\$72.72	\$106.19	\$139.67
Lineman Operator	\$75.17	\$109.87	\$144.57
Groundman	\$55.06	\$79.70	\$104.34

Note: 1. The above hourly rates do not include any applicable sales tax.

ATTACHMENT (con't)

STREET LIGHT MAINTENANCE AGREEMENT

2. Equipment Rates:

<u>EQUIPMENT DESCRIPTION</u>	<u>Hourly Rate</u>
Pickup Truck – ½ ton	\$ 8.73
Pickup Truck – ¾ ton	\$10.35
Utility Truck - 1 ton	\$12.00
Flat Bed Truck	\$23.24
Single Bucket Truck <42ft	\$22.42
Double Bucket Truck <52ft w Material Handler	\$23.88
Digger Derrick - 13,000 lbs capacity	\$24.45
Digger Derrick - 25,000 lbs capacity	\$44.80
Cable Trailer	\$ 7.14
Pole Trailer	\$ 7.14
Backhoe - Equal 580 Case	\$24.42
Mini Excavator	\$19.32
Skid Loader	\$14.09
Trencher - Walk Beside	\$30.68
Trencher - Ride On	\$39.30
Boring Equipment (medium/moderate capacity)	\$85.10
Compressor w/ Breakers	\$12.50
Flasher Arrow Board	\$ 6.31

For any additional equipment furnished by Contractor, that is not owned by Contractor, the billable rate will be calculated as the actual invoice cost to the Contractor plus 10%.

Note: 1. The above hourly rates do not include any applicable sales tax.

3. Material Costs

For material cost the billable rate to the City will be calculated as the actual invoice cost to the Contractor plus 10%.

4. Subcontractor Costs

For subcontractor cost the billable rate to the City will be calculated as the actual invoice cost to the Contractor plus 10%.