

**MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Smith, Public Works Director

**Date:** September 22, 2014

**Subject:** **Discussion of Agreement with Georgia Power for Dunwoody Village Parkway Streetlights**

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**ITEM DESCRIPTION**

Discussion of an agreement with Georgia Power to install and maintain 47 streetlights on Dunwoody Village Parkway.

**BACKGROUND**

Georgia Power owns nearly all of the streetlights in the city. Under this arrangement, the developer pays an upfront installation cost and the city pays a monthly rate for energy usage and maintenance. The power company installs the poles and performs maintenance of the poles and lights.

The design for the Dunwoody Village Main Street project includes the addition of 47 streetlights. Georgia Power has provided the attached proposal to install the lights at a cost of \$173,209.10 with a monthly rate of \$788.19. The project budget presented to the mayor and council in 2013 included \$300,000 for the installation costs.

**RECOMMENDED ACTION**

Staff requests authorization to expend \$173,209.10 for installation of the streetlights and to execute the attached lease agreement for ongoing energy usage and maintenance.

3825 Rogers Bridge Road NW  
Duluth, Georgia 30097



September 17, 2014

Ms. Mindy Sanders  
City of Dunwoody Public Works  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346

RE: Site lighting at *Dunwoody Village Pkwy Streetscape - Chamblee-Dunwoody Rd & Mt Vernon Rd*

Dear Ms. Sanders:

Thank you for your interest in Georgia Power Outdoor Lighting Services. It was a pleasure to meet with you to discuss the Dunwoody Village Streetscape lighting needs.

Here is the installation and lease information for the new lighting based upon my site visit.

**Georgia Power Company proposes the following:**

- |  |
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| <ul style="list-style-type: none"> <li>• Install 47 – 150 Watt High Pressure Sodium Decorative Post Top Fixtures</li> <li>• Install 47 – 12’ Aluminum Grand Breakaway Decorative Poles with GFCI receptacles</li> <li>• Install underground conductor</li> </ul> |
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The monthly fee for this lighting system will be \$788.19 plus tax. The monthly lease includes installation, materials, energy, and maintenance. Installation scope does not include removal of rock or unforeseen obstacles.

The upfront construction amount required for this project is \$ 173,209.10.

This proposal is valid for 60 days from the above date.

Thank you.

Regards,  
Lori Martucciello  
Account Executive  
GA Power Lighting Services  
404.561.2100



**Governmental NESC® Lease Agreement Lighting Services**

Customer Legal Name City of Dunwoody DBA \_\_\_\_\_

Service Address Dunwoody Village Pkwy, Dunwoody, GA 30338 County Dekalb

Mailing Address ON AC

Email  \_\_\_\_\_ Tel # 678-382-6850 Alt Tel \_\_\_\_\_

Tax ID NA \_\_\_\_\_ Business Description City Streetscape

Existing Customer Yes  No  If Yes (and if possible), does Customer want Equipment added to an existing account? Yes  No  If Yes, Which Account Number NSA

Equipment (excludes any applicable sales taxes)										
Action	Qty	Wattage	Type	Description	OH/UG	M/UM	Equipment Amount (\$)	Estimated Regulated Charge (\$)*	Estimated Monthly Charge (\$)*	
(1) INS	47	150	HPS	ARC Generation Post Tops	UG	UM	\$477.99	\$310.20	\$788.19	
(2)										
(3)										
(4)										
(5)										
Install (INS) Remove (REM) Reconnect (R/C) Previously UnBilled (UNB)							Monthly Total *	\$477.99	\$310.20	\$788.19

\* The Regulated Charge is subject to change at any time as dictated by the Georgia Public Service Commission. The amount shown is an estimate based on Summer rates in effect at time of Agreement proposal; actual charges may vary.

**Project Notes:** Installation scope does not include removal of rock or unforeseen obstacles.

\*\*\*City contractor to provide and install 2" electrical conduit with Mule Tape; 24 - 30" below grade; stake stub ups at each covered and clearly marked location; to take last run to the end of the property line

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**Initial Term** 1 months **Prepaid Amount (excludes any applicable sales taxes)** \$173,209.10

Customer agrees to lease the Equipment referenced above from Georgia Power Company on the attached terms and conditions and authorizes all actions noted above.

Customer also agrees to allow removal of existing outdoor lights as outlined in the removal contract incorporated by this reference. Yes  N/A

Customer Authorized Signature <input checked="" type="checkbox"/>	Date	Georgia Power Company	Date
<input checked="" type="checkbox"/>			
Print Name <input checked="" type="checkbox"/>		Print Name	
Print Title <input checked="" type="checkbox"/>		Print Title	

GPC Internal Use Only		INS / REM	UNREG / REG	HID / LED	RETRO / NEW / RWC	CUST. CONV. (Y/N)	Lead #	PPID#
DWE		<u>INS</u>	<u>UNREG</u>	<u>HID</u>	<u>NEW</u>	<u>No</u>		
DWE							Rev Class: Coml <input checked="" type="checkbox"/> Res <input type="checkbox"/> Ind <input type="checkbox"/>	
DWE							Region <u>Metro North</u>	
DWE							Construction: New <input checked="" type="checkbox"/> Existing <input type="checkbox"/>	
DWE							Customer Choice? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

If an existing customer, list account number if it is not shown above: 02034-90028



**TERMS and CONDITIONS (NESC Non-Governmental)**

1. **Lighting Equipment Lease.** This Lease Agreement ("Agreement") states the agreed terms and conditions upon which **Georgia Power Company ("GPC")** will: (i) lease to "**Customer**" (identified on Page 1) the "**Equipment**" referenced on Page 1 for use at the stated "Service Address" (the "**Premises**"); and (ii) provide electric service to operate the Equipment. The "**Equipment**" includes all poles, bases, wiring, conduit, fixtures, controls, and related items necessary to provide lighting service through the listed fixtures, unless expressly noted otherwise in "**Project Notes**." Customer acknowledges that regulatory change during the Agreement term may require GPC to modify or replace some Equipment.
2. **Intent and Title.** This Agreement is not a sale of the Equipment to Customer. **Customer expressly acknowledges that GPC retains title to the Equipment** and agrees that this Agreement only gives Customer the right to use the Equipment during the Agreement term, so long as Customer complies with all terms and conditions. Customer acknowledges that the Equipment, although attached to real property, always will remain the exclusive personal property of GPC and that GPC may remove the Equipment when this Agreement ends. Customer authorizes GPC, without further consent or action, to file any UCC financing statement or security agreement relating to the Equipment and agrees that GPC may record those documents. **GPC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law; Customer enters into this Agreement in sole reliance upon Customer's own advisors.**
3. **Term.** The initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. GPC's address for notice is 1790 Montreal Circle, Tucker, GA 30084-6801; Customer's mailing address is noted on Page 1.
4. **Payment.** GPC will invoice Customer per the terms stated on Page 1, subject to any change in the electric service charge dictated by the Georgia Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). If a balance is outstanding past the due date, Customer agrees to pay a 1.5% late fee on the unpaid balance and 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.
5. **Premises Activity.** Customer grants a license and right of access to GPC, and its contractors and representatives, to enter the Premises with vehicles and equipment to: (i) install and connect the Equipment and, if applicable, remove or disconnect existing equipment (collectively, the "**Installation**"); (ii) inspect, maintain, test, replace, repair, or remove the Equipment; (iii) provide electric service for the Equipment; or (iv) conduct any other Agreement-related activity (items (i) – (iv) collectively, the "**GPC Activity**"). Customer represents that the individual signing this Agreement on its behalf has authority to do so and that it has express authority from all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the GPC Activity. **Customer is solely responsible for safety of the Premises and agrees that GPC has no obligation to ensure the safety of the Premises.**
6. **Installation.** Customer represents that: (i) the Premises' final grade will vary no more than 6 inches from the grade existing at the time of Installation; and (ii) if applicable and required for proper Installation, Premises property lines will be clearly marked before Installation.
  - A. **Customer Work.** If GPC, upon Customer's request, allows Customer to perform any part of the Installation (including trenching) itself or through a third party, Customer warrants that the work will meet GPC's installation specifications (which GPC will provide to Customer and are incorporated by this reference). Customer is responsible for all reasonable additional costs arising from Customer's non-compliance with GPC's specifications or lack of timely (i.e., 10 days') notice to GPC that GPC's Installation activity can commence.
  - B. **Underground Facility/Obstruction Not Subject to Dig Law.** Because GPC Activity may require excavation not subject to the Georgia Utility Facility Protection Act (O.C.G.A. §§25-9-1 – 25-9-13) ("**Dig Law**"), **Customer must mark any private utility or facility (e.g., gas/ water/sewer line; irrigation facility; low voltage 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 Installation, Customer is responsible for all damages and any resulting delay.
  - C. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly marked or identified ("**Unforeseen Condition**"). If GPC encounters an Unforeseen Condition, GPC, in its sole discretion, may stop all GPC Activity until Customer either remedies the condition or agrees to reimburse all GPC costs arising from the condition. Customer is responsible for all costs of Equipment modification or change requested by Customer or dictated by an Unforeseen Condition or circumstance outside GPC's control.
7. **Equipment Protection and Damage.** After Installation and throughout this Agreement's term, in the event of any work or digging near the 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 all utility facility owners or operators as required by the Dig Law; and (iii) comply with the High-voltage Safety Act (O.C.G.A. §§46-3-30 – 46-3-40). As between Customer and GPC, Customer is responsible for all damages arising from failure to comply with applicable law or for Equipment damage caused by anyone other than GPC (or a GPC contractor or representative).
8. **Maintenance.** During this Agreement's term, GPC will maintain the Equipment and will bear the cost of routine repair or replacement. **Customer must notify GPC of any need for Equipment repair by either calling 1-888- 660-5890 or by reporting the need online (<http://outdoorlighting.georgiapower.com>).**
9. **Pole Attachments.** If Customer desires to attach anything to any Equipment (poles, light fixtures, etc.), Customer must first obtain GPC's written consent. Customer must call GPC Lighting Services Business Unit at 1-888-768-8458 to obtain the proper pole attachment authorization.
10. **Disclaimer; Damages.** **GPC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose or of merchantability) regarding the Equipment or any GPC Activity.** Customer also acknowledges that, due to the unique characteristics of the Premises, Customer's needs, or Equipment choice, the Equipment may not follow IESNA guidelines. **Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Equipment or this Agreement, or arising from damage, hindrance, or delay involving the Equipment or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.**
11. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, release, hold harmless, and, at GPC's request, defend GPC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from or against any loss, damage, cost, expense, or liability (including actual attorneys' fees reasonably incurred and all expenses of investigation and defense) for any damage or claim for personal or bodily injury (including death), property damage (including loss of use), monetary damage, or equitable relief caused by or arising out of any misrepresentation or act or omission of Customer involving this Agreement, the Equipment, or the Premises, whether or not caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of GPC.
12. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing. GPC's waiver of any past default will not waive any other default. If default occurs, GPC, at its discretion, may immediately terminate this Agreement, collect all past due amounts (including late fees) and all amounts due for the Equipment during the remaining Agreement term, remove the Equipment from the Premises, and seek any other available remedy.
13. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. Only a written amendment signed by each party can modify this Agreement, except that either party may update administrative or contact information (e.g., address, phone, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations without GPC's prior written consent. No assignment, whether with or without consent, relieves Customer of its Agreement obligations. Customer must provide advance notice of a change in control of all, or substantially all, of Customer's ownership or interest in the Premises. In this Agreement, "**including**" means "including, but not limited to." 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.