

**PURCHASE AND SALE AGREEMENT  
REGARDING MUNICIPAL STREET LIGHTS**

This Purchase and Sale Agreement Regarding Municipal Street Lights (the “Agreement”), made effective as of the 1st day of \_\_\_\_\_, is by and between NSTAR ELECTRIC COMPANY (hereinafter known as “NSTAR Electric” or the “Company,”) a Massachusetts corporation with a usual place of business at 800 Boylston Street, Boston, Massachusetts 02199, and the CITY OF SOMERVILLE, a municipal corporation of the Commonwealth of Massachusetts having a usual place of business at 93 Highland Avenue, Somerville, Massachusetts (hereinafter known as the “City,”).

WHEREAS, the Company presently supplies the City with street lighting services under tariffs approved by the Massachusetts Department of Public Utilities (“DPU”);

WHEREAS, the City has agreed to purchase from the Company certain property of the Company, consisting of the Company's FERC Account 373 municipal street lighting facilities and equipment, municipal flood lighting and area lighting facilities and equipment, consisting of luminaires, lamps, ballasts, photocells, brackets, conductors from the luminaire to the distribution connection, dedicated poles where applicable, foundations, conduits, dedicated manholes where applicable, and other underground equipment that are not part of the distribution system, as shown and described on Exhibit A attached hereto and made a part hereof, it being the City's intent to purchase all street lights, flood and area lighting, and related equipment dedicated to municipal use (“the Facilities”);

WHEREAS, the Company has agreed to sell and transfer the Facilities subject to the terms and conditions specified below; and

WHEREAS, the Company and City (“the Parties”) wish to resolve all issues or disputes between them regarding purchase and sale of the Facilities; tariffs applicable to the City after said purchase and sale; operation and maintenance of the street lights after said purchase and sale; and other issues.

THEREFORE, in consideration of the promises and mutually dependent covenants herein contained, it is agreed between the Parties hereto as follows:

1. The Company does hereby agree to sell, assign, convey, transfer and deliver to the City, and the City does hereby agree to purchase and accept, subject to the terms and conditions set forth herein, the Facilities, upon the following terms and conditions:

Upon payment as specified in Section 2 below, the City shall have all right, title and interest in the Facilities, including without limitation, the right to use, alter, remove or replace the Facilities in any way the City deems appropriate for the operation of a

municipal owned street lighting system, except as expressly stated herein. Nothing in this Agreement shall be deemed to limit the City's use of dedicated poles or dedicated underground conduit purchased by the City under this Agreement except to the extent such use by the City involves access to the Company's manholes, padmount transformers, or the connections to the Company's distribution system.

2. Effective as of \_\_\_\_\_ (the "Settlement Date"), the Facilities shall be conveyed by the Company to the City by a bill of sale in consideration of the sum of \$1.00 to be paid by the City as set forth in Section 5 hereof, said amount mutually agreed by the City and Company to be legal and sufficient consideration. The Facilities shall be accepted by the City in their then present quantity, condition and location, "AS IS", without any representation or warranty whatsoever, except as is set forth in Section 3 herein, **THE COMPANY SPECIFICALLY DISCLAIMING ANY EXPRESS WARRANTY AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
3. The Company warrants and represents the following:
  - (i) that it has good and marketable title to the Facilities;
  - (ii) that the Facilities are free and clear of any and all liens and encumbrances; and
  - (iii) that it has received any necessary permits, approvals, licenses or permission to convey the Facilities as aforesaid.

If any dedicated streetlight pole which will be acquired by the City has been installed or located on private property, NSTAR Electric shall assign to the City any easement, license or other grant of location associated with said pole, to the extent allowed by such agreements. In addition, if NSTAR Electric has an agreement with any entity to use space on any dedicated streetlight pole which will be acquired by the City, NSTAR Electric shall, to the extent allowed by such agreement, assign to the City any such agreement.

4. The City warrants and represents that it has complied with all provisions of law that may be applicable to it to authorize the City's purchase and acceptance of the Facilities and the payment of the purchase price and any other payments to be made hereunder.
5. The City shall make payment of \$1.00 to the Company for the Facilities on or before \_\_\_\_.
6. The Parties understand and agree that all area and floodlighting fixtures owned by other private parties and/or the Company and the poles to which these fixtures are attached, remain the personal property of the Company and/or such private parties and are not part of this Agreement

7. The Parties agree that this Agreement shall not be construed by them to alter or cancel any outstanding billings by the Company to the City, all of which shall continue in full force and effect despite the execution and delivery of this Agreement.
8. Pursuant to this Agreement, the Company will be providing electric service and certain other services in order that the City may implement a City-owned street lighting system. The City is this day entering into a License Agreement with the Company and its successors and/or assigns, to authorize the attachment and maintenance of the Facilities and such other equipment and fixtures that the City may hereafter purchase from third parties for the provision of street lighting (“Additional Fixtures”). The form of the License Agreement is attached hereto and incorporated herein as Exhibit B (the “License Agreement”). The Parties hereby agree to use their best efforts to obtain the signature of Verizon New England, Inc., d/b/a Verizon Massachusetts (“Verizon”) to this License Agreement in substantially the form as set forth in Appendix B. In the event Verizon elects not to execute this License Agreement, the Company and the City will utilize the License Agreement. The City agrees to pay when due fees as specified in the License Agreement except as set forth in the succeeding sentences.

Nothing in this Agreement nor the License Agreement shall be deemed a waiver of any claim the City may make at any time that the imposition of pole attachment fees, whether by the Company, Verizon or any other party, is inconsistent with law, nor a waiver of the City’s right to challenge the proposed or actual imposition of pole attachment fees by the Company, Verizon and/or any other party before the DPU or a court of competent jurisdiction.

The City reserves the right to obtain supplies of electric energy from any person, over the distribution wires and facilities of the Company, as authorized by St. 1997, c. 164. Effective for electricity consumed on or after \_\_\_\_\_, the Company agrees to provide the City with electric distribution service for the Facilities, under the rates included in the S-2 tariff as in effect from time to time, or other applicable tariff (the “S-2 Tariff”). Nothing in this Agreement shall be construed as a waiver of the City’s rights to appeal to the DPU on any issue, excepting the propriety of the S-2 rate charges as currently stated in the S-2 tariff.

9. In connection with this Agreement, the Company and City acknowledge that the City is currently served under multiple accounts for street lighting service. The Company agrees that it will work with the City and use good faith efforts to merge and reduce the number of these accounts, to the extent the applicable tariffs allow.
10. In the event that the City employs one or more third parties to perform maintenance and/or repair of the Facilities and the Additional Fixtures, the City shall guarantee that

such third parties are qualified to perform according to the requirements of Article 5.1 of the License Agreement.

11. The parties acknowledge and agree that as of the date the City assumes ownership of the Facilities, a number of the Facilities described on the attached Exhibit A may not comply with the terms of all applicable safety codes, regulations or laws insofar as such codes, regulations or laws require that the Facilities be relocated so as to maintain safe clearances and other safety and related requirements (such Facilities are hereafter referenced as “Nonconforming Facilities”). The City agrees that at the time of any modification to the Nonconforming Facilities which involves any change of the bracket, the City shall relocate such bracket so as to maintain safe clearances and other safety related requirements, said relocation to be at the City’s cost. Notwithstanding the foregoing, the Company reserves the right to require the City to relocate any Nonconforming Facilities at the City’s cost if circumstances arise that, in the Company’s good faith judgment to be explained in writing to the City, determine that the Nonconforming Facilities pose a safety risk to persons or to the Company’s electric system.
12. The Parties agree that the making and breaking of electrical connections to the Company’s electric system shall only be performed by the Company’s employees or its contractors. The City accordingly expressly agrees that it will pay, as additional charges under this Agreement, all reasonable costs incurred by the Company in connection with any work performed to make or break electrical connections to the Company’s electric system resulting from the City’s operation or maintenance of its municipal street light system.
13. The City acknowledges that the Company and Verizon’s poles and related facilities are used and are to continue to be used primarily for utility purposes, and that the City’s use of the poles for a municipal street light system will be secondary. The City accordingly expressly agrees that it will pay, as additional charges under this Agreement, all reasonable costs incurred by the Company or by NET in connection with any “Make-Ready Work,” as that term is defined in Article 1.9 of the License Agreement, in order to provide or maintain space on any pole or facility for the Facilities and Additional Fixtures to be attached and connected.
14. The City agrees that any Additional Fixtures for installation on the Company’s poles shall be subject to the terms set forth in the License Agreement, as may be revised and as in effect from time to time, shall be free from all defects, and shall in no substantial way jeopardize the Company’s electric system or interfere with the Company’s operations. The Company may refuse to allow the placement of any Additional Fixtures which, at the Company’s reasonable discretion, are not so free from defects or that might so substantially jeopardize said system or interfere with said operations. The City reserves its rights to remove and replace the Facilities and Additional Fixtures as may be afforded

to the City by law, and reserves the right to appeal such refusal by the Company to the DPU and/or to a court of competent jurisdiction.

15. The Company agrees that the City may, unless otherwise provided by law, at its sole expense, repair, modify or replace any existing Facilities, and may install Additional Fixtures on existing poles that are either solely or jointly owned by the Company, subject to Paragraph 12 above, the License Agreement and further subject to the following provisions:
  - (a) the City or any third party contractor of the City shall use properly licensed and qualified personnel when repairing, modifying or replacing existing Facilities or installing any Additional Fixtures, and shall comply with all applicable safety codes, regulations or laws;
  - (b) the City shall give the Company no less than thirty (30) days of notice in advance of the installation of any Additional Fixtures or any modification to existing Facilities, except in emergency situations in which it shall give as much advance notice as practicable, (the replacement of burned out bulbs or other defective equipment with equipment of the same type, size and style shall not be considered “modification”); and
  - (c) the City shall give the Company no less than three (3) business days of notice for any requests for the making or breaking of electrical connections to the Company’s electric system.

Nothing in this paragraph shall be deemed an agreement by the City to pay any pole attachment fees in connection with installing Additional Fixtures.

All activities of the City or of any third party contractors in repairing, replacing or installing any street lighting equipment shall be performed using bucket trucks, without climbing poles and at a working height not to exceed the height of the applicable street lighting facility unless the City or the third party contractor has permission of the Company to perform work in another manner.

16. Within thirty (30) days from the date of this Agreement the City shall place identification tags on all dedicated streetlight poles owned by the City identifying the City as the owner of such poles. For all streetlight poles installed by the City after the date of this Agreement, the City agrees to place said identification tags at the time of the installation of said poles.
17. In the event that the Company exercises its right under Article 8.5 or any comparable provision of the License Agreement to rearrange or relocate the City’s facilities on the pole or to relocate the City’s facilities to another pole, the Company shall provide the City no less than 3 days advance notice, unless emergency circumstances prohibit such

notice, in which case the Company shall provide the City with as much advance notice as is practicable.

18. The City acknowledges that it has read and understands the provisions of Articles 13 and 14 of the License Agreement and agrees that the City and any and all contractors of the City shall be bound by the provisions of Article 13 entitled "Liability and Damages," and shall at all times be in conformance with the provisions of Article 14, entitled "Insurance", in addition to all other terms set forth in the License Agreement, attached as Exhibit B. It is expressly understood that the City's indemnification obligation found in Article 13.3 of the License Agreement applies only to those Facilities and Additional Fixtures attached to poles owned solely or jointly by the Company and/or Verizon, and that the City's indemnification obligation found in Article 13.3 of the License Agreement does not apply to any Facilities and Additional Fixtures not attached to poles owned solely or jointly by the Company and/or Verizon.
19. The City and Company agree that they will each give the other Party reasonable advance notice (no less than three (3) business days, except in the case of emergency repairs to the Company's distribution system) of any work on or near street lights, poles, fixtures or related equipment, whenever such work may or will affect the other Party's equipment or operations. The Parties further agree that each Party will cooperate with the other to the extent repairs, replacement or work on one Party's equipment or property requires the assistance or cooperation of the other Party.
20. The City is responsible for the maintenance of all City owned Facilities and Additional Fixtures. For underground connected facilities, the City will be responsible for all maintenance from the point of connection at the manhole, pad mount transformer or hand hole, as applicable, to the lighting equipment. For overhead connected facilities, the City will be responsible for all maintenance from the point of connection at the secondary to the City's lighting equipment. Coordination and or maintenance of City owned Facilities and Additional Fixtures will be as follows:

#### Overhead Connected Streetlights

The provisions of paragraphs 12 and 15 shall govern the coordination and maintenance of City owned overhead connected streetlight equipment.

#### Underground Connected Streetlights

- a) When a repair requires access to a Company hand hole, the City or the City's contractor will call the Company and inform the Company as to the location of the hand hole and that it will be accessing said hand hole in order to effectuate repairs. The City or the City's contractor will call the Company to inform the Company when the repair is complete.

- b) When a repair requires access to a Company manhole or pad mount transformer, the City's contractor will call Company and inform the Company as to the location of the repair.
- c) The Company will dispatch an Underground ("UG") troubleshooting crew (consisting of an UG Troubleshooter and an UG Apprentice) to fault locate and repair the streetlight connection at the pad mount transformer or manhole. If the problem is the connection or on the Company side of the connection, it will be repaired at no charge to the City.
- d) If the problem is the cable going from the pad mount transformer or manhole to the streetlight and a repair can be made within the manhole or at the pad mount transformer and excavation is not required, the UG troubleshooting crew will perform the repair at the City's expense. This repair service will be based upon the direct and related indirect full cost and expense to the Company.
- e) If the problem is the cable going from the pad mount transformer or manhole to the streetlight and the repair can not be performed as described in the above paragraphs (c) or (d), the UG troubleshooting crew will clear the cable and mark same for identification purposes. The Company will notify the City that the cable has been cleared. This fault location and disconnection service is at the City's expense and will be based upon the direct and indirect cost to the Company.
- f) The City or the City's contractor will schedule a repair of the cable that includes adequate notice to the Company for the presence of a Company Inspector. The Company will provide, at the City's expense, an Inspector to identify the manhole or transformer, determine the safety of the manhole or transformer, identify to the City or the City's contractor the streetlight cable, and to observe the safe work practices of the City or the City's contractor while working in the Company's manhole or working adjacent to the Company's transformer. This service will be based upon the direct and related indirect cost to the Company.
- g) After the City or the City's contractor has completed the repair to the cable, the Company UG troubleshooting crew will return to reconnect the cable at the City's expense. This reconnection service will be based upon the direct and related indirect cost to the Company.

The Parties acknowledge that there may be instances in which the Company will perform maintenance on portions of the overhead or underground system purchased by the City under this Agreement. The City expressly agrees that it will pay, as additional charges under this Agreement, all reasonable costs incurred by the Company in connection with such maintenance. Prior to performing any such maintenance, the Company will obtain the City's approval to perform the maintenance.

21. This Agreement and the rights and obligations set forth herein shall not be assigned by either Party without the agreement of both Parties. This Agreement may not be modified except in writing, shall inure to and be binding upon the Parties and their respective successors and assigns, and shall be construed in accordance with the laws of the Commonwealth of Massachusetts. This Agreement, the License Agreement, and the S-2 tariff constitutes the entire Agreement between the Parties regarding the Facilities and the Additional Fixtures and maintenance and service of the Facilities and the Additional Fixtures, and any previous representations, either oral or written are hereby annulled and superseded. The Parties have freely entered into this Agreement and agree to each of its terms without reservation.
22. All written notices required under this Agreement, but excluding notices required under the License Agreement, shall be given by posting the same in first class mail, postage prepaid, as follows:
- To the City:                      City of Somerville  
   Mayor's Office  
   93 Highland Avenue  
   Somerville, MA 02155
- Copy to:                              City of Somerville  
   DPW Commissioner's Office  
   1 Franey Road  
   Somerville, MA 02155
- To the Company:                NSTAR Electric Company  
   c/o NSTAR Electric & Gas Corporation  
   Legal Department, P170  
   800 Boylston Street  
   Boston, MA 02199
23. The Parties agree to use their respective best efforts to resolve any dispute(s) which may arise regarding this Agreement. If a dispute arises that cannot be resolved among the representatives of the Parties involved in the daily management and implementation of this matter, the Mayor (or other representative duly designated by the City) and the Company's senior electric delivery operations manager will use their respective best efforts to resolve such dispute. If those individuals are unable to resolve the dispute within a reasonable time period, the Parties agree to submit the dispute to alternative dispute resolution in the form of non-binding mediation for resolution prior to seeking to enforce this Agreement before a court or the DPU. In the event of any disputes that may arise regarding this Agreement or the purchase of street lighting equipment from the



Company, the Parties may refer to, and the mediator may consider, DPU precedent regarding street lighting disputes arising under G.L. c. 164, §34A. Either party may seek injunctive relief without resorting to alternative dispute resolution or mediation to prevent irreparable harm caused by a breach of this Agreement.

24. To the extent that there is a conflict between the provisions of the License Agreement and this Agreement, the latter shall govern.
25. The Parties acknowledge that recitals set forth above are an integral part of this Agreement and shall have the same contractual significance as any other language.
26. Notwithstanding the operation of law or any other document, the terms and conditions of this Agreement shall survive the termination of the Bill of Sale.
27. This agreement supersedes and replaces any previous Agreements for Streetlighting Service entered into by the Parties and these previous agreements are cancelled by the mutual consent of the parties.

IN WITNESS WHEREOF, NSTAR Electric and the City of have caused this Purchase and Sale Agreement to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_.

NSTAR ELECTRIC COMPANY

By: \_\_\_\_\_

By (print): Joseph R. Nolan, Jr.

Title: Senior Vice President

Date: \_\_\_\_\_

CITY OF SOMERVILLE

By: \_\_\_\_\_

By (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

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Francis X. Wright, Jr  
City Solicitor

CITY OF SOMERVILLE

I hereby certify that, of the total contract amount of \$ 1.00 the sum of \$ 1.00 is available at this time; and that the sum of \$ 1.00 is hereby encumbered against the appropriate account for the purpose of this contract; and that as additional funds become available, I will encumber additional monies up to the total contract amount.

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Edward Bean, City Auditor

## **LIST OF EXHIBITS**

Exhibit A: Description of the Facilities

Exhibit B: License Agreement

**EXHIBIT A**  
**DESCRIPTION OF THE FACILITIES**

NOTE: Within 90 days of the signing of this Purchase and Sale Agreement Regarding Municipal Street Lights, the Parties shall to the extent they deem necessary or desirable, exercise good faith efforts to revise the attached Exhibit A inventory.

**EXHIBIT B**  
**LICENSE AGREEMENT**