

### 3.17.14 Town Redline

## AGREEMENT OF SALE

This Agreement of Sale ("Agreement"), is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between The Narragansett Electric Company d/b/a National Grid, a corporation organized and existing under the laws of the State of Rhode Island, having its principal place of business at 280 Melrose Street, Providence, Rhode Island, 02907, (hereinafter referred to as the "Seller" or the "Company" and the City or Town Name, a municipality organized and existing under the laws of the State of Rhode Island, having its principal place of business at Street Address, City/Town, Rhode Island, Zip Code (hereinafter referred to as the "Buyer"). The Seller and the Buyer may hereinafter be referred to individually as a "Party", and, collectively, as the "Parties."

## RECITALS

**WHEREAS**, the Seller presently provides street and area lighting services to the Buyer pursuant to multiple Company tariffs approved by the Rhode Island Public Utilities Commission (the "PUC"); and

**WHEREAS**, the Buyer has exercised its rights under R.I.G.L. § 39-30-1, *et seq.* to buy the Company's existing outdoor street and/or area lighting and associated equipment located within the boundary limits of the City/Town Name as shown and described on Exhibit A attached hereto and made a part hereof (each, individually, a "Facility" and, collectively, the "Facilities"); and

**WHEREAS**, the purpose of the Act is to reduce the cost of streetlights and provide better and more efficient streetlight service; and

**WHEREAS**, the Act provides that a purchasing municipality shall have the right to use, alter, remove, or replace such acquired lighting equipment in any way the municipality deems appropriate; and

**WHEREAS**, pursuant to R.I.G.L. § 39-30-1, *et seq.*, Seller shall transfer the Facilities to the Buyer, subject to the terms and conditions of this Agreement; and

**WHEREAS**, such sale shall be made pursuant to the Narragansett Electric Company Street and Area Lighting – Customer Owned Equipment S-05, Retail Delivery Service Tariff ("S-05 Tariff") approved by the PUC; and

**WHEREAS**, Buyer will hereby purchase street and/or area lighting Facilities located in or upon Company's infrastructure pursuant to R.I.G.L. § 39-30-1, *et seq.*, and desires to retain and/or make light attachments of existing Facilities in or upon structures of Company pursuant to R.I.G.L. § 39-30-1, *et seq.* and the Agreement for Customer-Owned Street and Area Lighting Attachments between Seller and Buyer set forth in Exhibit C attached hereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Buyer agree to the following terms and conditions:

### I. BASIC UNDERSTANDINGS

1. The Seller agrees to sell, and Buyer agrees to purchase, the Facilities, subject to the terms and conditions of this Agreement, the S-05 Tariff and R.I.G.L. § 39-30-1, *et seq.* on an "as is, where is" basis, but including any existing product warranties to the extent assignable and allowed by such warranties.

2. Upon Closing (as defined below), the Seller will convey to the Buyer all of its rights, title and interests in such Facilities.

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3. The Buyer maintains sole responsibility for ensuring that the list of Facilities in Exhibit A is accurate and complete as of the Closing Date.

4. As of the Closing Date (as defined below), the Buyer shall assume all responsibilities and obligations associated with ownership of the Facilities, including, without limitation, those contemplated by this Agreement and the S-05 Tariff.

5. To the extent that Seller possesses existing physical, hardcopy paper maps that appear to relate to the Facilities, and such maps are able to be copied in a legible form, Seller shall furnish the Buyer with one (1) copy of each such map in its current form ("Map(s)") after the Closing as such Maps may be available. Seller shall not have any obligation to create any new maps for the Buyer, nor shall Seller have any obligation to review, update or correct any Maps. The Buyer assumes all risk and liability arising from the Buyer's (including any contractor, agent or representative of Buyer) use or reliance on any Map or information contained therein. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THE MAPS, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE MAPS.

## II. PURCHASE PRICE

1. The Buyer shall pay to Seller at Closing a total consideration of \$ \_\_\_\_\_ ("Purchase Price") for the Facilities. The Parties acknowledge that the Purchase Price is mutually agreed and is legal and sufficient consideration for the Facilities pursuant to R.I.G.L. § 39-30-1, *et seq.*

2. The Buyer shall be solely responsible for the payment of all taxes on or relating to the Facilities, if any, following the Closing Date and thereafter. The Seller shall pay all taxes on the Facilities up to and including the Closing Date. Notwithstanding the designation of a Party as the owner of record of the Facilities for tax purposes, unless the tax liability on the Facilities is abated in its entirety as of the Closing Date, the tax liability shall be apportioned between Buyer and Seller in proportion to the number of days during such tax year within which Buyer and Seller, respectively, owned the Facilities. If the amount of the tax liability is not known or cannot be determined reliably at the time of the Closing, the tax liability shall be apportioned on the basis of the tax assessed for the most recent tax year for which such an apportionment or determination can be made, with a reapportionment to be performed as soon as the new tax rate and valuation can be ascertained.

## III. CLOSING, TITLE AND DISCLAIMER OF WARRANTIES

1. **CLOSING:** The closing of the purchase and sale of the Facilities ("Closing") shall occur on or about Month \_\_, 20\_\_ or such other date as may be mutually agreed by the Parties ("Closing Date"). At the Closing, Buyer shall pay the Purchase Price to Seller, and Seller shall deliver to the Buyer a Bill of Sale in the form attached hereto as Exhibit B (the "Bill of Sale"), incorporated herein by reference.

2. **LIENS AND ENCUMBRANCES:** Seller represents to Buyer that the Facilities are free from liens and encumbrances that are known to the Seller.

3. **CONDITION PRECEDENT:** The Closing shall be conditioned upon the execution of the Agreement for Customer-Owned Street and Area Lighting Attachments between Seller and Buyer in the form attached hereto as Exhibit C, incorporated herein by reference.

4. **BILL OF SALE; DISCLAIMER OF WARRANTY:**

(a) Seller shall transfer title to the Facilities to Buyer and assign any existing product warrantie by the Bill of Sale attached hereto as Exhibit B.

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(b) THE FACILITIES ARE SOLD "AS IS WHERE IS". THERE ARE NO PROMISES, COVENANTS OR UNDERTAKINGS WITH RESPECT TO THE FACILITIES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRIC SAFETY CODE (NESC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE FACILITIES ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF THE SELLER AND THE SELLER MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

#### IV. OWNERSHIP AND ATTACHMENT/EASEMENT RIGHTS

1. **DEMARCATON OF OWNERSHIP:** The point of ownership demarcation shall be deemed to be the existing connection point where the applicable street light Facility is energized from the electric distribution system ("Connection Point"). The Seller shall retain ownership of the electric distribution system up to and including the Connection Point. Buyer shall own the street lighting system from the Connection Point to the luminaire inclusive of the applicable Facilities. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Seller shall, in its sole discretion, define the Connection Point.

2. **THIRD PARTY LIGHTING:** Lighting facilities (including, without limitation poles, standards, arms, brackets, wires, cable, conductor, conduit, foundations and luminaires) owned by Seller and used to provide regulated lighting services to independent third party customers (each, a "Third Party Lighting Asset" or collectively, the "Third Party Lighting Assets") shall not be included in the Facilities that are being transferred to the Buyer through this Agreement. The transfer of Facilities shall exclude facilities upon which Third Party Lighting Assets are attached, physically and/or electrically; provided, however, the Seller shall transfer the requested luminaires and associated brackets or arms to the Buyer on these facilities upon which Third Party Lighting Assets are attached. The Seller shall continue to provide the regulated lighting services to independent customers in the City/Town of City/Town Name after the Closing Date.

3. **JOINT USE INFRASTRUCTURE:** The Buyer understands that some of the Facilities are currently installed or otherwise coexist ("Coexisting Facilities"), in whole or in part, on or within Seller's conduit, vaults, or other Seller facilities, assets or infrastructure ("Joint-Use Structures"), and that such Coexisting Facilities shall not be separated from the Joint Use Structures prior to Closing.

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4. **ATTACHMENT RIGHTS:** Pursuant to R.I.G.L. § 39-30-1, *et seq.*, Seller shall provide attachment rights to the Buyer for the Facilities to the Seller's support infrastructure and electric distribution system in accordance with the terms in the Agreement for Customer-Owned Street and Area Lighting Attachments set forth in Exhibit C, attached hereto.

5. **EASEMENT/ACCESS RIGHTS:** Seller shall assign to Buyer the non-exclusive right, in common with Seller and others entitled thereto, to maintain and operate the Facilities under any existing easement, license, grant of location or other agreement associated with said Facilities, to the extent assignable and allowed by such easements, licenses, grants of location or other agreements without any warranties or representations whatsoever. Company will provide any such easements, licenses or grants no less than sixty days prior to transfer of the Facilities and will either work with Customer to resolve any impediment to the operation of any Attachments or Facilities prior to transfer or reduce the price appropriately.

#### V. LIABILITY

The Parties and the parties affiliates, and their respective officers, directors, employees, representatives and contractors shall not be liable to each other for any indirect, consequential, punitive, incidental, special, or exemplary damages in connection with this Agreement, or the Attachments contemplated herein, including, without limitation, the condition, design, engineering, installation, maintenance, construction, location, operation of, or failure of operation of, the Facilities Poles or Structures, under any theory of law that is now or may in the future be in effect, including without limitation: contract, tort, R.I.G.L. § 6-13.1-1 *et seq.* strict liability or negligence.

#### VI. INDEMNIFICATION

The Parties acknowledge and agree that the indemnification provision in the Agreement for Customer-Owned Street and Area Lighting Attachments is incorporated herein by reference; provided, however, that this Article shall not apply to any liability, loss, damages, or expense arising out of any claim from personal injury or property damage or other type of claim, in which the cause of action occurred before the Closing Date.

#### VII. INSURANCE

The parties and their contractors shall, at their own sole cost and expense, obtain and keep in force comprehensive general liability insurance in terms and amounts commercially reasonable (but not less than any applicable statutory or regulatory limit or cap on liability) covering any action arising in connection with this Agreement.

The Buyer may elect to self-insure provided that the Seller consents and Buyer provides written notice and evidence of self insurance to the Seller prior to transfer of the Facilities and execution of this Agreement.

#### VIII. MISCELLANEOUS

1. **GOVERNING LAW:** This Agreement shall be governed by, performed, and construed in accordance with the laws of the State of Rhode Island without regard to the conflicts of law principles contained therein.

2. **PRIOR AGREEMENTS:** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements, discussions, communications, and correspondence. Any prior agreements, promises, negotiations, or representations not set forth in this Agreement are of no force or effect.

3. **ASSIGNMENT, MODIFICATION:** This Agreement and the rights and obligations set forth herein shall not be assigned by either Party without the written agreement of both Parties. This Agreement may

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**Deleted:** If Company cannot locate any easement affecting streetlights prior to sale and if the Municipality requires the easement in any future legal action, the Company agrees to use its best efforts to locate such easement. (SETH: Does this work? )

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**Deleted:** From and after the Closing Date, the Seller, its affiliates, and their respective officers, directors, employe

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**Deleted:** es, and agents, shall not be liable to Buyer or its officers, officials, employees, representatives or contractors for direct, indirect, consequential, punitive, special, exemplary, or any other damages under any theory of law that is now or may in the future be in effect, including without limitation, contract, tort, R.I.G.L. § 6-13.1-1 *et seq.*, strict liability, or negligence, in connection with this Agreement, the Agreement for Customer-Owned Street and Area Lighting Attachments set forth in Exhibit C, attached hereto, or the Facilities, including, without limitation, damages with respect to or arising from the condition, operation of, or failure of operation of the Facilities. The Buyer's sole remedy for recovery under this Agreement shall be limited to an equitable remedy to enforce the transfer of the Facilities under the Agreement.

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**Deleted:** In accordance with the License Agreements, the Buyer shall, at its sole cost and expense, obtain and keep in force comprehensive general liability insurance in terms and amounts commercially reasonable (but not less than any applicable statutory or regulatory limit or cap on liability) covering any action arising in connection with this Agreement, and shall name the Seller as an additional insured thereunder. Such insurance will insure all of the indemnity obligations set forth herein and, upon request, the Buyer shall provide a certificate of insurance to Seller showing such coverage.

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not be amended or modified except in a writing signed by both Parties, and shall inure to and be binding upon the Parties and their respective successors and assigns.

4. **SEVERABILITY:** If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

5. **SURVIVAL:** Articles I(5), III(4)(b), V, VI, VII, VIII(1) and Exhibit C shall survive closing.

6. **NOTICE:** Any notice given under this Agreement shall be in writing and shall be hand delivered, sent by registered or certified mail, delivered by a reputable overnight courier, or sent by facsimile with electronic confirmation of receipt, to the other party's representative as follows:

Buyer:  
City/Town Name  
Street Address  
City/Town, State Zip Code  
Attention: \_\_\_\_\_

Seller:  
The Narragansett Electric Company d/b/a National Grid  
40 Sylvan Avenue  
Waltham, MA 02451  
Attention: Outdoor Lighting & Attachments

7. **APPLICABLE STATUTE AND TARIFF.** The Parties understand and agree that this Agreement is made pursuant to R.I.G.L. § 39-30-1 *et seq.*, and shall be subject to the terms of the S-05 Tariff. To the extent there is any conflict between this Agreement and the S-05 Tariff, the S-05 Tariff shall govern.

{Signatures on the following page.}

**IN WITNESS WHEREOF**, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

<b>City/Town Name</b>	<b>The Narragansett Electric Company d/b/a National Grid</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A  
DESCRIPTION OF STREET AND AREA LIGHTING FACILITIES

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**EXHIBIT B**

**BILL OF SALE**

The Narragansett Electric Company d/b/a National Grid, a Rhode Island corporation with a principal place of business in Providence, Rhode Island, ("Seller"), in consideration of \$Purchase Price paid by the City/Town of City/Town Name ("Buyer"), the receipt of which is hereby acknowledged, does hereby sell, transfer and assign all its right, title, and interest unto Buyer, in the following described goods and chattels, to wit:

[Description of Facilities –Exhibit A]

THE FACILITIES ARE SOLD "AS IS WHERE IS" THERE ARE NO PROMISES, COVENANTS OR UNDERTAKINGS WITH RESPECT TO THE FACILITIES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRIC SAFETY CODE (NESC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE FACILITIES ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF THE SELLER AND THE SELLER MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

TO HAVE AND TO HOLD the Facilities herein described unto Buyer, its successors and assigns, to its and their own use and benefit forever.

IN WITNESS WHEREOF, THE NARRAGANSETT ELECTRIC COMPANY has caused these presents to be signed in its name and behalf by its duly authorized representative, this \_\_\_\_ day of Month, Year.

The Narragansett Electric Company d/b/a National Grid  
By: \_\_\_\_\_  
Name: Authorized Signer  
Title: Title

Accepted as to the Terms and Conditions contained herein,

CITY/TOWN NAME

By: \_\_\_\_\_  
Name: Authorized Signer  
Title: Title



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**EXHIBIT A TO BILL OF SALE  
DESCRIPTION OF STREET AND AREA LIGHTING FACILITIES**

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EXHIBIT C  
AGREEMENT  
FOR  
CUSTOMER-OWNED STREET AND AREA LIGHTING  
ATTACHMENT

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