

New York Supreme Court
Appellate Division – Second Department

Docket No. 2021-01543

In the Matter of the Application of

DEBORAH KOPALD,
Petitioner-Appellant

For a Judgment pursuant to Article 78

-against-

THE TOWN OF HIGHLANDS, NEW YORK,
THE NEW YORK POWER AUTHORITY
Respondents-Respondents

ORANGE AND ROCKLAND UTILITIES, INC.,
Respondent

RECORD ON APPEAL VOL. 2 of 2 (Pages 810-1189)

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Orange County Clerk's Index No. EF004088-2020

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TOWN of HIGHLANDS



*Bear Mountain
Fort Montgomery
Highland Falls
West Point*

Chartered December 3rd, 1872

*254 Main Street
Highland Falls, NY 10928
(845) 446-3398-4280
Fax: (845) 446-4298*

Deborah Kopald
PO Box 998
Fort Montgomery, NY 10922

Deborah-

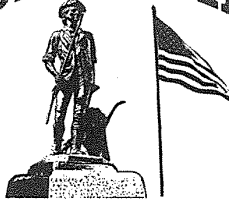
In response to your other FOIL request dated September 16, 2019, the Town has not received another contract from NYPA. I have sent you the contract that we have from a previous FOIL request.

Respectfully,

A handwritten signature in black ink that reads "June Patterson". The signature is written in a cursive style.

June Patterson
Town Clerk
Town of Highlands

TOWN of HIGHLANDS



Chartered December 3rd, 1872

Bear Mountain
Fort Montgomery
Highland Falls
West Point

254 Main Street
Highland Falls, NY 10928
(845) 446-3398-4280
Fax: (845) 446-4298

Deborah Kopald
PO Box 948
Fort Montgomery, NY 10922

Deborah-

This is in response to your FOIL request dated September 16, 2019.

Unfortunately, at this time, we are unable to complete this request due to incomplete information. Please provide an address of the property that you are requesting information on.

When this is received, we will begin processing this request. Also, do you wish to review the file or have it copied for you?

Respectfully

A handwritten signature in black ink that reads "Jane Patterson". The signature is written in a cursive style.

Jane Patterson
Town Clerk
Town of Highlands

Exhibit 12b Town of Highlands Agendas September 20, 2019 (812-813)

7/27/2020

Yahoo Mail - agenda 09.23.19.docx

agenda 09.23.19.docx

From: Lesley Peterson (lpeterson@highlands-ny.gov)

To: deborah_kopald@ymail.com

Date: Friday, September 20, 2019, 04:15 PM EDT



agenda 09.23.19.docx
14.7kB

TOWN OF HIGHLANDS

TOWN BOARD MEETING AGENDA , 2019.....7:00 PM

Public comment on Agenda items only.

Approval of previous minutes.

Communications (letters, phone calls, etc.).

Financial reports, requests and resolutions.

- Paid out from paying account \$62,178.04 to cover check run dated September 13, 2019. The big items are: GLOBAL MONTELLO GROUP CORP \$2059.95 SANITATION-DEISEL FUEL; NYS MUNICIPAL WORKERS COMP \$31,903.25 EMPLOYEE INSURANCE COVERAGE; ORANGE & ROCKLAND UTILITIES \$3037.12 MULTIPLE DEPTS-ELECTRIC DELIVERY (NOT INCLUDING STREET LIGHTS); RIDER, WEINER & FRANKEL \$6629.45 LEGAL SERVICES.

Board Liaison reports and Department Heads (as needed)

Supervisor's report.

Attorney's comments and concerns

Unfinished business.

General business.

- Re-Appointment of Sole Assessor.
- Appointment of Part Time Crossing Guard at FM School crossing.
- Permission for Ryan Falk to attend Water License classes Oct 22 & 23.
- Set public hearing for local noise ordinance.
- Review of progress of projects at FM Sewer Plant.

Other business not listed above.

General public comment.

Adjourn regular meeting.

Executive session. (if necessary)

Exhibit 12c Town email September 24, 2019 (814)

7/27/2020

Yahoo Mail - FOIL Request 2019-00115 : Completion Letter

FOIL Request 2019-00115 : Completion Letter

From: Lesley Peterson (lpeterson@highlands-ny.gov)

To: Deborah_Kopald@ymail.com

Date: Tuesday, September 24, 2019, 09:22 AM EDT



Kopald.pdf
762.6kB



CompletionLetter.pdf
55.6kB

Exhibit 12d_Authorization to Proceed with LED Light Inquiry
(816-817)



NY Power
Authority

COPY

ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

April 5, 2019

Supervisor Bob Livsey
Town of Highlands
254 Main Street
Highland Falls NY 10928

RE: Energy Services Program
Authorization to Proceed with turn-key street light project
Town of Highlands– LED Street Lighting

Dear Supervisor Livsey,

The New York Power Authority (NYPA) is excited to support the Town of Highlands in identifying and implementing a comprehensive street lighting upgrade. Improving the existing street lights is a widely used and effective strategy to achieve the goal of reducing energy consumption, lowering utility costs, and improving light quality throughout the community.

Consistent with the Master Cost Recovery Agreement, NYPA provides a turn-key solution to upgrade the Town of Highlands's existing street lights to energy efficient LED technology. NYPA is pleased to offer these services to replace approximately 167 existing street light fixtures with new high efficient LED technology.

By signing below, the Town of Highlands authorizes NYPA to proceed with the full turn-key solution of the LED street lighting project, which includes the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project. When the design and bidding is completed, you will receive an Initial Customer Installation Commitment (ICIC) for your review and signature. At this point, if you choose to proceed to project implementation all development costs will be rolled into the overall project. Conversely, should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase. NYPA will be fully transparent through this process and provide complete documentation as to how it determined all project costs.

By signing below, affirm that you agree to these conditions:



NY Power Authority

ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

PAGE 2
AUTHORIZATION TO PROCEED – Town of Highlands

Joseph Rende

(Name, printed)

Senior Director, Customer Business
Development

(Title)

(Signature)

(Date)

MERVIN R. LIVSEY

(Name, printed)

Town Supervisor

(Title)

[Handwritten Signature]

(Signature)

9-24-19

(Date)

Exhibit 13 Notice
(817-825)

7/27/2020

Yahoo Mail - RE: Town of Highlands LED streetlight scheme with O&R

RE: Town of Highlands LED streetlight scheme with O&R

From: dps. sm. Secretary (secretary@dps.ny.gov)

To: deborah_kopald@ymail.com

Date: Monday, July 27, 2020, 11:24 AM EDT

Good morning,

The application has not been received yet.

You can search by company name, town name, or put the word "street lighting".

Thank you.

From: Deborah Kopald [mailto:deborah_kopald@ymail.com]
Sent: Monday, July 27, 2020 6:17 AM
To: dps.sm.Secretary <Secretary@dps.ny.gov>
Subject: Town of Highlands LED streetlight scheme with O&R

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Has an application been made yet to the PSC to approve the Town of Highlands to the LED streetlight scheme with O&R?

Can you also tell me what to type into the advanced search to figure this out?

thanks

Deborah

NOTICE

From: Deborah Kopald (deborah_kopald@ymail.com)

To: blivsey@highlands-ny.gov; kpecoraro@highlands-ny.gov; jpatterson@highlands-ny.gov; justin.driscoll@nypa.gov

Cc: newsofthehighlands@gmail.com; jrider@riderweiner.com; stephanie.arencibia@nypa.gov; jesse.scott@nypa.gov; lori.alesio@nypa.gov

Bcc: deborah_kopald@ymail.com

Date: Wednesday, May 20, 2020, 01:09 PM EDT

Dear Supervisor Livsey, Comptroller Pecoraro, Clerk Patterson and Mr. Driscoll,

When the courts re-open, I will seek to invalidate all contracts signed during the pandemic between NYPA and the Town of Highlands regarding LED lights. They are subject to invalidation pursuant to NY CPLR Article 78 for multiple reasons, including but not limited to NY GEN MUN § 801.

Any monies that have been exchanged pursuant to such contracts or that will be exchanged are at your own peril.

Very truly yours,

Deborah Kopald

NOTICE

From: Deborah Kopald (deborah_kopald@ymail.com)

To: blivsey@highlands-ny.gov; kpecoraro@highlands-ny.gov; jpatterson@highlands-ny.gov; jrider@riderweiner.com; justin.driscoll@nypa.gov; stephanie.arenecibia@nypa.gov; jesse.scott@nypa.gov; lori.alesio@nypa.gov

Date: Friday, June 5, 2020, 12:17 PM EDT

Bob et al:

My email should be understood to cover ANY arrangement with LED lights. Since I am now informed that the paper misinformed the public during a pandemic, let me be crystal clear that I will seek to invalidate all contracts related to LED lights regarding the Town including with O&R.

This is not a type II action.

Any monies that have been exchanged pursuant to such contracts or that will be exchanged are at your own peril.

Very truly yours,

Deborah Kopald

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>

To: blivsey@highlands-ny.gov <blivsey@highlands-ny.gov>; Kelly Pecoraro <kpecoraro@highlands-ny.gov>; June Patterson <jpatterson@highlands-ny.gov>; justin.driscoll@nypa.gov <justin.driscoll@nypa.gov>

Cc: Mary Jane Pitt <newsofthehighlands@gmail.com>; Justin Rider <jrider@riderweiner.com>; Arenecibia Stephanie (Molly) <stephanie.arenecibia@nypa.gov>; Jesse Scott <jesse.scott@nypa.gov>; Lori Alesio <lori.alesio@nypa.gov>

Sent: Wednesday, May 20, 2020, 01:09:21 PM EDT

Subject: NOTICE

Dear Supervisor Livsey, Comptroller Pecoraro, Clerk Patterson and Mr. Driscoll,

When the courts re-open, I will seek to invalidate all contracts signed during the pandemic between NYPA and the Town of Highlands regarding LED lights. They are subject to invalidation pursuant to NY CPLR Article 78 for multiple reasons, including but not limited to NY GEN MUN § 801.

Any monies that have been exchanged pursuant to such contracts or that will be exchanged are at your own peril.

Very truly yours,

Deborah Kopald

Fw: NOTICE

From: Deborah Kopald (deborah_kopald@ymail.com)

To: sug@coned.com

Date: Friday, June 5, 2020, 12:31 PM EDT

Grace:

I am forwarding you all recent emails I sent to Walter Hedeman- I assume you got them through him. Please contact me ASAP regarding status of contracts between O&R and the Town of Highlands and whether you will accede to my demand to hold off signing anything so I can get to court to challenge same.

Deborah Kopald

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>
To: Walter Hedeman <hedemanw@coned.com>
Sent: Friday, June 5, 2020, 12:20:43 PM EDT
Subject: Fw: NOTICE

fyi

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>
To: blivsey@highlands-ny.gov <blivsey@highlands-ny.gov>; Kelly Pecoraro <kpecoraro@highlands-ny.gov>; June Patterson <jpatterson@highlands-ny.gov>; Justin Rider <jrider@riderweiner.com>; justin.driscoll@nypa.gov <justin.driscoll@nypa.gov>; Arencibia Stephanie (Molly) <stephanie.arencibia@nypa.gov>; Jesse Scott <jesse.scott@nypa.gov>; Lori Alesio <lori.alesio@nypa.gov>
Sent: Friday, June 5, 2020, 12:17:46 PM EDT
Subject: NOTICE

Bob et al:

My email should be understood to cover ANY arrangement with LED lights. Since I am now informed that the paper misinformed the public during a pandemic, let me be crystal clear that I will seek to invalidate all contracts related to LED lights regarding the Town including with O&R.

This is not a type II action.

Any monies that have been exchanged pursuant to such contracts or that will be exchanged are at your own peril.

Very truly yours,

Deborah Kopald

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>

To: blivsey@highlands-ny.gov <blivsey@highlands-ny.gov>; Kelly Pecoraro <kpecoraro@highlands-ny.gov>; June Patterson <jpatterson@highlands-ny.gov>; justin.driscoll@nypa.gov <justin.driscoll@nypa.gov>
Cc: Mary Jane Pitt <newsofthehighlands@gmail.com>; Justin Rider <jrider@riderweiner.com>; Arencibia Stephanie (Molly) <stephanie.arencibia@nypa.gov>; Jesse Scott <jesse.scott@nypa.gov>; Lori Alesio <lori.alesio@nypa.gov>
Sent: Wednesday, May 20, 2020, 01:09:21 PM EDT
Subject: NOTICE

Dear Supervisor Livsey, Comptroller Pecoraro, Clerk Patterson and Mr. Driscoll,

When the courts re-open, I will seek to invalidate all contracts signed during the pandemic between NYPA and the Town of Highlands regarding LED lights. They are subject to invalidation pursuant to NY CPLR Article 78 for multiple reasons, including but not limited to NY GEN MUN § 801.

Any monies that have been exchanged pursuant to such contracts or that will be exchanged are at your own peril.

Very truly yours,

Deborah Kopald

Fw: where are filings for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY

From: Deborah Kopald (deborah_kopald@ymail.com)

To: sug@coned.com

Cc: hedemanw@coned.com

Date: Friday, June 5, 2020, 01:02 PM EDT

Grace,

Please see correspondence with the DPS.

The DPS has no record of a filing for permission for this contract.

If the DPS has misinformed me please let me know ASAP.

My understanding is you need PSC approval for the proposed contract.

Please let me know if you understand same or otherwise ASAP.

Again, my demand is to not sign a contract with the Town of Highlands at this time as I plan to proceed to court as soon as practical to stop it.

Sincerely,

Deborah

----- Forwarded Message -----

From: dps. sm. Secretary <secretary@dps.ny.gov>

To: Deborah Kopald <deborah_kopald@ymail.com>

Sent: Thursday, June 4, 2020, 02:16:59 PM EDT

Subject: RE: where are filings for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY

Good afternoon,

You can search in DMM by Keyword or Advanced search.

For question number 2 refer to PSL 70 and for number 3 - any financing or operation/maintenance agreements between NYPA and Munis should be kept and approved by muni. governing body.

Thanks,

From: Deborah Kopald [mailto:deborah_kopald@ymail.com]

Sent: Thursday, June 04, 2020 12:00 PM

To: dps.sm.Secretary <Secretary@dps.ny.gov>

Subject: Re: where are filings for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi,

Thank you for getting back to me quickly.

- 1) what would be the way to look up this information on DMM advanced
- 2) does the PSC have to approve these sales/contracts?
- 3) Is there anything file on DMM between NYPA and the Town of Highlands and does that too need to be approved?

Thank you,

Deborah

On Thursday, June 4, 2020, 11:48:25 AM EDT, dps. sm. Secretary <secretary@dps.ny.gov> wrote:

Dear Deborah Kopald,

We are not able to find the case/matter number. It could be that the company did not file it with the DPS yet . Please contact the company.

Thank you.

From: Deborah Kopald [mailto:deborah_kopald@ymail.com]
Sent: Thursday, June 04, 2020 11:39 AM
To: dps.sm.Secretary <Secretary@dps.ny.gov>
Subject: where are filings for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Secretary Phillips,

7/27/2020

Yahoo Mail - Fw: where are filings for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY

Where are filings on DMM for LED lights- specifically if O&R is selling said lights to the Town of Highlands, NY.

Thanks,
Deborah

Fw: email back from ToH - again I reiterate my request to NOT sign a contract with them and not to accept funds and provide LED lights to the municipality at this time

From: Deborah Kopald (deborah_kopald@ymail.com)

To: sug@coned.com

Date: Friday, June 5, 2020, 12:31 PM EDT

Grace pursuant to my initial email to you, I am forwarding correspondence I sent to Walter Hedeman on this matter. - Deborah Kopald

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>

To: Walter Hedeman <hedemanw@coned.com>

Sent: Friday, June 5, 2020, 12:07:24 PM EDT

Subject: email back from ToH - again I reiterate my request to NOT sign a contract with them and not to accept funds and provide LED lights to the municipality at this time

Hi Walter,

]

I am reviewing an email I just got from the Town of Highlands. One councilman wrote

Orange and ROCKLAND was submitted a letter of intent to purchase the lights for \$31000 , their legal team reviewed that letter , responded and we responded back I think we are awaiting finality on that matter.

At this point, having not heard from you, I am going to have to name O&R in an Article 78. I again request that the utility sign nothing with the Town of Highlands as I have put it on notice (via you) that there is an issue in dispute.

Please do not sign a contract and do not accept funds for LED lights with the Town of Highlands at this time.

Thank you,

Deborah

Exhibit 14a Public Private Use Questionnaire
(826-828)



NY Power Authority

Energy Services Projects
Public/Private Use Questionnaire

File #: 2461

Project Name: *ES-ESN-0862 Town of Highlands - LED Street Lighting*

PART I. PROJECT IDENTIFICATION:

Project Description:

LED Street lighting conversion

1. Does the description above accurately describe the improvements to be done by NYPA? Yes No
If no, please include additional explanation below:

2. Please identify (a) any funds (e.g., grants) that were or are intended to be used in connection with the Project, and (b) all sources of funds and the amounts from each source that will be used to reimburse NYPA.

The Town's general funds collected through the tax levy will be used

PART II. USE OF THE FACILITY:

3. Is any portion of any facility in which improvements are to be done by NYPA (the "NYPA Improvements") presently owned, leased, managed, occupied or otherwise used by (a) an entity which is not the State, a city, town, village, county, or a governmental instrumentality of any of the foregoing, for any purpose; or (b) a natural person for a trade or business purpose (each a "Business User")? (Hereinafter, the portion of the facility housing such NYPA Improvements shall be referred to as the "Facility".) Please provide any additional comments below:

Town is acquiring rights from O&R and consent from Verizon for use of poles

4. Is there any expectation that during the economic life of the NYPA Improvements any portion of the Facility will be owned, leased, managed, occupied or otherwise used by a Business User? Yes No
Please provide any additional comments below:

5. If No is checked for both Questions 3 and 4 in Part II, skip to Recipient Certification.

If you checked Yes for either Question 3 or 4 in Part II, complete Schedule A (Facility Square Footage Listing) for each Business User using, managing or operating any Facility pursuant to an arrangement the term of which, including all renewal options, is greater than 50 days.



NY Power Authority

Energy Services Projects
Public/Private Use Questionnaire

File #: 2461

Project Name: *ES-ESN-0862 Town of Highlands - LED Street Lighting*

RECIPIENT CERTIFICATION

I hereby certify that the above information is true and complete based upon documentation in my office and further certify that I will report in writing any changes in the information contained herein.

[Handwritten Signature]

Recipient Representative (sign name)

MERVIN R. LIUSEY

Print or Type Name

TOWN SUPERVISOR

Title

845 446 4280 x 312

Phone

6-12-20

Date

RECIPIENT RE-CERTIFICATION

I hereby re-certify that the above information is true and complete and has not changed since the original certification date except as noted above

Recipient Representative (sign name)

Print or Type Name

Title

Phone

Date



NY Power Authority

Energy Services Projects Public/Private Use Questionnaire

File #: 2461

Project Name: *ES-ESN-0862 Town of Highlands - LED Street Lighting*

SCHEDULE A - Facility Square Footage Listing



	Square Footage
A. Estimated Square Footage of areas to be enhanced by NYPA Improvements:	
B. Estimated Square Footage of Common Areas (e.g., hallways and lobbies):	
C. Net Useable Square Feet [A – B]:	
D. Estimated Square Footage of "private business use" (excludes general public use, use by a state or local governmental unit, or use by a natural person not engaged in a business activity) corresponding to C above. List each usage below (add pages if necessary):	
D1.	
D2.	
D3.	
D4.	
...Dn.	
E. Total Private Business Use (Sum of D1 through Dn):	
F. Non-Qualified Use Percentage (E/C):	
G. Qualified Use Percentage (1 – {E/C}):	

* After review of Schedule A, it is possible that additional facility use information may be required. If so, an additional schedule (Schedule B) will be provided.

General Public Use Definition: Use as a member of the general public generally refers to transient use (rather than use by a lessee) of a Facility which is available to all users on a first-come, first-served basis at the same price, if any, or a price based on a rate schedule which may include volume discounts. (For example, a large meeting room is available to members of the general public if it is available on a first-come, first-served basis at rates such as: 1-5 persons, \$25; 6-25 persons, \$50; 26-50 persons, \$75; over 50 persons, \$100.)

**AGREEMENT FOR PURCHASE AND SALE OF
STREET LIGHTING FACILITIES**

THIS AGREEMENT (this “Purchase Agreement”), dated as of the [] day of [], 2020, by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation with offices at One Blue Hill Plaza, Pearl River, New York 10965 (“Seller”), and the TOWN OF HIGHLANDS, NEW YORK, a municipal corporation with offices located at 254 Main Street, Highland Falls, New York 10928 (“Buyer”). Seller and Buyer are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

W I T N E S S E T H

WHEREAS, Seller owns, operates and maintains Street Lighting Facilities (as that term is defined below) within the geographical boundaries of Buyer; and

WHEREAS, Buyer wishes to purchase from Seller, and Seller is agreeable to selling to Buyer, the Street Lighting Facilities upon the terms and conditions contained in this Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and such other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. As used in this Purchase Agreement, the following terms have the meanings specified below in this Section 1.1.

“Ancillary Agreements” means (a) the Operating Agreement, and (b) the Mutual General Release and Settlement Agreement, as the same may be amended from time to time.

“Apportionable Items” has the meaning set forth in Section 3.3(a).

“Bill of Sale” means the Quit Claim Bill of Sale, substantially in the form of Exhibit A hereto, to be executed and delivered by Seller to Buyer at the Closing, to evidence the transfer by Seller to Buyer of Seller’s right, title and interest in and to the Street Lighting Facilities.

“Business Day” shall mean any day other than Saturday, Sunday and any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble to this Purchase Agreement.

“Buyer’s Deliverables” has the meaning set forth in Section 8.5.

“Buyer Protected Parties” has the meaning set forth in Section 6.4(a).

“Buyer’s Required Approvals” means (i) approval of the ~~Town~~Village Board of Buyer authorizing Buyer (by its Town Supervisor or other Person) to enter into this Purchase Agreement, the Bill of Sale, the Mutual General Release and Settlement Agreement and the Operating Agreement, and (ii) the written consent of Verizon Communications, Inc., successor to the New York Telephone Company, pursuant to the Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company Covering The Joint Use of Poles dated as of September 1, 1974 and the Administrative and Operating Practices Associated with the Joint Use Pole Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company effective September 1, 1974, for the continued attachment of any and all of the Street Lighting Facilities currently attached either to poles jointly owned by Seller and Verizon Communications, Inc. or to poles solely owned by Verizon Communications, Inc.

“Breaching Party” has the meaning set forth in Section 9.1(e).

“Claiming Party” has the meaning set forth in Section 6.5(a).

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Commercially Reasonable Efforts” means efforts which are designed to enable the performing Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Purchase Agreement and which do not require the performing Party to expend any funds or assume any liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Purchase Agreement.

“Excluded Assets” has the meaning set forth in Section 2.3.

“Governmental Authority” means any applicable federal, state, local or other governmental, regulatory or administrative agency, taxing authority, commission, department, board, or other governmental subdivision, court, tribunal, arbitrating body or other governmental authority, including the PSC.

“Interim Period” has the meaning set forth in Section 6.1.

“Mutual Release and Settlement Agreement” means the Mutual Release and Settlement Agreement to be executed and delivered by Buyer and Seller at Closing, said agreement to be substantially in the form attached hereto as Exhibit B.

“Operating Agreement” means the Operating Agreement to be executed and delivered by Buyer and Seller at Closing, said agreement to be substantially in the form attached hereto as Exhibit C.

“Outside Date” has the meaning set forth in Section 9.1(b).

“Parties” has the meaning set forth in the preamble to this Purchase Agreement.

“Party” has the meaning set forth in the preamble to this Purchase Agreement.

“Permitted Lien” means (a) any lien for Taxes not yet due or delinquent, (b) any Lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000, (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller, (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any Governmental Authority to regulate any asset, and all matters of public record, and (e) any lien released prior to Closing.

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, association, or governmental entity or any department or agency thereof.

“Preliminary Apportioned Items Amount” has the meaning set forth in Section 3.3(b).

“PSC” means the State of New York Public Service Commission.

“Purchase Agreement” means this Agreement for Purchase and Sale of Street Lighting Facilities, together with the Exhibits and Schedules attached hereto, as the same may be amended from time to time.

“Purchase Price” has the meaning set forth in Section 3.2.

“Responding Party” has the meaning set forth in Section 6.5(a).

“Seller” has the meaning set forth in the preamble to this Purchase Agreement.

“Seller Protected Parties” has the meaning set forth in Section 6.4(b).

“Seller’s Deliverables” has the meaning set forth in Section 7.5.

“Seller’s Required Approvals” means (i) approval of the board of directors of Seller for Seller (by a Vice President or other Person) to enter into this Purchase Agreement, the Bill of Sale, the Mutual General Release and Settlement Agreement and the Operating Agreement, and (ii) an order of the PSC pursuant to Section 70 of the New York State Public Service Law approving the sale of the Street Lighting Facilities pursuant to the terms of this Purchase Agreement.

“Seller’s Tariff” shall mean and include any and all tariffs on file by Seller with the PSC (including, but not limited to, P.S.C. No. 3 ELECTRICITY), as the same shall be formally

issued, supplemented, amended, superseded, and/or interpreted from time to time, now or in the future.

“Street Lighting Facilities” means all of those certain overhead-fed street lighting facilities that are owned solely by Seller, attached to utility poles located within the geographical boundaries of the Buyer, used solely for street lighting purposes, and which consist of luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, including the In-Line Fused Disconnects referred to in Section 2.2, all as depicted in Exhibit A to the Operating Agreement.

“Street Lighting Facilities Assessed Values/Taxes” has the meaning set forth in Section 6.6.

“Survey” has the meaning set forth in Section 6.2.

“Third Party Losses/Claims” has the meaning set forth in Section 6.4.

Section 1.2 Certain Interpretive Matters. In this Purchase Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term “includes” or “including” shall mean “includes without limitation” or, as applicable, “including without limitation.” References in this Purchase Agreement to an Article, Section or Exhibit shall mean an Article, Section or Exhibit of this Purchase Agreement, and reference to a specified agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented, or restated from time to time.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Transfer of Street Lighting Facilities. Upon the terms and subject to the conditions contained in this Purchase Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase, assume, acquire and receive from Seller, all of Seller’s right, title and interest in and to the Street Lighting Facilities.

Section 2.2 Demarcation of Ownership. From and after the Closing, Buyer shall own all portions of each of the Street Lighting Facilities from the point in change (transition) from the Seller’s secondary conductor to the street light and including the luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to that point in change; provided that with respect to Street Lighting Facilities for which Buyer has caused an In-Line Fused Disconnect (as defined in the Operating Agreement) to be installed following the Closing, from and after the Closing, Buyer shall own all portions of such Street Lighting Facilities from and including the In-Line Fused Disconnect to the to the street light and including the luminaires, lamps, mast

arms, their associated wiring, electrical connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to the In-Line Fused Disconnect.

Section 2.3 Excluded Assets. Seller is not assigning, conveying, transferring or delivering to Buyer and Buyer is not purchasing, assuming, acquiring or receiving from Seller any of Seller's right, title and interest in and to the following, all of which are being retained by Seller following the Closing (hereinafter collectively referred to as the "Excluded Assets"):

(a) Any and all of Seller's right, title and interest in and to any poles, structures, equipment or equipment attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(b) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any injury or damage caused to any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(c) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any injury or damage caused to the Street Lighting Facilities prior to the Closing;

(d) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any and all costs and expenses incurred by Seller for relocating, adjusting, or protecting/maintaining in place any Street Lighting Facilities (including any planning, designing and engineering work in connection therewith) prior to the Closing in connection with any Governmental projects or private projects, including street relocation, adjustment, reconstruction or resurfacing projects, sewer infrastructure projects and water infrastructure projects;

(e) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any costs and expenses incurred by Seller for relocating, adjusting, or protecting/maintaining in place any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities (including any planning, designing and engineering work in connection therewith) in connection with any Governmental Authority projects or private projects, including street relocation, adjustment, reconstruction or resurfacing projects, sewer infrastructure projects and water infrastructure projects;

(f) Any and all of Seller's right, title and interest in and to any and all spare parts or spare components relating to the Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(g) Any and all of Seller's right, title, and interest in and to any and all vehicles, equipment, tools and supplies relating to installing, operating, inspecting, maintaining, repairing, replacing or decommissioning in whole or in part any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(h) Any and all of Seller's right, title and interest in and to any and all agreements and contracts with third parties relating to installing, operating, inspecting, maintaining, repairing, replacing or decommissioning in whole or in part any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities; and

(i) Any and all of Seller's right, title and interest in and to any and all franchise grants, licenses, permits, and interests in real property pertaining in any way to any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities.

ARTICLE III

CLOSING, PURCHASE PRICE, APPORTIONABLE ITEMS

Section 3.1 Closing. The Closing shall take place at the offices of Seller at 10:00 A.M. (Eastern time) on the tenth Business Day after the conditions to Closing set forth in Articles VII and VIII (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived by the Party entitled to waive such condition, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing. The date of Closing is hereinafter referred to as the "Closing Date." The Closing shall be effective for all purposes as of 12:01 A.M. (Eastern Time) on the Closing Date.

Section 3.2 Purchase Price. The purchase price (the "Purchase Price") for the Street Lighting Facilities shall be an amount equal to \$30,922, *increased* by the Preliminary Apportioned Items Amount if Buyer owes Seller such amount and *decreased* by the Preliminary Apportioned Items Amount if Seller owes Buyer such amount; provided that if the survey conducted pursuant to Section 6.2 hereof determines that (i) the number of overhead-fed Street Lighting Facilities is either more or less than 168, the Purchase Price shall be *increased* \$184 for each overhead-fed Street Lighting Facility more than 168 and *decreased* \$184 for each overhead-fed Street Lighting Facility less than 168.

Section 3.3 Apportionable Items.

(a) The following items (the "Apportionable Items") shall be apportioned as of 11:59 P.M. of the day before the Closing Date with Seller bearing the expense of the item applicable to the period before the Closing Date and Buyer bearing the expense of the item applicable to the period on and after the Closing Date:

(i) Real property taxes (including special franchise taxes) assessed or imposed on Seller by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lighting Facilities; and

(ii) Any and all other personal property taxes, real estate taxes, occupancy taxes, assessments (special or otherwise) and any and all other applicable fees, taxes and charges assessed or imposed on Seller by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lighting Facilities.

(b) Each of the Apportionable Items shall be apportioned based upon (i) the extent to which (a) Seller, prior to the Closing, has paid such Apportionable Item with respect to any period on and after the Closing Date (*i.e.*, with respect to any period from and after Seller's transfer of the Street Lighting Facilities to Buyer) or (b) Buyer, after the Closing, will be responsible to pay such Apportionable Item with respect to any period before the Closing Date (*i.e.*, with respect to any period before Seller's transfer of Street Lighting Facilities to Buyer) and (ii) the number of days in the applicable tax or other period that are (a) before the Closing Date and (b) on and after Closing Date; provided that, for the purposes of such apportionment calculations, Buyer shall not be credited with being responsible to pay any special franchise tax or, to the extent Buyer is the direct or indirect recipient of any other Apportionable Item, any other Apportionable Item (although, for the avoidance of doubt, Seller shall be credited with any and all payments by Seller, prior to the Closing, of any special franchise tax and any other Apportionable Item with respect to any period on and after the Closing Date notwithstanding that Buyer may be the direct or indirect recipient of such payments). The result of the calculation of the Apportionable Items performed for purposes of the Closing, which shall be netted to a single number (the "Preliminary Apportionable Items Amount"), shall be based on the current amount of each Apportionable Item for the period that includes the Closing Date and, if any such current amount is not then available (*e.g.*, because the applicable taxing authority has not yet issued the amount of the Apportionable Item with respect to the period that includes the Closing Date), shall be based on the amount for the most recent former period. Following the Closing and within 60 days after the date that the last of the previously unavailable amounts of the Apportionable Items becomes available, the Parties shall use the available amounts to true-up the calculation that led to the Preliminary Apportionable Items Amount and the Party that owes the other Party based on such true-up calculation (and taking into account the Preliminary Apportionable Items Amount that was paid at Closing by adjusting the Purchase Price) shall pay such other Party within 30 days after the true-up calculation is made. The obligations set forth in this Section 3.3 shall survive the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization. Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 4.2 Authority, Binding Obligation. Subject to obtaining the Seller's Required Approvals: Seller has all requisite corporate power and authority to execute and deliver this Purchase Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Purchase Agreement and the performance by Seller of its obligations hereunder have been duly and validly authorized by all necessary corporate action; and this Purchase Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 4.3 No Conflicts; Consents and Approvals. Subject to obtaining the Seller's Required Approvals, the execution and delivery by Seller of this Purchase Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the certificate of incorporation or by-laws of Seller or under any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Seller.

Section 4.4 Legal Proceedings. To the knowledge of Seller, there are no actions, suits or proceedings pending against Seller before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller's ability to proceed with the transactions contemplated by this Purchase Agreement. To the knowledge of Seller, Seller is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller's ability to proceed with the transactions contemplated by this Purchase Agreement.

Section 4.5 Liens. To the knowledge of Seller, the Street Lighting Facilities are free and clear of all liens except Permitted Liens.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

Section 5.1 Organization. Buyer is a municipal corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 5.2 Authority, Binding Obligation. Subject to obtaining the Buyer's Required Approvals: Buyer has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Purchase Agreement and the performance by Buyer of its obligations hereunder have been duly and validly authorized by all necessary action; and this Purchase Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 5.3 No Conflicts; Consents and Approvals. Subject to obtaining the Buyer's Required Approvals, the execution and delivery by Buyer of this Purchase Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the charter or other organizational documents of Buyer or under any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Buyer.

Section 5.4 Legal Proceedings. To the knowledge of Buyer, there are no actions, suits or proceedings pending against Buyer before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Buyer's ability to proceed with the transactions contemplated by this Purchase Agreement. To the knowledge of Buyer, Buyer is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority which, individually or in the aggregate,

could reasonably be expected to have a material adverse effect on Buyer's ability to proceed with the transactions contemplated by this Purchase Agreement.

Section 5.5 Availability of Funds. Buyer has sufficient funds available to it to enable Buyer to pay the Purchase Price to Seller.

ARTICLE VI

COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Street Lighting Facilities. During the period from the date of this Purchase Agreement up to, but not including, the Closing Date (the "Interim Period"), Seller shall operate and maintain the Street Lighting Facilities in the ordinary course of its business consistent with its past practices.

Section 6.2 Survey of Street Lighting Facilities. During the Interim Period, Seller shall cause a survey of the Street Lighting Facilities ("Survey") to be performed in good faith to determine the number of Street Lighting Facilities. Prior to the commencement of the Survey, Seller shall notify Buyer of the dates the Survey will be conducted and Buyer shall be allowed to have a representative present when Seller conducts the Survey. Seller shall provide Buyer with written notice of the result of the Survey, which result shall be used in connection with determining the Purchase Price.

Section 6.3 Pursuit of Required Approvals. During the Interim Period:

(a) Seller will, in order to consummate the transactions contemplated hereby, (i) exercise Commercially Reasonable Efforts to obtain the Seller's Required Approvals as promptly as practicable, including making all required filings with, and giving all required notices to, each applicable Governmental Authority or other Person and (ii) cooperate in good faith with each applicable Governmental Authority and other Person and promptly provide such other information and communications to each such Governmental Authority or other Person as such Governmental Authority or other Person may reasonably request in connection therewith.

(b) Buyer will, in order to consummate the transactions contemplated hereby, (i) exercise Commercially Reasonable Efforts to obtain the Buyer's Required Approvals as promptly as practicable, including making all required filings with, and giving all required notices to, each applicable Governmental Authority or other Person and (ii) cooperate in good faith with each applicable Governmental Authority and other Person and promptly provide such other information and communications to each such Governmental Authority or other Person as such Governmental Authority or other Person may reasonably request in connection therewith.

(c) Seller, with respect to the Seller's Required Approvals, will provide prompt notification to Buyer, and Buyer, with respect to the Buyer's Required Approvals, will provide prompt notification to Seller, of any material communications with the applicable

Governmental Authority or other Person from whom the Seller's Required Approvals or Buyer's Required Approvals are sought and when any such approval is obtained, taken, made, given or denied, as applicable.

Section 6.4. Indemnification Against Third Party Claims And Losses.

(a) From and after the Closing, Seller shall retain liability for and shall defend, indemnify and hold harmless Buyer, its parents, subsidiaries, affiliates and its and their respective trustees, directors, officers, employees, attorneys, shareholders, contractors, subcontractors, agents, representatives, successors and assigns (collectively, the "Buyer Protected Parties") from and against any and all claims, counterclaims, causes of action, lawsuits, proceedings, judgments, losses, liabilities, damages, fines, penalties, interest, costs and expenses (including court costs, reasonable fees of attorneys, accountants and other experts and reasonable expenses of investigation, preparation, and litigation) for personal injuries (including death) or damages to property arising from or claimed to arise from the Street Lighting Facilities (collectively, "Third Party Losses/Claims") that third parties have suffered or sustained prior to the Closing or that third parties claim to have been suffered or sustained prior to the Closing, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Buyer Protected Parties.

(b) From and after the Closing, Buyer shall have liability for and shall defend, indemnify and hold harmless Seller, its parents, subsidiaries, affiliates and its and their respective trustees, directors, officers, employees, attorneys, shareholders, contractors, subcontractors, agents, representatives, successors and assigns (collectively, the "Seller Protected Parties") from and against any and all Third Party Losses/Claims that third parties have suffered or sustained on or after the Closing or that third parties claim to have been suffered or sustained on or after the Closing, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Seller Protected Parties on or after the Closing Date for which negligence or other acts or omissions the Seller's Tariff (*i.e.*, Schedule for Electric Service, PSC No. 3 – Electricity, General Information Section 10.1, or its successor) does not provide an applicable exclusion from or limitation of liability.

(c) The obligations set forth in this Section 6.4 shall survive the Closing.

Section 6.5 Procedure with Respect to Third Party Claims And Losses.

(a) If any Party becomes subject to a pending or threatened Third Party Claim/Loss and such Party (the "Claiming Party") believes it is entitled to indemnification pursuant to Section 6.4 hereof from the other Party (the "Responding Party") as a result, then the Claiming Party shall notify the Responding Party in writing of the basis for its claim for indemnification setting forth the nature of the claim in reasonable detail. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of any liability or obligations under Section 6.4 or this Section 6.5 except to the extent that the defense of such Third Party Claim/Loss is prejudiced by the failure to give such notice.

(b) If any Third Party Claim/Loss proceeding is brought by a third party against a Claiming Party and the Claiming Party gives notice to the Responding Party pursuant to this Section 6.5, the Responding Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Responding Party provides written notice to the Claiming Party that the Responding Party intends to undertake such defense, (ii) the Responding Party conducts the defense of the Third Party Claim/Loss actively and diligently with counsel reasonably satisfactory to the Claiming Party and (iii) if the Responding Party is a party to the proceeding, the Responding Party has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Claiming Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Claiming Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Claiming Party. The Claiming Party shall fully cooperate with the Responding Party and its counsel in the defense or compromise of such Third Party Claim/Loss. If the Responding Party assumes the defense of a Third Party Claim/Loss proceeding, no compromise or settlement of such Third Party Claim/Loss may be effected by the Responding Party without the Claiming Party's consent unless (A) there is no finding or admission of any violation of law or any violation of the rights of any Person and no effect on any other Third Party Claims/Loss that may be made against the Claiming Party and (B) the sole relief provided is monetary damages that are paid in full by the Responding Party.

(c) If (i) notice is given to the Responding Party of the commencement of any Third Party Claim/Loss proceeding and the Responding Party does not, within 30 days after the Claiming Party's notice is given, give notice to the Claiming Party of its election to assume the defense of such proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of Section 6.5(b) become unsatisfied or (iii) the Claiming Party determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Responding Party under this Agreement, then the Claiming Party shall (upon notice to the Responding Party) have the right to undertake the defense, compromise or settlement of such Third Party Claim/Loss; provided that the Responding Party shall reimburse the Claiming Party for the costs of defending against such Third Party Claim/Loss (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third Party Claim/Loss, in both cases to the extent it is determined that such Responding Party is liable to the Claiming Party under this Agreement with respect to such Third Party Claim/Loss. The Responding Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

(d) The obligations set forth in this Section 6.5 shall survive the Closing.

Section 6.6 Property Tax Reduction. Buyer shall exercise Commercially Reasonable Efforts to cause any and all assessed values and related special franchise tax assessments and real property tax assessments reasonably associated with the Street Lighting Facilities (the "Street Lighting Facilities Assessed Values/Taxes") to be reduced as of the Closing such that the assessed values and related special franchise tax assessments and real property tax assessments

with respect to property that Seller retains after the Closing (including the Excluded Assets) does not include, from and after the Closing, any Street Lighting Facilities Assessed Values/Taxes and Seller is not requested or required to pay any special franchise tax or real property tax associated with the Street Lighting Facilities Assessed Values/Taxes from and after the Closing. To the extent that Buyer does not cause the reductions contemplated by this Section to be effective as of the Closing, (i) Buyer shall continue to exercise Commercially Reasonable Efforts after the Closing to cause the reductions contemplated by this Section and (ii) if Seller pays any special franchise tax or real property tax associated with the Street Lighting Facilities Assessed Values/Taxes from and after the Closing, Buyer shall reimburse Seller for any and all such payments (including by means of a credit on Seller's subsequent bill(s)).

Section 6.7 Tax Matters.

(a) Buyer acknowledges that Seller will not comply with the provisions of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Purchase Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

Section 6.8 Risk of Loss. Seller shall bear the risk of loss of and damage to the Street Lighting Facilities during the period from the date of this Purchase Agreement up to but not including the Closing Date and Buyer shall bear the risk of loss of and damage to the Street Lighting Facilities from and after the Closing Date.

Section 6.9 Brokerage Fees and Commissions. Each Party covenants to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such covenant. Each Party (an indemnifying Party) will pay or otherwise discharge, and will indemnify, defend and hold the other Party harmless from and against, any and all claims against and liabilities of the other Party for any and all brokerage fees, commissions and finder's fees in connection with the transactions contemplated hereby by reason of any action taken or the breach of this covenant by the indemnifying Party.

Section 6.10 Expenses. Except to the extent expressly provided to the contrary in this Purchase Agreement, and whether or not the transactions contemplated herein are consummated, all costs and expenses incurred by a Party in connection with the negotiation, execution and consummation of the transactions contemplated hereby, including the cost of filing for and prosecuting applications for the Seller Required Approvals and the Buyer Required Approvals, shall in all instances be borne by the Party incurring such costs and expenses.

Section 6.11 Further Assurances. Subject to the terms and conditions of this Purchase Agreement, at either Party's request and without further consideration, the other Party shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting Party may reasonably request in order to consummate the transactions contemplated by this Agreement; provided that the other Party shall not be obligated to execute

or deliver any instruments, provide any materials or information or take any actions that modify the rights, remedies, obligations or liabilities of such other Party pursuant to this Purchase Agreement or applicable law.

ARTICLE VII

BUYER'S CONDITIONS TO CLOSING

The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer in its sole discretion):

Section 7.1 Seller's Representations and Warranties. The representations and warranties made by Seller in this Purchase Agreement shall have been materially true and correct as of the date of this Purchase Agreement and shall be materially true and correct as of Closing; provided that Seller shall have no liability to Buyer for any such representation not being materially true and correct as of Closing due to occurrences, matters, events, facts or circumstances occurring after the date of this Purchase Agreement.

Section 7.2 Seller's Performance. Seller shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

Section 7.3 Orders and Laws. There shall not be any temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any Governmental Agency of competent jurisdiction or other law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Purchase Agreement; provided that any judgment or order that restrains, enjoins or otherwise prohibits or makes illegal the consummation of the transactions contemplated hereby, or any such temporary restraining order, preliminary or permanent injunction or other judgment or order must not have resulted from any litigation or proceeding filed by Buyer or its affiliates.

Section 7.4 Buyer's Required Approvals. The Buyer's Required Approvals, in form and substance satisfactory to Buyer in its sole discretion, shall have been obtained and be in full force and effect; provided that the absence of any appeals and applications for rehearing or reargument and the expiration of any appeal, rehearing or reargument period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 7.5 Seller's Deliverables. Seller shall have delivered, or caused to have been delivered, to Buyer each of the following (collectively, the "Seller's Deliverables") at or before the Closing:

- (a) a counterpart of the Bill of Sale duly executed by Seller;
- (b) a counterpart of the Operating Agreement duly executed by Seller;

(c) a counterpart of the Mutual Release And Settlement Agreement duly executed by Seller;

(d) resolutions of the board of directors of Seller certified by the Secretary, Assistant Secretary or other officer of Seller authorizing the execution and delivery of this Purchase Agreement and the consummation of the transactions contemplated hereby; and

(e) a certificate of the Secretary, Assistant Secretary or other officer of Seller as to the incumbency of the Person executing this Purchase Agreement on behalf of Seller and the genuineness of such Person's signature.

ARTICLE VIII

SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller in its sole discretion):

Section 8.1 Buyer's Representations and Warranties. The representations and warranties made by Buyer in this Purchase Agreement shall have been materially true and correct as of the date of this Purchase Agreement and shall be materially true and correct as of Closing, provided that, except with respect to the representation and warranty in Section 5.5 Buyer shall have no liability to Seller for any such representation not being materially true and correct as of Closing due to occurrences, matters, events, facts or circumstances occurring after the date of this Purchase Agreement.

Section 8.2 Buyer's Performance. Buyer shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Purchase Agreement to be performed or complied with by Buyer at or before the Closing.

Section 8.3 Orders and Laws. There shall not be any temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any Governmental Authority of competent jurisdiction or other law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Purchase Agreement; provided that any such judgment or order restrains, enjoins or otherwise prohibits or makes illegal the consummation of the transactions contemplated hereby, or any such temporary restraining order, preliminary or permanent injunction or other judgment or order must not have resulted from any litigation or proceeding filed by Seller or its affiliates.

Section 8.4 Seller's Required Approvals. The Seller's Required Approvals, in form and substance satisfactory to Seller in its sole discretion, shall have been obtained and be in full force and effect; provided that the absence of any appeals or applications for reargument or

rehearing and the expiration of any appeal, reargument or rehearing period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 8.5 Buyer's Deliverables. Buyer shall have delivered, or caused to have been delivered, to Seller each of the following (collectively, the "Buyer's Deliverables") at or before the Closing:

- (a) A wire transfer of immediately available funds (to such account or accounts as Seller shall have given notice to Buyer not less than five Business Days prior to the Closing Date) in an amount equal to the Purchase Price;
- (b) A counterpart of the Bill of Sale duly executed by Buyer;
- (c) A counterpart of the Operating Agreement duly executed by Buyer;
- (d) A counterpart of the Mutual Release and Settlement Agreement duly executed by Buyer;
- (e) Resolutions of the board of trustees of Buyer certified by the Secretary, or other officer of Buyer authorizing the execution and delivery of this Purchase Agreement and the consummation of the transactions contemplated hereby; and
- (f) A certificate of the Secretary, or other officer of Buyer as to the incumbency of the Person executing this Purchase Agreement on behalf of Buyer and the genuineness of such Person's signature.

ARTICLE IX

TERMINATION

Section 9.1 Termination Prior To Closing.

- (a) This Purchase Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.
- (b) This Purchase Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if (i) any Governmental Authority of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and non-appealable or (ii) any statute, rule, order or regulation shall have been enacted or issued by any Governmental Authority (excluding the Buyer, if acting or attempting to act as a Governmental Authority) which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the Closing contemplated hereby shall not have occurred on or before the first annual anniversary of the date of this Purchase Agreement (the "Outside Date"); provided that the right to terminate this Purchase Agreement under this Section 9.1(b)(iii) shall not be

available to any Party whose failure to fulfill any obligation under this Purchase Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

(c) This Purchase Agreement may be terminated at any time prior to the Closing by Buyer upon written notice to Seller if any Buyer's Required Approvals shall have been denied or shall have been granted but are not in form and substance satisfactory to Buyer in its sole discretion.

(d) This Purchase Agreement may be terminated at any time prior to the Closing by Seller upon written notice to Buyer if any Seller's Required Approvals shall have been denied or shall have been granted but are not in form and substance satisfactory to Buyer in its sole discretion.

(e) This Purchase Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if the other Party (the "Breaching Party") has materially breached or violated a representation, warranty, covenant or agreement hereunder so as to cause the failure of a condition to Closing set forth in Article VII or Article VIII, as applicable, and such breach (other than a breach of Buyer's obligation to pay the Purchase Price in accordance with the terms of Article III, for which no cure period shall be allowed) has not been cured by the earlier of 30 days following written notice thereof or the Outside Date, provided that if such violation or breach is not capable of being cured within such 30 day period and such 30 day period shall have ended before the Outside Date, the Breaching Party shall have an additional period to cure that expires on the earlier of 30 days thereafter or the Outside Date.

Section 9.2 Remedies Upon Termination Prior To Closing.

(a) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 9.1(a),(b),(c) or (d) hereof, neither Party shall have any liability to the other Party arising from this Agreement.

(b) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 9.1(e) hereof, such Party may pursue any remedies against the Breaching Party available under this Purchase Agreement or applicable law, subject to provisos in Sections 7.1 and 8.1 and subject to the limitation of liability set forth in Section 10.1(c) hereof.

ARTICLE X

LIMITATIONS OF LIABILITY AND WAIVERS

Section 10.1 Limitation of Liability. Notwithstanding anything in this Purchase Agreement to the contrary, except in the case of a claim based on fraud or willful misconduct which shall not be subject to the following limitations:

(a) The representations and warranties in this Agreement shall survive for a period of six months following the Closing Date and any claim by a Party that the other has breached or violated a representation or warranty must be made in writing and received by the Party against which the claim is made no later than the expiration of this survival period; provided that if written notice of such a claim has been given prior to the expiration of the survival period, then the claim may be prosecuted to resolution notwithstanding the expiration of the survival period;

(b) If a Party's breach or violation of a representation or warranty in this Purchase Agreement is not used by the other Party to validly terminate this Purchase Agreement prior to the Closing pursuant to Section 9.1(e), then the breaching Party's aggregate liability to the other Party for any and all breaches or violations of representations and warranties in this Purchase Agreement shall not exceed 10% of the Purchase Price; and

(c) The aggregate liability of a Party to the other Party in the event that the other Party validly terminates this Purchase Agreement prior to the Closing pursuant to Section 9.1(e) shall not exceed 100% of the Purchase Price.

Section 10.2 Waiver of Other Representations and Warranties. THE STREET LIGHTING FACILITIES ARE BEING SOLD AND TRANSFERRED "AS-IS, WHERE-IS" CONDITION AND SUBJECT TO ALL FAULTS OF WHATEVER NATURE, AND, EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN ARTICLE IV OF THIS PURCHASE AGREEMENT, SELLER HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING THE STREET LIGHTING FACILITIES OR WITH RESPECT TO THIS PURCHASE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING, IN PARTICULAR WITH RESPECT TO THE STREET LIGHTING FACILITIES, THEIR DESIGN, MANUFACTURE, CONSTRUCTION, FABRICATION, CONDITION OR PERFORMANCE, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH ANY LAWS OR STANDARDS, INCLUDING THE NATIONAL ELECTRIC SAFETY CODE, THE NATIONAL ELECTRIC CODE, THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, THE OCCUPATIONAL SAFETY AND HEALTH ACT AND ANY RULES OR REGULATIONS THEREUNDER, WHETHER OR NOT SELLER KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

Section 10.3 Waivers of Certain Remedies. NOTWITHSTANDING ANYTHING IN THIS PURCHASE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR

OTHERWISE, ARISING FROM THIS PURCHASE AGREEMENT OR THE BREACH OR VIOLATION THEREOF.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Notices.

(a) Unless this Purchase Agreement specifically requires otherwise, any notice, demand or request (“Notice”) provided for in this Purchase Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by fax or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer, to:

Town of Highlands
254 Main Street
Highland Falls, NY 10928
Attention: Kelly Pecoraro, Comptroller

with a copy to:

RIDER, WEINER & FRANKEL, P.C.
PO Box 2280
Newburgh, NY 12550
Attention: M. Justin Rider, Esq.

If to Seller, to:

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, New York 10977
Attention: Vice President - Operations

with a copy to:

Consolidated Edison Company of New York, Inc.
Law Department
4 Irving Place, 18th Fl
New York, New York 10003
Attention: Grace Su, Associate Counsel

(b) Notice given by personal delivery, mail or overnight courier pursuant to Section 11.1(a) shall be effective upon the intended recipient's physical receipt of, or refusal to receive such Notice. Notice given by fax pursuant to Section 11.1(a) shall be effective as of the date of delivery is confirmed by electronic transmission confirmation if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day.

Section 11.2 Entire Agreement. This Purchase Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and contains the sole and entire agreement between the Parties with respect to such subject matter.

Section 11.3 Waiver. Any term or condition of this Purchase Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Purchase Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Purchase Agreement on any future occasion.

Section 11.4 Amendment. This Purchase Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Section 11.5 No Third Party Beneficiaries. The terms and provisions of this Purchase Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

Section 11.6 Assignment; Binding Effect. Neither this Purchase Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party. Subject to this Section 11.6, this Purchase Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 11.7 Headings. The headings used in this Purchase Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

Section 11.8 Invalid Provisions. If any provision of this Purchase Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Purchase Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Purchase Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Purchase Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and in lieu of such illegal, invalid or unenforceable provision, there will be

added automatically as a part of this Purchase Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 11.9 Counterparts; Fax. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any fax or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 11.10 Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Purchase Agreement shall be governed by and construed in accordance with the Law of the State of New York, without giving effect to any conflict or choice of law provision that would result in the application of another state's Law.

(b) Each of the Parties hereby submits to the exclusive jurisdiction of the State courts located in New City (Rockland County) in the State of New York and the Federal courts located in the City of White Plains in the State of New York with respect to any action or proceeding relating to this Agreement and the transactions contemplated hereby.

EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING RELATING TO THIS PURCHASE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Purchase Agreement as of the date first written above.

ORANGE AND ROCKLAND
UTILITIES, INC.

By _____
Francis W. Peverly
Vice President - Operations

TOWN OF HIGHLANDS, NEW YORK

By  _____
Town Supervisor

Exhibit A

Form of Quit Claim Bill of Sale

Exhibit B

Form of Mutual Release and Settlement Agreement

Exhibit C

Form of Operating Agreement

Exhibit 14c Quit Claim Bill of Sale
(854-856)

Quit Claim Bill of Sale

THIS BILL OF SALE, made the [REDACTED] day of [REDACTED], 2020

BETWEEN ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation
One Blue Hill Plaza
Pearl River, New York 10965

party of the first part, and

TOWN OF HIGHLANDS, a New York municipal corporation
254 Main Street
Highland Falls, NY 10928

party of the second part,

WITNESSETH, that the party of the first part in consideration of One and more Dollars (\$1.00 and more) lawful money of the United States, paid by the party of the second part, does hereby assign, transfer and release over unto the party of the second part, and the heirs or successors and assigns of the party of the second part forever,

ALL THAT PERSONAL PROPERTY more particularly described on **Exhibit A** attached hereto and made a part hereof, WITH ALL SUCH PERSONAL PROPERTY BEING SOLD BY THE PARTY OF THE FIRST PART AND PURCHASED BY THE PARTY OF THE SECOND PART IN “AS-IS, WHERE-IS” CONDITION AND SUBJECT TO ALL FAULTS OF WHATEVER NATURE AS SAME MAY EXIST AS OF CLOSING, IT BEING FURTHER ACKNOWLEDGED BY THE PARTY OF THE SECOND PART THAT THE PARTY OF THE FIRST PART IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH PERSONAL PROPERTY INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH THE NATIONAL ELECTRIC SAFETY CODE (“**NESC**”), NATIONAL ELECTRIC CODE (“**NEC**”), THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA (“**IESNA**”) OR ANY RULES, REGULATIONS AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (“**OSHA**”), WHETHER OR NOT THE PARTY OF THE FIRST PART KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY THE PARTY OF THE FIRST PART.

EXCEPTING AND RESERVING to the party of the first part, its successors and assigns, any personal property interest which is deemed to be an “Excluded Asset”, as such term is more accurately described in that certain Asset Purchase Agreement dated [REDACTED], 2020 by and between the parties hereto.

THIS SALE does not constitute a disposition of all or substantially all the assets of the Seller.

EXHIBIT A

LEGAL DESCRIPTION OF PERSONAL PROPERTY

MUTUAL GENERAL RELEASE AND SETTLEMENT AGREEMENT

This **MUTUAL GENERAL RELEASE AND SETTLEMENT AGREEMENT** ("Agreement"), dated as of [REDACTED] day of [REDACTED], 2020, is by and between ORANGE AND ROCKLAND UTILITIES, INC., a corporation with a principal place of business located at One Blue Hill Plaza, Pearl River, New York 10965 ("Company") and the TOWN OF HIGHLANDS, NEW YORK, a municipal corporation with offices located at 254 Main Street, Highland Falls, New York 10928 ("Town"). The Company and the Town are each sometimes referred to individually as a "Party," and collectively as the "Parties."

WHEREAS, the Company and the Town entered into a certain Agreement for Purchase and Sale of Street Lighting Facilities, dated as of [REDACTED], 2020 ("Purchase Agreement"). All capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Purchase Agreement; and

WHEREAS, the Company sold to the Town, and the Town purchased from the Company, the Street Lighting Facilities pursuant to the Purchase Agreement; and

WHEREAS, the execution of this Agreement represents additional consideration for the sale and purchase of the Street Lighting Facilities and was a condition precedent to said Closing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and such other good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged under seal, the Parties hereto agree as follows:

1. Each Party, for itself and each of its respective directors, officers, members, managers, partners, shareholders, employees, representatives, agents, attorneys, parents, subsidiaries, divisions and affiliated entities past and present, and its and their predecessors, successors, assigns, heirs, executors, and administrators, does hereby release and forever discharge the other Party and each of its respective directors, officers, members, managers, partners, shareholders, employees, representatives, agents, attorneys, parents, subsidiaries, divisions and affiliated entities past and present, and its and their predecessors, successors, assigns, heirs, executors, and administrators and all persons acting by, through, under or in concert with any of them, from any and all actions, causes of action, damages, suits, demands, controversies, claims, debts, liabilities, obligations, promises, agreements, costs, expenses, fees (including reasonable attorneys' fees), whether in contract, tort (including fraud or misrepresentation), law or equity, whether known or unknown, and which concern any and all claims arising from or related to the Street Lighting Facilities and invoicing for street lighting services provided by the Company to the Town prior to the Effective Date (hereinafter the "Street Light Claims"). This Agreement further represents a final resolution of all potential billing disputes which relate to Street Light Claims from which no appeal can be taken to the

State of New York Public Service Commission, and no judicial relief can be sought by either Party.

2. The Parties hereto acknowledge and agree that this Agreement shall not extinguish (i) Street Light Claims which may arise after the Effective Date of this Agreement, (ii) any other actions, causes of action, damages, suits, demands, controversies, claims, debts, liabilities, obligations, promises, agreements, costs, expenses, fees (including reasonable attorneys' fees), whether in contract, tort (including fraud or misrepresentation), law or equity, whether known or unknown, which are not Street Light Claims and which may exist between the Parties now or after the Effective Date, or (iii) claims relating to an alleged breach of this Agreement.

3. The Company agrees that it will not pursue collection of Street Light Claims which may have been under billed prior to the Effective Date.

4. The Town agrees that it will not pursue refunds of Street Light Claims which may have been over billed prior to the Effective Date.

5. Neither this Agreement, nor anything contained herein, nor any action taken by the Parties in performance of their obligations hereunder, shall be construed as evidence of the validity of any Street Light Claims asserted by any Party, nor an admission of the same by any Party.

6. The Parties hereto represent that the individuals executing this Agreement have been fully authorized by their respective governing bodies and/or companies to enter into this Agreement with full and binding effect upon their governing bodies and/or companies.

7. Nothing contained in this Agreement constitutes an admission of liability by either Party hereto.

8. This Agreement cannot be changed or modified, unless in writing, signed by the Town and the Company. The Parties agree that there are no understandings, agreements, or representations, expressed or implied, other than those expressed herein. This Agreement supersedes and merges all prior discussions and understandings, and constitutes the entire agreement between the Parties related to the subject matter hereof.

9. In the event that any provision of this Agreement is held to be unenforceable or invalid by any court or regulatory authority of competent jurisdiction, the validity and therefore the ability to enforce the remaining provisions shall not be affected so long as the Parties renegotiate the invalid provision(s) in order to accomplish the goal and intent of this Agreement.

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

ORANGE AND ROCKLAND UTILITIES, INC.

By _____
(signature)

Name _____
(printed)

Title _____

TOWN OF HIGHLANDS, NEW YORK

By _____
(signature)

Name _____
(printed)

Title _____

OPERATING AGREEMENT

THIS AGREEMENT (this “Operating Agreement”), dated as of the [REDACTED] day of [REDACTED], 2020 by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation with offices at One Blue Hill Plaza, Pearl River, New York 10965 (“Seller” or the “Company”), and the TOWN OF HIGHLAND, NEW YORK, a municipal corporation with offices located at 254 Main Street, Highland Falls, New York 10928 (“Buyer” or the “Town”). The Company and the Town are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, the Company and the Town entered into that certain Agreement for Purchase and Sale of Street Lighting Facilities dated as of [REDACTED], 2020 pursuant to which, as of the date of this Operating Agreement, the Company sold to the Town the Street Lighting Facilities; and

WHEREAS, the Parties wish to define their rights and obligations with respect to the operation, maintenance, repair, replacement, and inspection of, and other matters pertaining to, the Street Lighting Facilities from and after the Closing of the Company’s sale to the Town of the Street Lighting Facilities pursuant to the Purchase Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and such other good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. As used in this Operating Agreement, capitalized terms shall have the meanings ascribed to them in the Purchase Agreement unless otherwise defined in this Operating Agreement and the following terms shall have the following meanings:

“Breaching Party” has the meaning set forth in Section 8.2(b).

“Company” has the meaning set forth in the preamble to this Operating Agreement.

“Company Protected Parties” has the meaning set forth in Section 4.8.

“Company Tariff” shall mean and include any and all tariffs on file by the Company with the PSC (including, but not limited to, P.S.C. No. 3 ELECTRICITY), as the same shall be formally issued, supplemented, amended, superseded, and/or interpreted from time to time, now or in the future.

“Disconnection Services” means the services provided by the Company in order to de-energize Street Lighting Facilities or New Street Lighting Facilities so that Qualified Workers can perform Work on such Street Lighting Facilities or New Street Lighting Facilities, as set forth in Section 4.6.

“In-Line Fused Disconnects” means the waterproof safety devices that allow for the de-energization of the Street Lighting Facilities or New Street Lighting Facilities, the details of which are illustrated in Exhibit A hereto, and as set forth in Section 4.4.

“In-Line Fused Disconnects Deadline” has the meaning set forth in Section 4.4.

“Label” means a label attached to the head of each of the Street Lighting Facilities that (i) clearly states that the same is owned by the Town and (ii) does not obscure or otherwise make it more difficult to visually observe from the ground any other information (including wattage) on the head of the Street Lighting Facility. All Labels shall comply with the nomenclature requirements as to type and size, as promulgated by the National Electrical Manufacturers Association.

“Label Deadline” has the meaning set forth in Section 4.5.

“New Street Lighting Facilities” means the street lighting facilities owned by the Town and installed to any poles located within the geographical boundaries of the Town after the Closing of the Company’s sale to the Town of the Street Lighting Facilities pursuant to the Purchase Agreement.

“Operating Agreement” means this Operating Agreement, together with the Exhibits and Schedules attached hereto, as the same may be amended from time to time.

“Party” has the meaning set forth in the preamble to this Operating Agreement.

“Parties” has the meaning set forth in the preamble to this Operating Agreement.

“Permitted Lien” means (a) any lien for Taxes not yet due or delinquent, (b) any Lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000, (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller, (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any Governmental Authority to regulate any asset, and all matters of public record, and (e) any lien released prior to Closing.

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, association, or governmental entity or any department or agency thereof.

“PSC” means the State of New York Public Service Commission.

“Portal” has the meaning set forth in Section 4.1.

“Purchase Agreement” means the Agreement for Purchase and Sale of Street Lighting Facilities, dated as of [REDACTED], 2020, between the Company and the Town, together with the Exhibits and Schedules thereto, as the same may be amended from time to time.

“Qualified Workers” has the meaning set forth in Section 4.2.

“Reconnection Services” means the services provided by the Company in order to re-energize Street Lighting Facilities or New Street Lighting Facilities after Qualified Workers have performed Work on such Street Lighting Facilities or New Street Lighting Facilities, as set forth in Section 4.6.

“Street Lighting Facilities” means all of those certain overhead and underground street lighting facilities that are owned solely by Seller, attached to utility poles located within the geographical boundaries of the Buyer, used solely for street lighting purposes, and which consist of luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, including the In-Line Fused Disconnects referred to in Section 2.2, all as depicted in Exhibit A to this Operating Agreement.

“Third Party Losses/Claims” has the meaning set forth in Section 4.8.

“Town” has the meaning set forth in the preamble to this Operating Agreement.

“Verizon” means Verizon Communications, Inc. or its successor(s).

“Verizon Approval” means the written consent of Verizon, successor to the New York Telephone Company, pursuant to the Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company Covering The Joint Use of Poles dated as of September 1, 1974 and the Administrative and Operating Practices Associated with the Joint Use Pole Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company effective September 1, 1974, for the attachment of any and all Street Lighting Facilities and New Street Lighting Facilities either to poles jointly owned by the Company and Verizon or to poles verizo

“Work” has the meaning set forth in Section 4.1.

Section 1.2 Certain Interpretive Matters. In this Operating Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term “includes” or “including” shall mean “includes without limitation” or, as applicable, “including without limitation.” References in this Operating Agreement to an Article, Section or Exhibit shall mean an Article, Section or Exhibit of this Operating Agreement, and reference to a specified agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented, or restated from time to time.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 2.1 Organization. Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 2.2 Authority, Binding Obligation. Subject to obtaining the Seller's Required Approvals: Seller has all requisite corporate power and authority to execute and deliver this Operating Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Operating Agreement and the performance by Seller of its obligations hereunder have been duly and validly authorized by all necessary corporate action; and this Operating Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 2.3 No Conflicts; Consents and Approvals. Subject to obtaining the Seller's Required Approvals, the execution and delivery by Seller of this Operating Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the certificate of incorporation or by-laws of Seller or under any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Seller.

Section 2.4 Legal Proceedings. To the knowledge of Seller, there are no actions, suits or proceedings pending against Seller before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller's ability to proceed with the transactions contemplated by this Operating Agreement. To the knowledge of Seller, Seller is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller's ability to proceed with the transactions contemplated by this Operating Agreement.

Section 2.5 Liens. To the knowledge of Seller, the Street Lighting Facilities are free and clear of all liens except Permitted Liens, provided, however, such Permitted Liens do not restrict or prohibit the sale of Street Lighting Facilities by the Company to the Town or the Town's use, operation, repair, replacement or maintenance of the Street Lighting Facilities purchased by the Town.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

Section 3.1 Organization. Buyer is a municipal corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 3.2 Authority, Binding Obligation. Subject to obtaining the Buyer's Required Approvals: Buyer has all requisite power and authority to execute and deliver this Operating Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Operating Agreement and the performance by Buyer of its obligations hereunder have been duly and validly authorized by all necessary action; and this Operating Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 3.3 No Conflicts; Consents and Approvals. Subject to obtaining the Buyer's Required Approvals, the execution and delivery by Buyer of this Operating Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the charter or other organizational documents of Buyer or under any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Buyer.

Section 3.4 Legal Proceedings. To the knowledge of Buyer, there are no actions, suits or proceedings pending against Buyer before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Buyer's ability to proceed with the transactions contemplated by this Operating Agreement. To the knowledge of Buyer, Buyer is not subject to any outstanding judgments, rules, orders, writs, injunctions or

decrees of any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Buyer's ability to proceed with the transactions contemplated by this Operating Agreement.

ARTICLE IV

WORK ON STREET LIGHTING FACILITIES AND NEW STREET LIGHTING FACILITIES

Section 4.1 Responsibility for Work and Recording. From and after the Closing, the Town shall have sole responsibility for the installation, operation, maintenance, repair, replacement, removal, modification and inspection of the Street Lighting Facilities (including installation of In-Line Fused Disconnects as required by Section 4.4 and affixing Labels as required by Section 4.5) and any New Street Lighting Facilities (collectively, the "Work"). Each item of Work for which a record may be made in the internet Municipal Street Light Portal (the "Portal") that is to be provided by the Company pursuant to the agreement, dated as of August 20, 2014, between the Town and the Company shall be recorded by the Town in the Portal, and approved by the Company prior to the performance of the activity. For Work associated with emergency repairs (e.g., storm related, auto accidents) the Town and the Company will coordinate the recording of such Work in the Portal in a timely fashion after such repairs are made. The Town shall permit the Company or its designated representatives to review, copy and audit any and all records of the Town with respect to the Work during regular business hours and upon reasonable notice.

Section 4.2 Qualified Personnel. The Town shall cause the Work to be performed only by qualified employees, contractors and/or subcontractors of the Town (collectively, "Qualified Workers"). The Town shall cause all Qualified Workers to be trained, qualified and in full compliance with the United States Occupational Safety and Health Administration, National Fire Protection Association, National Electric Code, American National Standards Institute, the rules and regulations thereunder and any all other applicable laws, rules, regulations and requirements which pertain to the Work.

Section 4.3 Performance Standard for Work; Compliance with Laws. The Town shall cause the Work to be performed in a good workmanlike manner, in accordance with the best accepted practices in the industry, in compliance with this Operating Agreement and all applicable federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes, and only after all permits, approvals, licenses, easements or other permissions required to perform the Work have been obtained from each required Person.

Section 4.4 Obligation to Install In-Line Fused Disconnects. The Town shall cause In-Line Fused Disconnects to be installed and fully functional with respect to each of the Street Lighting Facilities no later than the date (the "In-Line Fused Disconnects Deadline") that is 24 months after the effective date of this Operating Agreement as set forth in Section 9.11; provided that if the Town does not cause this Work to be performed by the In-Line Fused Disconnects

Deadline, the Company may, but shall not be obligated to, (i) cause this Work to be performed and the Town shall reimburse the Company for all cost and expenses incurred by the Company in doing so, or (ii) disconnect electric service to the Street Lighting Facility. The Town shall cause In-Line Fused Disconnects to be installed and fully functional with respect to each of the New Street Lighting Facilities at the time of the installation of such New Street Lighting Facilities. With respect to any Street Lighting Facilities or New Street Lighting Facilities that have fully functional In-Line Fused Disconnects, the Town shall cause the Qualified Workers to operate the In-Line Fused Disconnects so as to de-energize the Street Lighting Facilities or New Street Lighting Facilities that will be subject of Work before the Work is performed.

Section 4.5 Obligation to Affix Labels. The Town shall cause Labels to be permanently affixed to each of the Street Lighting Facilities no later than the date (the “Label Deadline”) that is 24 months after the date of this Operating Agreement; provided that if the Town does not cause this Work to be performed by the Label Deadline, the Company may, but shall not be obligated to, cause this Work to be performed and the Town shall reimburse the Company for all cost and expenses incurred by the Company in doing so. The Town shall cause Labels to be permanently affixed to each of the New Street Lighting Facilities at the time of the installation of such New Street Lighting Facilities.

Section 4.6 Disconnection/Reconnection Services From the Company. Upon the Town’s request, the Company shall perform Disconnection Services on any Street Lighting Facilities or New Street Lighting Facilities that do not have fully functional In-Line Fused Disconnects. After completing the Work, the Town shall request, and the Company shall perform, Reconnection Services on such Street Lighting Facilities or New Street Lighting Facilities. The Town shall promptly pay the Company for all Disconnection Services and associated Reconnection Services pursuant to the applicable Company Tariff.

Section 4.7 Stray Voltage. Should the Company at any time notify the Town that, as a result of stray voltage testing by the Company or otherwise, the Company has determined that a stray voltage condition is being caused or contributed to by any Street Lighting Facilities or New Street Lighting Facilities, the Town shall cause all Work to be performed expeditiously (and within any time frame required by the Stray Voltage Orders) to reduce the stray voltage to within the allowable stray voltage range specified in the Stray Voltage Orders; provided that if the Town does not cause such Work to be performed with such time frame, the Company may, but shall not be obligated to, (i) cause the Work to be performed and the Town shall reimburse the Company for all cost and expenses incurred by the Company in doing so, or (ii) disconnect electric service to the Street Lighting Facility or New Street Lighting Facility that is causing or contributing to the stray voltage condition.

Section 4.8 Indemnification - Third Party Losses/Claims. The Town shall defend, indemnify and hold harmless the Company, its parents, subsidiaries, affiliates and its and their respective trustees, directors, officers, employees, attorneys, shareholders, contractors, subcontractors, agents, representatives, successors and assigns (collectively, the “Company Protected Parties”) from and against any and all claims, counterclaims, causes of action, lawsuits, proceedings, judgments, losses, liabilities, damages, fines, penalties, interest, costs and

expenses (including court costs, reasonable fees of attorneys, accountants and other experts and reasonable expenses of investigation, preparation, and litigation) for personal injuries (including death) or damages to property arising from or claimed to arise from the Street Lighting Facilities, the New Street Lighting Facilities or the Work (collectively, "Third Party Losses/Claims") that third parties suffer or sustain or claim to suffer or sustain, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Company Protected Parties for which negligence or other acts or omissions the Company Tariff (*i.e.*, Schedule for Electric Service, PSC No. 3 – Electricity, General Information Section 10.1, or its successor) does not provide an applicable exclusion from or limitation of liability.

Section 4.9 Indemnification – Damage to Utility Poles/Other Attachments. The Town shall indemnify and hold harmless the Company from and against any damage to utility poles or other property of the Company arising from the Street Lighting Facilities, the New Street Lighting Facilities or the Work, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Company Protected Parties for which negligence or other acts or omissions a Company Tariff does not provide an applicable exclusion from or limitation of liability.

Section 4.10 Procedure with Respect to Third Party Claims and Losses.

(a) If the Company becomes subject to a pending or threatened Third Party Claim/Loss and the Company believes it is entitled to indemnification pursuant to Section 4.8 hereof from the Town as a result, then the Company shall notify the Town in writing of the basis for its claim for indemnification setting forth the nature of the claim in reasonable detail. The failure of the Company to so notify the Town shall not relieve the Town of any liability or obligations under Section 4.8 or this Section 4.10 except to the extent that the defense of such Third Party Claim/Loss is prejudiced by the failure to give such notice.

(b) If any Third Party Claim/Loss proceeding is brought by a third party against the Company and the Company gives notice to the Town pursuant to this Section 4.10, the Town shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Town provides written notice to the Company that the Town intends to undertake such defense, (ii) the Town conducts the defense of the Third Party Claim/Loss actively and diligently with counsel reasonably satisfactory to the Company and (iii) if the Town is a party to the proceeding, the Town has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Company shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Company in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by the Company. The Company shall fully cooperate with the Town and its counsel in the defense or compromise of such Third Party Claim/Loss. If the Town assumes the defense of a Third Party Claim/Loss proceeding, no compromise or settlement of such Third Party Claim/Loss may be effected by the Town without the Company's consent unless (A) there is no finding or admission of any violation of law or any violation of the rights of any Person and no effect on any other Third Party Claims/Loss that may be made against the Company and (B) the sole relief provided is monetary damages that are paid in full by the Town.

(c) If (i) notice is given to the Town of the commencement of any Third Party Claim/Loss proceeding and the Town does not, within 30 days after the Company's notice is given, give notice to the Company of its election to assume the defense of such proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of Section 4.10(b) become unsatisfied or (iii) the Company determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Town under this Operating Agreement, then the Company shall (upon notice to the Town) have the right to undertake the defense, compromise or settlement of such Third Party Claim/Loss; provided that the Town shall reimburse the Company for the costs of defending against such Third Party Claim/Loss (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third Party Claim/Loss, in both cases to the extent it is determined that the Town is liable to the Company under this Operating Agreement with respect to such Third Party Claim/Loss. The Town may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

ARTICLE V

ATTACHMENT AND ACCESS

Section 5.1 Attaching to Utility Poles. Upon the Town obtaining the Verizon Approval and performing any and all conditions of such approval, the Town shall be permitted to continue to attach Street Lighting Facilities and newly attach New Street Lighting Facilities to utility poles jointly owned by the Company and Verizon and utility poles solely owned by Verizon, in each case located within the geographical boundaries of the Town, subject to obtaining any and all permits, approvals, licenses, easements or other permissions for such attachments that may be required from any Person other than the Company. The Town shall be permitted to continue to attach Street Lighting Facilities and newly attach New Street Lighting Facilities to utility poles solely owned by the Company that are located within the geographical boundaries of the Town, subject to obtaining any and all permits, approvals, licenses, easements or other permissions for such attachments that may be required from any Person other than the Company. Except for Street Lighting Facilities and New Street Lighting Facilities, this Operating Agreement does not authorize the Town to attach any other facilities or equipment to utility poles solely owned by the Company or jointly owned by the Company and Verizon.

Section 5.2 Access to Street Lighting Facilities and New Street Lighting Facilities. The Town shall not interfere with or restrict any and all access by the Company for any purpose to the utility poles to which any Street Lighting Facilities or New Street Lighting Facilities are attached, the Street Lighting Facilities and New Street Lighting Facilities themselves, or any other attachments on or about such utilities poles.

ARTICLE VI

ELECTRIC SERVICE

Section 6.1 Service Pursuant to Company Tariff. Electric service for the Street Lighting Facilities and New Street Lighting Facilities shall be pursuant to the applicable Company's Tariff and the Town shall make application therefore as required; provided that nothing in this Operating Agreement shall prevent the Town from purchasing its energy supply for any and all Street Lighting Facilities or New Street Lighting Facilities from an energy service company.

ARTICLE VII

INSURANCE

Section 7.1 Insurance Requirements. During the term of this Operating Agreement and thereafter as provided below, the Town shall obtain and maintain the following insurance policies:

- (a) 1. **Workers Compensation Insurance** as required by law.
2. **Employers Liability Insurance**, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).
3. **Commercial General Liability Insurance**, including Contractual Liability, with limits of not less than \$5,000,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$5,000,000 per occurrence and, for at least three years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without the Company's prior written approval. The Company acknowledges that the Town has a self-insured reserve of \$75,000. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name the Company, its corporate parent, affiliates and subsidiaries as additional insureds with respect to liability associated with, or arising out of, all operations, work and services to be performed by or on behalf of the Town under or in connection with this Operating Agreement.
4. **Commercial Automobile Liability**, covering all owned, non-owned and hired automobiles used by the Town, its contractors and subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

(b) All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

(c) At least three days prior to commencing operations, work and services under this Operating Agreement, the Town shall furnish the Company with copies of the insurance policies specified in paragraph (a) of this Article and certificate(s) of insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that the Company is an additional insured with respect to all coverages enumerated in this Article. The Company shall have the right, upon request, to require the Town to furnish the Company, with a copy of the insurance policy or policies required under paragraph (a) of this Article. All such certificates and policies shall be sent to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, 17th Floor
New York, N.Y. 10003

Attention: Supply Chain Department
Supplier Management Group (SMG)

Such certificates, and any renewals or extensions thereof, shall provide that at least 30 days prior written notice shall be given to the Company in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retentions which shall be for the account of the Town.

(d) To the fullest extent allowed by law, the Town agrees that this is an insured contract and that the insurance required herein is intended to cover the Company, its corporate parent, affiliates and subsidiaries for any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the operations, work and services performed under this Agreement.

(e) For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, the Town shall be deemed to have assumed tort liability for any injury to any employee of the Town or the Company arising out of the performance of the operations, work and services performed under this Agreement, including injury caused by the partial or sole negligence of the Company and notwithstanding any statutory prohibition or limitation of the Town's contractual obligations hereunder.

(f) In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the operations, work and services performed under this Operating Agreement, the Town, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall

inform such insurer(s) that the notice is being provided on behalf of the Company, its corporate parent, affiliates and subsidiaries and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of the Town, the Company, and the Company's corporate parent, affiliates and subsidiaries under the policies in the event that any claim, allegation, suit, or action is made against the Town, the Company, and the Company's corporate parent, affiliates and subsidiaries.

(g) In the event the Town uses contractors and subcontractors in connection with this Operating Agreement, the Town shall require all contractor and subcontractors to provide the same insurance coverage as required in this Article. Each contractor and/or subcontractor shall name the Company, its corporate parent, affiliates and subsidiaries as additional insureds under its Commercial General Liability insurance. The Town shall require each contractor and subcontractor to submit acceptable certificates of insurance to the Company prior to the contractor's and/or subcontractor's commencement of its operations, work and/or services. The Town shall, and shall cause any contractor and subcontractor to, furnish the Company with written notice at least 30 days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage.

(h) If any insurance coverage is not secured, maintained or is cancelled before termination of this Operating Agreement, and the Town fails immediately to procure other insurance as specified, the Company may, but shall not be obligated to, procure such insurance and the Town shall reimburse the Company for all costs and expenses thereof.

(i) The Town shall furnish the Company's Risk Management Department with copies of any accident or incident report(s) sent to the Town's insurance carriers covering accidents, incidents or events occurring in connection with or as a result of the performance of all operations, work and services to be performed by or on behalf of the Town under or in connection with this Operating Agreement. In addition, if requested, the Town shall promptly provide copies of all insurance policies relevant to this accident or incident.

(j) Nothing contained in this Article is to be construed as limiting the extent of the Town's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of the Town under or in connection with this Operating Agreement, or limiting, diminishing, or waiving the Town's obligation to indemnify, defend, and save harmless the Company, its corporate parent and its' subsidiaries in accordance with this Operating Agreement.

ARTICLE VIII

TERM, TERMINATION, WAIVER OF CERTAIN REMEDIES

Section 8.1 Term. This Operating Agreement shall continue in full force and effect until terminated in accordance herewith.

Section 8.2 Termination.

(a) This Operating Agreement may be terminated at any time by mutual written consent of the Company and the Town.

(b) This Operating Agreement may be terminated at any time by either Party upon written notice to the other Party if the other Party (the “Breaching Party”) has materially breached or violated a provision hereof and such breach has not been cured within 30 days following written notice thereof, provided that if such violation or breach is not capable of being cured within such 30 day period, the Breaching Party shall have an additional period to cure.

Section 8.3 Waiver of Certain Remedies. NOTWITHSTANDING ANYTHING IN THIS OPERATING AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING FROM THIS OPERATING AGREEMENT OR THE BREACH OR VIOLATION THEREOF.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. Unless this Operating Agreement specifically requires otherwise, any notice, demand or request (“Notice”) provided for in this Operating Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by fax or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer, to:
Town of Highlands
254 Main Street
Highland Falls, NY 10928
Attention: Kelly Pecoraro, Comptroller

with a copy to:

If to Seller, to:

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, New York 10977
Fax No. 845-577-3074
Attention: Vice President – Operations

with a copy to:

Consolidated Edison Company of New York, Inc.
Law Department
4 Irving Place, 18th Fl
New York, New York 10003
Attention: Grace Su, Associate Counsel

Notice given by personal delivery, mail or overnight courier pursuant to this Section 9.1 shall be effective upon the intended recipient's physical receipt of, or refusal to receive such Notice. Notice given by fax pursuant to this Section 9.1 shall be effective as of the date of delivery is confirmed by electronic transmission confirmation if delivered before 5:00 p.m. Eastern Time on any Business Day or the next succeeding Business Day if delivery is after 5:00 p.m. Eastern Time on any Business Day or during any non-Business Day.

Section 9.2 Entire Agreement. This Operating Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and contains the sole and entire agreement between the Parties with respect to such subject matter.

Section 9.3 Waiver. Any term or condition of this Operating Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Operating Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Operating Agreement on any future occasion.

Section 9.4 Amendment. This Operating Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Section 9.5 No Third Party Beneficiaries. The terms and provisions of this Operating Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

Section 9.6 Assignment; Binding Effect. Neither this Operating Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party. Subject to this Section 9.6, this Operating Agreement is binding

upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 9.7 Headings. The headings used in this Operating Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

Section 9.8 Invalid Provisions. If any provision of this Operating Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Operating Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Operating Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Operating Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Operating Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 9.9 Counterparts; Fax. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any fax or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 9.10 Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Operating Agreement shall be governed by and construed in accordance with the Law of the State of New York, without giving effect to any conflict or choice of law provision that would result in the application of another state's Law.

(b) Each of the Parties hereby submits to the exclusive jurisdiction of the State courts located in New City (Rockland County) in the State of New York and the Federal courts located in the City of White Plains in the State of New York with respect to any action or proceeding relating to this Operating Agreement and the transactions contemplated hereby.

EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING RELATING TO THIS OPERATING AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.11 Effective Date. This Operating Agreement shall be effective as of the date set forth in the preamble of this Operating Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Operating Agreement as of the date first written above.

ORANGE AND ROCKLAND
UTILITIES, INC.

By _____
Francis W. Peverly
Vice President - Operations

TOWN OF HIGHLANDS, NEW YORK

By _____
Town Supervisor

EXHIBIT A

Exhibit 14f Highlands Offer Letter December 20, 2019
(877-879)



Grace Su
Associate Counsel
Law Department
Consolidated Edison Company of New York, Inc.
4 Irving Place, Rm 18-833, New York NY 10003
Tel.: 212-460-6699
Email: sug@coned.com

December 20, 2019

VIA ELECTRONIC MAIL

Kelly Pecoraro
Comptroller
Town of Highlands
254 Main Street
Highland Falls, NY 10928

Re: Town of Highlands' Purchase of Orange and Rockland Street Lighting System

Dear Ms. Pecoraro:

The Town of Highlands has expressed interest in purchasing Orange and Rockland Utilities, Inc.'s street lighting system located in the Town. Such sale would be conducted pursuant to the provisions of Service Classification No. 6 of Orange and Rockland's electric tariff.

Orange and Rockland is willing to sell its street lighting system to the Town for an estimated price of \$30,922. This price is subject to update based on the results of the audit discussed below. The Town also will be responsible for the other costs discussed below. The attachment to this letter sets forth sales price information for the Town's street lighting accounts. Orange and Rockland's sale of its street lighting system to the Town is subject to New York State Public Service Commission approval pursuant to Section 70 of the New York Public Service Law. Sale of the street lighting system to the Town at the above-quoted price will assist the Company in demonstrating that the sale is in the "public interest" as required by Section 70.

If the Town is willing to purchase Orange and Rockland's street lighting system at the above-quoted sales price, Orange and Rockland will prepare a formal written sales agreement. In addition, any transfer of street lights from Orange and Rockland to the Town will have to address the issues set forth below.

Minimum Bill Under SC4 (Public Street Lighting - Company Owned)

Under Service Classification No. 4 of Orange and Rockland’s electric tariff (*i.e.*, the Service Classification under which the Town is currently taking service for its street lighting accounts), a customer is required to pay a minimum bill equal to the monthly luminaire charge multiplied by 60 months. Therefore, for any street lights installed within the last five years, the Town will owe some portion of this minimum bill. As set forth in the attachment, this results in an additional \$5,211 that has been added to the sales price.

Audit

If Orange and Rockland and the Town reach an agreement on the sales price, Orange and Rockland would need to re-audit the system to determine the exact number of overhead-fed street lights to be transferred from Orange and Rockland to the Town. The sales price will be revised to reflect the findings of the audit. The audit will be performed at Orange and Rockland’s cost. A representative of the Town can accompany Orange and Rockland during the performance of this audit.

Non-O&R Costs That Will be Incurred by the Town

Labeling - the Town will have 24 months from the transfer of ownership date to label the poles and luminaires in accordance with Company specifications.

Disconnect Devices - the Town will have 24 months from the transfer of ownership date to install a disconnect device for each street light.

Frontier/Verizon- if the Town’s streetlights are owned by Frontier or Verizon, the Town will need to seek permission to own street lights on the Frontier- or Verizon-owned poles. Frontier or Verizon may seek to assess the Town pole attachment fees. The Town will need to provide written evidence of Frontier’s/Verizon’s permission as a condition of closing.

Maintenance – commencing with the transfer of ownership date, the Town will be responsible for all maintenance associated with the street lights it purchases.

Disposal - commencing with the transfer of ownership date, the Town will be responsible for proper disposal of any bulbs or other street lighting equipment.

Environmental Liabilities - the Town will indemnify O&R with respect to any environmental effects of the street lights sold.

Operating Agreement – as a condition of closing, Orange and Rockland and the Town will need to execute an operating agreement setting forth the operational protocols that will be effective after the transfer of ownership date.

Please contact me if you have any questions regarding this matter.

Sincerely,
/s/ Grace Su

Grace Su
Associate Counsel

c. Enclosure

Exhibit 14g Street Lighting System Price
(880)

Town of Highlands

Street Lighting System Price Summary

12/20/2019

<u>Account No.</u>	<u>Type</u>	<u>Number of Lights (1)</u>	<u>Original Book Cost</u>	<u>Net Book Cost</u>	<u>Replacement Cost (2)</u>	<u>Depreciated Replacement Cost</u>	<u>Fair Mkt Value</u>
9991596009	Overhead-fed	168	\$57,989	\$22,137	\$120,342	\$26,680	\$24,740
9991596009	Underground-fed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
		168	57,989	22,137	\$120,342	\$26,680	\$24,740
Estimated Incremental Costs for UG Street Lights					<u>0</u>	<u>0</u>	<u>0</u>
Total Street Light Costs					\$120,342	\$26,680	\$24,740
Minimum Bill Under SC4						<u>5,211</u>	<u>5,211</u>
Total Sales Price						\$31,892	\$29,952
					Price	\$30,922	

(1) The number of overhead versus underground-fed streetlights is subject to change based on the results of an audit that will be conducted should the Town choose to move forward with the streetlight purchase.

(2) Based on Stores Overhead Factor of 57%.

Exhibit 15 Selections from Town FOIL
(881-885)

June Patterson

From: Richard Sullivan
Sent: Friday, September 20, 2019 9:09 AM
To: Bob Livsey; JRider@riderweiner.com
Subject: Fwd: NYPA Street Lighting Authorization to Proceed.pdf
Attachments: attachment 1.pdf; ATT00001.htm; NYPA Street Lighting Authorization to Proceed.pdf; ATT00002.htm

Good Morning,

Bob I'm not sure what Justin-you-me email to me is in reference to, however, in regard to LED lighting, please see attachments. The July one, 30 some pages, we acted on, you signed.

The two page April 5th one is what Jeff Laino is waiting on to allow continuation, and I'm glad Justin's eyes will see both. Justin in a previous email indicated this should be clear on the agenda, and Ty, June and Richie May be ambivalent based on Deborahs continued berating , I leave it to you as to dissemination. Previously we called it MCRA (master cost recovery agreement) , call the two page what you wish, but Steve Walker and Deborah Kopald will be watching.

Richie

Sent from my iPad

Begin forwarded message:

From: Richard Sullivan <rsullivan@highlands-ny.gov>
Date: September 19, 2019 at 10:06:16 AM EDT
To: Richard Sullivan <rsullivan@highlands-ny.gov>
Subject: NYPA Street Lighting Authorization to Proceed.pdf

June Patterson

From: Richard Sullivan
Sent: Monday, April 01, 2019 4:00 AM
To: Bob Livsey; June Gunza; Ty King; Richard Parry
Cc: Kelly Pecoraro
Subject: Fwd: LED light presentation

(As you can tell by the hour of this email, I'm working mixed nights.)
Hope all enjoyed a good weekend , now, on LED-

I was asked to spearhead this, I did. Please know I have no firm mindset on which direction to go with LED yet, Ms. Kopald emailed me daily at the school board, I'm very familiar with her position on electromagnetic, non ionizing pollution.

What Ive done to date :

- contacted Computel , who Bill Edsall brought in as a utility analyst. As per Computel's latest email, David Rose of that group has asserted \$7000+ is recoverable, Computel would get half of that, and that is for overbilling.
- I emailed Jim Ramus and received no response, but I did talk to the mayor , and in the village, a similar measure to purchase the lights via NYPA was halted, and the village now has O&R installing, for free, 7 lights per year , I believe they are LED. The village has over 225 lights, this will take some time, this is their choice at the moment, is a 30 year effort , one could run 3 models- O&R replacing 2%/ year; O&R replacing additional for \$169/ light; NYPA method and replace all at once. The third model will bring fastest up front savings , I doubt any of us really wants to own the lights, unless it is shown financially prudent.
- O&R is tough to get through on street light program, however, I did contact Teresa Johnson 8457835573 johnsonthe@oru.com Is her contact data. Teresa told me that O&R would in some measure as they are in the village if we pursue them; she further said for \$169/ light O&R would replace more than 2% per year, which is their current parameter for LED upgrades. Not sure if O&R will do all of them, if they do, we don't own them, fantastic , but they will still be LED and give Ms Kopald unending fuel for discontent.

This email I'm forwarding was resent to me alone, I believe Debra sent it to all of you. On April 8th, even if not reimbursed by town, I intend to treat Jeff Laino to a light meal in HF before the meeting , we owe him nothing , the estimate and meeting visit is no charge, and if possible, I'd like Jeff to not be attacked during his presentation, Ms Kopald can public comment all she wants, and I have no objection to her mentioned guest at a subsequent date, but I don't want anyone being hostile, we are in discovery, not conclusion.

One more point of contact was Robert Berdy of Clarkstown, 845 6392048, he spent time describing Clarkstown's effort, I invite anyone interested to contact him or Teresa Johnson , I have emailed Teresa pertinent data to request something formal from O&R.

Finally, April 8th, John Blanc has another speaker lined up, do I have Jeff Laino come at 7 or will he speak after John Blanc's Speaker?

Thanks All, I haven't responded to Debra, Bob L sets the agenda, if it is felt I should respond I will pending the comments you feed back.

Richie

June Patterson

From: Richard Sullivan
Sent: Friday, April 05, 2019 1:40 PM
To: Jeff Laino
Cc: Bob Livsey; June Gunza; Ty King; Richard Parry; June Patterson
Subject: Monday Eve
Attachments: IMG_1182.jpg; ATT00001.txt; IMG_1183.jpg; ATT00002.txt

Good Afternoon Jeff,

Again, thank you for the workup. As discussed Tuesday, I'm sending a confirmation email, including the town supervisor, town board and town clerk. Also, please see our agenda, and a map of 254 Main Street, there is Main Street parking as well as behind town hall.

Looking forward to your 3 part presentation, including the moderate-high level factoids surrounding LED lighting ; I am working in Mt Pleasant on water improvements, and on my commute going through New Castle (Chappaqua) , I see LED going on, and called New Castle, Nyack, Kingston, Rhinebeck and Clarkstown for real time input on satisfaction with the respective upgrades they are implementing, all seem content, and with no dispute, many localities are pursuing these upgrades.

Also as discussed, the local dissenter did include a letter in this weeks paper singling me out for pursuing this, if in attendance I will require negative comments be directed at me , as many others I've contacted are genuinely interested in this rapidly expanding fad/ technology.

Very best wishes for a great weekend,

Richie

June Patterson

From: Richard Sullivan
Sent: Tuesday, January 07, 2020 8:53 AM
To: June Patterson
Subject: FOIL request LED # A10. Fwd: [EXTERNAL]Town of Highlands_ES_MCRA_2019 between New York Power Authority , mERVIN R. LIVSEY and John Canale is Signed and Filed!

Sent from my iPad

Begin forwarded message:

From: Bob Livsey <blivsey@highlands-ny.gov>
Date: September 10, 2019 at 8:53:55 AM EDT
To: Richard Sullivan <rsullivan@highlands-ny.gov>
Cc: "Jeffrey.Lamo@nypa.gov" <Jeffrey.Lamo@nypa.gov>, Justin Rider <JRider@riderweiner.com>, June Gunza <jgunza@highlands-ny.gov>, Ty King <tking@highlands-ny.gov>, Richard Parry <rparry@highlands-ny.gov>
Subject: RE: [EXTERNAL]Town of Highlands_ES_MCRA_2019 between New York Power Authority , mERVIN R. LIVSEY and John Canale is Signed and Filed!

Our next Town Board meeting is on Sept 23. I will put it on the agenda for the town board to give me permission to sign

MERVIN R. LIVSEY

Supervisor, Town of Highlands
254 Main Street
Highland Falls, NY 10928
845 446-4280 x 312
Fax 845 446 4298
Cell 845 238 8074
blivsey@highlands-ny.gov

From: Richard Sullivan
Sent: Monday, September 9, 2019 8:27 AM
To: Bob Livsey <blivsey@highlands-ny.gov>
Subject: Fwd: [EXTERNAL]Town of Highlands_ES_MCRA_2019 between New York Power Authority , mERVIN R. LIVSEY and John Canale is Signed and Filed!

Sent from my iPhone

Begin forwarded message:

From: "Laino, Jeffrey" <Jeffrey.Laino@nypa.gov>
Date: September 9, 2019 at 7:12:25 AM EDT

Amended Order to Show Cause (Motion #1) August 24, 2020
(885-887)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

Index No: EF004088-2020

-----X
In the Matter of the Application of Deborah Kopald,
Petitioner

AMENDED

For a Judgment pursuant to CPLR Article 78

ORDER TO SHOW CAUSE
PRELIMINARY INJUNCTION
TRO REQUESTED

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc.,
The New York Power Authority

Respondents

-----X

TEMPORARY RESTRAINING ORDER REQUESTED

UPON the annexed Petition of Deborah Kopald sworn to on July 27, 2020, and exhibits annexed thereto as well as the corresponding Memorandum of Law (on NYSCEF, see filed documents)

LET the Respondents, The Town of Highlands New York, Orange and Rockland Utilities, Inc. and the New York Power Authority show cause before this Court (which is located at 285 Main Street, Goshen NY 10924) on the 21 day of September 2020 pursuant to NY CPLR 2214(b) (such that the show cause date is the reply and the answer is due pursuant to NY CPLR 2214(b)) why an order should not be entered herein granting the following relief:

- the Town of Highlands New York, Orange and Rockland Utilities, Inc., and The New York Power Authority are enjoined from taking any action in furtherance of the Light Emitting Diode (“LED”) streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands.
- the transfer of funds and signing of contracts between and/or among the parties (the Town of Highlands New York, Orange and Rockland Utilities, Inc., and the New York Power Authority) for the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands is halted and enjoined.
- the Town of Highlands New York, Orange and Rockland Utilities, Inc. and/or the New York Power Authority are Enjoined from submitting the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands to the New York Public Service Commission (“PSC”) for its approval.

APPEARANCES ARE NOT REQUIRED

- if any of the parties have submitted an application to the PSC for approval of the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands or for approval of any part thereof, they are ordered to request a withdrawal from the PSC

As well as any other relief this Court deems just and equitable.

ORDERED, that pending a hearing and determination of Petitioner’s motion to stay and pending further order of this Court

- that the Town of Highlands New York, Orange and Rockland Utilities, Inc., and The New York Power Authority are enjoined from taking any action in furtherance of the Light Emitting Diode (“LED”) streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands
- that the transfer of funds and signing of contracts between and/or among the parties (the Town of Highlands New York, Orange and Rockland Utilities, Inc., and the New York Power Authority) for the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands is halted and enjoined
- that the Town of Highlands New York, Orange and Rockland Utilities, Inc. and/or the New York Power Authority are Enjoined from submitting the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands to the New York Public Service Commission (“PSC”) for its approval
- that if any of the parties have submitted an application to the PSC for approval of the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands or for approval of any part thereof, they are ordered to request a withdrawal from the PSC

Sufficient cause therefor appearing, let service of a copy of this order, together with the papers upon which it was granted upon the Town of Highlands, 254 Main Street, Highland Falls, NY 10928; Orange and Rockland Utilities, Inc. c/o Consolidated Edison Corp., via Department of State service of process or 4 Irving Place, New York, NY 10003; and the New York Power Authority, 30 South Pearl Street, Albany NY, 12207 or 123 Main Street Mail Stop 10-B Corporate Communications, White Plains, NY 10601

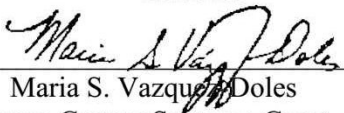
On or before August 28, 2020 shall be deemed sufficient service thereof (Petitioner, who must use outside vendors requests sufficient time given general pandemic slowdown for getting things printed

and served; Petitioner, who has been in touch with the parties via email and gave them notice that she would seek the overturn of the contracts in Court, will email a signed copy of this order to the parties at the email addresses below upon signature, if signed, immediately in the interim.) and it is;

Dated: Goshen, NY
August 24th, 2020

Ordered, that any opposition must be served upon counsel for the moving party and filed with this Court no later than 5:00 pm on September 11, 2020 and any reply must be served and filed no later than 5:00 pm on September 17, 2020.

ENTER:

Hon.  J.S.C.
Maria S. Vazquez Doles
Orange County Supreme Court

Town of Highlands
Town Hall
254 Main Street
Highland Falls, NY 10928
jpatterson@highlands-ny.gov
jrider@riderweiner.com

Orange and Rockland Utilities
c/o Consolidated Edison Corp.
vias DOS, 4 Irving Pl,
New York, NY 10003
hedemanw@oru.com
sug@coned.com

New York Power Authority
123 Main Street Mail Stop 10B
Corporate Communications
White Plains, NY 10601-3170
justin.driscoll@nypa.gov

Affidavit of Deborah Kopald in Support of Order to Show Cause (Motion #1) August 24, 2020
(888-908)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

Index No: EF004088-2020

-----X
In the Matter of the Application of Deborah Kopald,
Petitioner

For a Judgment pursuant to CPLR Article 78

AFFIDAVIT IN SUPPORT OF
ORDER TO SHOW CAUSE
REQUEST FOR PRELIMINARY
INJUNCTION
TRO REQUESTED

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc.,
The New York Power Authority

Respondents

-----X

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

TEMPORARY RESTRAINING ORDER REQUESTED

I, Deborah Kopald, being duly sworn deposes and states:

1. I am requesting Pursuant to the Petition Verified on July 27, 2020, the Exhibits attached thereto and my Memorandum of Law and order from this Honorable Court stating

- that the Town of Highlands New York, Orange and Rockland Utilities, Inc., and The New York Power Authority are enjoined from taking any action in furtherance of the Light Emitting Diode (“LED”) streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands pending further order of the Court
- that the transfer of funds and signing of contracts between and/or among the parties (the Town of Highlands New York, Orange and Rockland Utilities, Inc., and the New York Power Authority) for the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands are halted and enjoined until such time as this Article 78 proceeding is decided by this Court, , notice of entry has been served to all parties and then only pursuant to the order of this Court.
- that the Town of Highlands New York, Orange and Rockland Utilities, Inc. and/or the New York Power Authority are Enjoined from submitting the LED streetlighting project approved in the April 27, 2020 Resolution of the Town Board of the Town of Highlands to the New York Public Service Commission for its approval until 15 days

after this Article 78 proceeding is decided by this Court in their favor and notice of entry has been served.

In the meantime, I am requesting a Temporary Restraining Order until this Order to Show Cause can be decided. The Resolution in question is in Exhibit 1.

2. The gravamen of the Petition is that the Town of Highlands, which has been planning on replacing the Sodium Vapor and Mercury Vapor Streetlighting in the portion of the Town of Highlands that it controls¹ (Fort Montgomery, a small Census-Designated Place (“CDE”) along the Hudson River with 790 voting residents, just North of the Bear Mountain Bridge and nestled in the environmentally and ecologically significant Palisades Interstate Park) failed to do the appropriate environmental review under SEQR and wrongly designated the LED streetlighting scheme a “Type II action”. I assert it had to have a SEQR review under Type I (or unlisted) and as such should not proceed until this mandatory review takes place.

3. A circulated petition (Exhibit 3) demonstrates that the people of Fort Montgomery do not want these harsh lights, which may also be inappropriate in the more urban areas utilizing them named by Board member Richard Sullivan (Nyack, Kingston, etc., Petition @ ¶15), but nonetheless have been “chosen” by these municipalities due to the limited offerings of NYPA (which has “a few sizes to fit all” lighting options (Exhibit 4)) that not only do not distinguish between rural and urban areas, but do not distinguish between rural areas nestled in a State Park along the Hudson river and other rural areas). The lights in question are linked in many studies with retinal toxicity, breast cancer and sleep disruption due to melatonin decreases as well as death and disruption of night-time insect ecological webs. Humans and animals were designed to operate in darkness at night for optimal circadian rhythm functioning, a point I made

¹ On information and belief, the Village of Highland Falls, which is located in the Town of Highlands has jurisdiction over the other streetlights.

repeatedly in the briefing book I put together and presented to the Town of Highlands Town Board (Exhibit 2). The blue-white light from LED's exposes people at night to harsh daylight frequencies, whereas the current sodium and mercury vapor lighting does not, and are not associated with complaints of discomfort when someone looks at the lights, as opposed to the Blue-White LED's which are associated with complaints of harshness and irritation. Petition at ¶12.

4. There are other options, such as warmer color temperature lights of an orange or yellow cast (if one is set on selecting LEDs) or *remaining with the current non-LED lights which are also yellow or orange*². (Color-Temperature is neither a measure of light intensity, which is measured in lumens, nor a measure of power, which is measured in watts). See Exhibit 2, Briefing Book for further discussion, especially page 3 of the PDF for a visual. Indeed the circulated petition (Article 78 Petition at ¶12) reads:

TOWN OF HIGHLANDS STREETLIGHT PETITION

Blue-white LED streetlights will not save very much money. Compared to the cost to health, and well-being they may wind up costing money. Humans and animals are not designed to be exposed to daylight frequencies at night.

The town's lighting choices should be based on existing and emerging science about the negative effects of blue light on human health and the environment. This includes increased cancer risk, unpleasant glare and intensity, and damaging effects on the eye's retina, sleep quality, hormones and the well-being of wildlife.

The town should maintain our yellow sodium lights and replace broken mercury lights with them as the town did before. The yellow sodium lights provide clear visibility in all weather without being too bright and contain no harmful daylight frequencies.

Right now, when a light breaks, O&R replaces it with a blue-white LED light. Individuals should have the right to tell O&R they want the same yellow light if their streetlight breaks.

² Red LED lights are mandated on beaches in Florida to protect the turtle population and as indicated in the briefing book, the city of Flagstaff, AZ and Yellowstone National Park use Orange LED lights.

Meanwhile, the Town should commit to investigating the less harmful orange-amber LED lights (less harmful than blue-white LED lights) as this technology improves over time. Then we can consider whether they are a better solution than the existing yellow sodium vapor lights.

5. The Briefing Book includes letters from a New York area ophthalmologist and optometrist, who wrote directly to the Nassau County legislature with his concerns. I wrote as follows in the Petition:

In addition to findings by the American Medical Association (glare, sleep problems and other biological effects) and the International Agency for Research on Cancer (shift-work disrupts circadian rhythms, and such shifts, which are also accompanied by light during normal sleeping hours lead to an increase in cancer), I included letters written by New York practicing doctors on the topic of the dangers of blue-white light: one from an otolaryngologist, Joshua Rosenthal, MD and an optometrist, Joel N. Kestenbaum, OD, who directed his letter to the Nassau County legislature. Dr. Rosenbaum shows graphs of increased stress levels from exposure to artificial blue-white light. Dr. Kestenbaum writes:

It is very important to note that although a lower color temperature (3000K and below) (see figure below) is better for glare, all LED street lamps emit a certain amount of HEV light. Most municipalities who have already installed LED street lamps have installed the higher color temperature lighting, a cheaper alternative but more glare producing and higher HEV exposing blue white light. Residents in these areas are up in arms. After public outcry, the city of Davis, CA spent hundreds of thousands of dollars installing warmer LED fixtures just a month after installing white LED lamps. Phoenix residents are also complaining and they are also considering retrofitting to a lower color temperature light. Locally, LED street lamp installations in NYC and Brooklyn are being seen as a disaster by residents. They feel as if there is a film crew outside their windows and the light is spilling into their homes, disrupting their lives. Most don't even realize that they are being exposed to additional HEV light that has potential to lead to health issues.

..... Based on current research and best practices for reducing light pollution, it is just a matter of time that lawsuits are filed for either installing the wrong LED lamps or improperly shielding them in public areas. Technology is wonderful but can also be dangerous. There needs to be a balance between public benefits, health concerns, and cost savings. With what I have learned in the past few years about health issues and LED exposure and from the complaints that patients reveal in my eye care practice, my vote is for public safety.

He also references a number of articles including “Are LED streetlights disrupting your sleep”, “LED streetlights may contribute to serious health conditions, says AMA,

prompting cities to re-evaluate” and “AMA report affirms human health impacts from LEDs.” (See exhibits 2w, 2x and 2y).

See: Petition at ¶11 and
Exhibit 2 Briefing Book (pages 16-22 of
PDF)

Dr. Kestenbaum refers to municipalities which had to remove the LED lights after complaints. He refers to one such well-known case in Davis, CA, which I also referred to in a letter to the editor to *The News of the Highlands* on December 7, 2018

In Davis CA, city leaders spent \$350,000 to replace hundreds of LED streetlights after residents complained a mere month after installation. Residents in Brooklyn have complained that it feels like a film crew is outside their apartment buildings.

and again on April 5, 2019 (See: Exhibit 5):

A few months ago I wrote a lengthy letter about the serious problem with LED lights – in sum—that Davis, Calif. Spent \$350K ripping them out after residents were irritated by them....

Both medical professionals discuss effects on human hormones from exposure to this light: depletion of melatonin which prevents cancer and is needed for sleep and increase in stress hormones as measured in blood tests after exposure to these lights.

6. The Briefing Book also discusses that the breakage of LED lights is a hazmat situation due to the toxic nickel and copper used in them. The Agency for Toxic Substances and Disease Registry (“ATSDR”) (Exhibit 3 Briefing Book at page 6 of the PDF) discusses same and refers to a 2012 Scientific American Article, “the Dark Side of LED lightbulbs” on the environmental health risks when 20% of the population is allergic to nickel.

7. Paragraphs 9 and 10 of the Petition speak to other citations in my Briefing Book of the extreme biological harm of LED lights:

I also cited to the French Agency for Food, Environmental, and Occupational Health and Safety (“ANSES”) Reports on LED lights. With regard to the April 5, 2019 report, I wrote:

The report cites the scientific evidence on the "phototoxic effects" of short-term exposures to high-intensity blue light, as well as an increased risk of age-related macular degeneration after chronic exposure. Age related macular degeneration causes vision loss in those over 50 by damaging a spot in the center of the retina. The press release for the report states:

.....the expert appraisal showed that even very low levels of exposure to blue light in the evening or at night disrupt biological rhythms and therefore sleep. ANSES stresses that the screens of computers, smartphones and tablets are major sources of blue-rich light, and children and adolescents, whose eyes do not fully filter blue light, are a particularly susceptible population.

The Agency confirms the toxicity of blue light on the retina and highlights the biological rhythm and sleep disruption associated with exposure to blue light in the evening or at night, particularly via screens and especially for children. The Agency therefore recommends limiting the use of LED devices with the highest blue-light content, especially for children, and reducing light pollution as much as possible to preserve the environment.

Their previous report on the topic was issued in 2010 and called "Lighting systems using light emitting diodes (LEDs): health issues to be considered" It stated:

The issues of most concern identified by the Agency concern the eye due to the toxic effect of blue light and the risk of glare... Blue light is...recognized as being harmful and dangerous for the retina, as a result of cellular oxidative stress

adding that the blue light necessary to obtain white LEDs causes "toxic stress" to the retina. Blue light causes a photochemical risk to the eye, says the report, the level of which depends on the accumulated dose of blue light to which the person has been exposed, which is generally the result of low-intensity exposure repeated over long periods. In other words, cumulative effect as well as intensity matter.

The report also indicated that three groups are particularly at risk; children, populations which are already light sensitive and workers likely to be exposed to high-intensity lighting. The report cited glare and pointed out that because the emission surfaces of LEDs are highly concentrated point sources, the luminance of each individual source can be 1000 times higher than the discomfort level. In particular, the report refers to the glare risk and says that previous lighting standards should not be adapted to systems using LEDs. Any systems should have optics and diffusers to avoid glare and are more appropriate for industrial settings, not residential ones.

On page 8 [of the Briefing Book, Exhibit 2], I showed differences in plasma melatonin in the blood from night time versus day time and artificial night light

On pages 9 and 10 [of the Briefing Book, Exhibit 2], I went on to cite other studies showing harm:

According to a 2015 Harvard Medical School (“HMS”) advisory, night shift work and exposure to light at night are related to several types of cancer, diabetes, heart disease and obesity. The updated advisory it was based upon goes on to state the following:

...while any kind of light can suppress the secretion of melatonin, blue light does so more powerfully

Even dim light can interfere with a person's circadian rhythm and melatonin secretion. A mere eight lux—a level of brightness exceeded by most table lamps and about twice that of a night light—has an effect, notes Stephen Lockley, a Harvard sleep researcher.

While light of any kind can suppress the secretion of melatonin, blue light at night does so more powerfully. Harvard researchers and their colleagues conducted an experiment comparing the effects of 6.5 hours of exposure to blue light to exposure to green light of comparable brightness. The blue light suppressed melatonin for about twice as long as the green light and shifted circadian rhythms by twice as much (3 hours vs. 1.5 hours)

A 2017 study, “Outdoor Light at Night and Breast Cancer Incidence in the Nurses’ Health Study II” conducted by researchers at the Harvard School of Public Health found that

exposure to residential outdoor light at night may contribute to invasive breast cancer risk.

The Harvard nurses study came to the same type of conclusion as a 2009 study done in Israel which stated:

...the analysis yielded an estimated 73% higher breast cancer incidence in the highest LAN [light at night] exposed communities compared to the lowest LAN exposed communities.

Another study, “Melatonin, environmental light and breast cancer” dating to that time from an international team of researchers including a doctor at Columbia University in New York, NY came to the same conclusion in regard to female shift workers who were exposed to light at night.

In addition to cancer risk, there is the risk of retinal toxicity. One recent study published in Spain in 2012 found that blue LED light can irreparably damage the cells in the eye's retina specifically the retinal pigment epithelial cells. The study comes to the disturbing conclusion that once damaged, the retina cannot be regenerated and thus LED light exposure can cause blindness.

In 2018, a group from the University of Toledo, Ohio found, as ANSES reported, that that LED light exposure can lead to macular degeneration. The authors recommend not using cell phones in the dark because LED blue light dilates pupils and causes the harmful blue light to enter the eyes, triggering the production of a toxic chemical that interacts with oxygen to kill photoreceptor cells.

Finally, a 2016 article, "Effects of blue light on the circadian system and eye physiology" speaks to the disruption to sleep and blue-light induced damage to the retina. The graph in this paper makes the point that lights can appear similar intensity to a person, but the LED will have much more of the dangerous blue-spectrum light in it....

The referenced graph on the subsequent page (11) show that the blue-white LED lights have proportionately more of the dangerous wavelengths of the light spectrum than fluorescents and incandescents, which most mimic natural light. The next graph shows that circadian sensitivity (sensitivity of sleep rhythms) is most pronounced at these blue-white wavelengths.

9. In September, 2019, I provided the latest study from *Experimental Neurology*

(Exhibit 7b) and an email from one of the study's authors, toxicologist Laura Fonken, PhD, who wrote:

I absolutely agree with you that blue-white LED lights are not the optimal design for streetlights

Exhibit 8 consists of symposium abstracts from a 2015 conference "Human Made Noise and Nighttime Lighting" sponsored by the American Association of Science ("AAS"):

Artificial night lighting and loud, human-made sounds are increasingly prominent features in urban and rural areas across the globe. Because sensory systems are the primary means by which organisms interact with their environment, these evolutionarily novel stimuli have the potential to drastically alter the biology and ecology of diverse taxa, including humans. New evidence suggests that these sensory stimuli represent strong forces influencing human well-being and the behavior and distributions of animals....

(Conference abstract)

These are the individual symposium abstracts:

“Predicting Sound and Light Levels at Large Spatial Scales”:

The National Park Service created models of sound level and night sky conditions for the coterminous U. S. to assess resource conditions in national parks and adjacent landscapes. These models generalize measurements taken from hundreds of sites spanning the range of geographic and ecological conditions found in park units. *These data show that most people live in environments where night skies and soundscapes are profoundly degraded, and that noise and light pollution issues span much of the continent..... Collaborative conservation efforts that extend beyond park boundaries will be required to conserve natural sensory environments for future generations.*

(Emphasis Added)

“Going Global: Individual to Community-Level Responses to Noise and Light”:

The acoustic environment and natural cycle of day and night are of fundamental importance to countless species. Yet two prominent and underappreciated features of anthropogenic environmental change, noise and artificial light, are creating acoustic condition and light regimes that are highly novel across the globe. *These stimuli can compromise the sensory systems by interfering with organisms' abilities to obtain, interpret and respond to environmental cues and alter biological clocks.* Here we summarize the weight of current evidence that indicates that these aspects of human-induced environmental change can be powerful forces that require greater attention by biologists. We show that anthropogenic noise can drastically reduce avian diversity, disrupt avian physiological systems and behavior and alter several ecological interactions among community members. Similarly, *at the individual level, we present evidence that exposure to light at night has several behavioral and physiological effects that can trigger reduced biological function and possibly reduced longevity.*

(Emphasis added)

“Social Science and Citizen Science to Inform Sound and Light Management”

Citizen science can offer a unique structure for adaptive management, particularly of dispersed environmental features as found in residential systems. The knowledge-production capacity of citizen science makes it an overlooked, yet fundamental property of social-ecological systems

So while the AAS was promoting improving degraded visual landscapes from light pollution (and degraded soundscapes), the Town of Highlands, nestled in a State park proposes worsening it without conducting the necessary SEQRA review. The email record

also shows that they decided they were going to do this before listening to any evidence. Exhibit 9 is an email I sent with a link to a November 2019 Daily Mail article with this headline and bullet points:

Light Pollution is driving the INSECT APOCALYPSE, scientists claim --- from luring moths to their deaths to making bugs more visible to predators:

- Experts reviewed over 200 studies into the impacts of artificial light on bugs
- Light pollution has diverse impacts on insects that can shake entire food webs
- It is feared that 40 per cent of creepy-crawlies could go extinct within decades
- Researchers encourage people to reduce their use of artificial light at night

What is significant here is that the artificial component of the light are daylight frequencies that one would not naturally see at night. While one can say that orange and yellow are not lights one would see at night, these frequencies have much less effect on circadian rhythms- see especially page 12 of the PDF of the Briefing Book (Exhibit 2). Exhibit 10 is a CNN.com article that came out right before I filed this Petition that speaks to the urgency of the human and environmental health problem: “Light pollution ruins teen sleep and may contribute to mental disorders, study says”. The study in question, “Association of Outdoor Artificial Light at Night with Mental Disorders and Sleep Patterns Among US Adolescents” was published in *JAMA Psychiatry*. (JAMA is the acronym for Journal of the American Medical Association).

10. Of concern is the fact that even though the Town had pursued an agreement with the New York Power Authority (“NYPA”) in the fall to investigate LED lights, Supervisor Bob Livsey engaged in behavior that was actually a violation of New York Penal Law § 240.65 by failing to fulfill my Freedom of Information Law (“FOIL”) request for the proposed contract, telling me days before the meeting there was no such contract, then publishing an agenda the Friday before the meeting not listing LED lights, changing it Monday evening, September 23rd right before the meeting, and then voting on it. See Exhibits 12 and 15. The full FOIL record (see also NYPA response to FOIL (Exhibit 11) shows that the Town had planned to vote on this

document in the earlier weeks of September, so the deception was deliberate. Perhaps an academic point, but worth noting nonetheless, some of the Town FOILs showed that the Town Attorney, M. Justin Rider recommended transparency to the Supervisor ahead of time, so the Supervisor would seem to lack an excuse for listening to legal advice; a video of the September 23, 2019 Town Board meeting at which I brought up the issue at the beginning at public comment shows Mr. Rider falling on his sword for his client's malfeasance, citing a "misunderstanding". I am off-screen, sitting in the back of the room out of view of the camera, but am asking the questions about the LED lights: <https://www.youtube.com/watch?v=lJJWVF-T2J0&t=663s>.

11. Worse, it appears that the Board member aggressively shepherding this project, Richard Sullivan, has a conflict of interest inasmuch as he was working for NYPA during the time by his own admission (this was revealed in NYPA FOIL, but withheld by Richard Sullivan in response to a FOIL request I had made for emails regarding the project, also a New York Penal Law § 240.65 violation). See Petition at ¶14. There is not an exception for Town officials who have a business relationship with the company who are not benefitting financially from the contract who are actively managing the promotion of the contract. See Memorandum of Law, Part II.

12. Most significantly, given the plethora of evidence presented that the LED streetlights have extreme impacts on environmental and human health (and there are alternatives- the status quo or lower-color temperature orange and yellow (and red) LED lights, this scheme should never have been designated a Type II action by the Town Board. See Memorandum of Law, Part I. I explain therein why the lights should be designated a Type I action; certainly at a minimum it is an unlisted action, but not a Type II action, which has no environmental impacts. Pursuant to 6 NYCRR 617.3(c), the procedure for these actions was not followed:

(c) An application for agency funding or approval of a Type I or Unlisted action will not be complete until:

- (1) a negative declaration has been issued; or
- (2) until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy. When the draft EIS is accepted the SEQR process will run concurrently with other procedures relating to the review and approval of the action, if reasonable time is provided for preparation, review and public hearings with respect to the draft EIS.

and Pursuant to 6 NYCRR 617.3(d), there are clear areas of controversy which need to be addressed:

(d) The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQR process. Early consultations initiated by agencies can serve to narrow issues of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

The LED streetlighting scheme obviously does not qualify for a Type II exemption: there is nothing on the list of Type II actions (actions not subject to SEQR review) in 6 NYCRR § 617.5(c) that give an exemption for LED streetlighting. The major light replacement does not qualify for these exemptions:

- (1) maintenance or repair involving no substantial changes in an existing structure or facility;
- (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;
- (3) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure;
- (26) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment

On pages 3 and 4 of the Memorandum of Law, I write:

Switching from a light that people are generally finding irritating and which is linked with the health problems described in the Introduction, and in the Petition are substantial changes. Replacement of lights are not replacement of structures: they are replacements of lights. The lampposts themselves are the structures. In any event the lights exceed the thresholds in 6 NYCRR § 617.4. The lighting from LED lights encompasses a wider area than the sodium and mercury vapor lights; the total illuminated area would exceed 10 acres for a Type 1 action;

unlisted actions only need to meet 25% of that threshold and apply when parkland is adjacent, which is the case all over Fort Montgomery (See: 6 NYCRR § 617.4(b)(9)(10):

(9) any Unlisted action (unless the action is designed for the preservation of the facility or site), that exceeds 25 percent of any threshold established in this section, occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places (Volume 36 of the Code of Federal Regulations, parts 60 and 63, which is incorporated by reference pursuant to section 617.17 of this Part), or that is listed on the State Register of Historic Places or that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law

(10) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR part 62 (which is incorporated by reference pursuant to section 617.17 of this Part)

The Fort Montgomery Battle Site qualifies as does the Palisades Interstate Park Commission land adjacent to Franklin Street, adjacent to Mine Road, to Forest Hill Road, Canterbury Road and other locations in the Town of Highlands. (The Court can take judicial notice of official maps from the county and the state). Furthermore, lest the Respondents try to misrepresent that LED lights are “green infrastructure” and thus subject to Type II; green infrastructure is specifically defined in in 6 NYCRR § 617.2 thus:

(r) Green infrastructure means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse.

The term has nothing whatsoever to do with streetlighting. Finally, this is not “routine maintenance, but a major change with major implications.

I add here, that in colloquial parlance, LED lights are being talked about as “green”. However, even if they do in fact reduce the use of electricity, such a reality would not obviate a required review of the environmental effects of the technology. So-called global warming reduction must

be balanced with other effects on the environment. Put another way, the law does not give the Town a pass not to conduct an environmental review. 6 NYCRR § 617.7(c)(1)(ii) specifically refers to the following items which apply to the instant situation.

- (ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;*
- (v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;*
- (vi) a major change in the use of either the quantity or type of energy;*
- (vii) the creation of a hazard to human health;*
- (xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment*

13. An injunction is requested, because without it, this scheme will go ahead, money will be spent that the Court is likely to decide should be permanently enjoined absent a proper SEQR review to vet the environmental impacts of the LED light scheme, the Town Attorney indicated in a meeting that he was waiting on O&R for contracts to be signed, and the Deputy Town Clerk just told me they were signed by all parties. A TRO is specifically warranted pursuant to § 6313. While the contracts in question could be invalidated by this Court *ex post facto*, the parties can file an application with the New York Public Service Commission (“PSC”) at any moment, and that needs to be immediately halted to prevent the PSC from acting on the application to approve the streetlights. The PSC, on information and belief, does not have jurisdiction over the question of whether the Town of Highlands violated SEQR; only this Honorable Court does. They certainly have no interest in entertaining it as they have been routinely approving such applications from other jurisdictions. (The SEQR issue applies to the preliminary injunction as well as the TRO.) Most relevant to the TRO request, correspondence with James Denn, Public

Affairs Officer at the PSC (see Exhibit 16) indicates that the filing for approval from the PSC may or may not be reversible. He cannot guarantee either way. In other words, the PSC reserves the right to approve the lights even if there is a simultaneous proceeding in another jurisdiction; however this Court can order the parties not to file for permission for approval at the PSC until the proper SEQOR review is conducted. No permission had yet been filed with the PSC³, but as mentioned Town Clerk told me the contracts had been signed. There is another Town Board meeting tonight at which the Town could move to authorize O&RR to so apply.

14. NY CPLR § 6301 allows a preliminary injunction when rights are being violated. This situation meets the three-part test in *Vapor Tech. Ass'n v. Cuomo*, 66 Misc. 3d 800, 118 N.Y.S.3d 397 (N.Y. Sup. Ct. 2020):

The three-part test applicable to motions for preliminary injunctions is first, whether the moving party will likely suffer irreparable harm if the preliminary injunction is not granted; second, whether there is a likelihood of success on the merits of the petition; and finally, whether a balancing of the equities favors the moving party.

There is irreparable harm; once one of the parties submits an application to the PSC, which is imminent, the PSC does not necessarily guarantee that it will withdraw the application, and the time for it to render a decision starts from the moment the application is made and a State Administrative Procedures Act (“SAPA”) notice goes out. Email correspondence of the PSC (Exhibit 16) suggests that the PSC will not necessarily recognize the jurisdiction of this Court and stop the application from being ruled upon. The Town of Highlands must first engage in a proper SEQOR review and designate the project a Type I or unlisted action (I assert it should be Type I). There is irreparable harm to the environment if the Town of Highlands goes ahead with this project as well as harm to the Town’s finances if the residents wind up demanding the removal of a costly and irritating boondoggle as occurred in Davis, CA and Phoenix, AZ. The

³ Since those emails occurred, the power went out here for five days- I was blocked in due to dangling wires and a tree across the road. I also had a tree my driveway and have been laid up with extreme back pain from chopping up said tree, so I have not yet had a chance to get the Article 78 served or to file this motion as of this writing.

Town has a small tax base: over 90% of the land was taken by the U.S. Government by eminent domain for West Point earlier last century, so spending money on this scheme as well as the legal fees and contract negotiations in violation of lawful procedure is onerous. According to the 2010 census, the Town only had 12,492 residents (inclusive of West Point). Given the tiny size of the town and the fact that the Town's budget is only a little over \$6,000,000, no more attorneys' fees should be spent on this scheme, there are allegations against the Town of lawless behavior⁴ that is causing the legal bill to be disproportionately high⁵. The town continues to be non-transparent (failure to fulfill FOIL requests related to this scheme (Penal Code violations), the greenlighting of incorrect "Type II" status at the height of the Pandemic), etc., so it is necessary to stop further action being taken with regard to this scheme at next Monday's board meeting. (Again, it's a question of time before O&R files an application with the PSC to approve the lights (it is going to happen absent this Court's intervention and could occur any day if not already), and as stated the PSC will move ahead with the process without being bound by the jurisdiction of this Court; the only remedy is for this Court to tell the parties not to file the application with the PSC).

15. I am likely to win this Article 78, because it is obvious that the streetlights scheme

⁴ The Town moved ahead with this scheme at what on information and belief was its first meeting during the pandemic state of emergency; people have been under siege and were hard-pressed to know of their plans. The sneaky behavior demonstrated (flagrant violations of NY Penal 240.65) are a repeat behavior pattern as demonstrated in the Petition; absent an immediate restraint, the Town is likely to waste further legal fees on this scheme and potentially take further action to finalize contracts at the next board meeting, which on information and belief is in a week from today (Monday).

⁵ The Town is being sued on a RICO lawsuit by a former local policeman in federal court. I also sued them alleging illegal granting of permits; I have also put them on notice that they are attempting to charge me illegal fees to get a ZBA appeal heard (illegally passing along the costs of the tribunal's attorney to the applicant among other things). They also passed a noise ordinance that is illegal, allowing construction to go on until 9 p.m. at night likely in retaliation for having been sued over an illegal construction project. While each issue needs to be addressed separately, there is a pattern of lawless behavior here (the Town will do what it gets away with, and apparently the Supervisor doesn't even listen to the Town attorney when he does suggest compliance with legal norms). Further work by the Town attorney to defend lawless this lawless scheme causes irreparable harm to the taxpayers especially given the small tax base.

should not have been declared a Type II action and that a full SEQR review is required, including a public hearing and the filling out of an Environmental Impact Statement. The Town did not follow proper legal procedure by approving the light scheme. I respectfully assert that they need to be stopped and made to conduct the legally required SEQR review publicly *before* the PSC process occurs because the streetlights have a huge negative environmental impact and because if allowed to file with the PSC, a procedural problem will occur whereby the scheme may be permissioned no matter what this Court rules.

16. The balance of equities favors me as an affected citizen. Procedurally it would be onerous to have to file an Article 78 against the PSC in Albany if the Respondents are not enjoined from filing an application for approval of the streetlighting scheme before the PSC, while the issue of whether SEQR was violated is litigated. On information and belief, I am the first person in the State of New York to file something adverse to the use of LED streetlighting in Supreme Court; the PSC has been promoting it, and does not review the environmental effects of the technology it promotes. By way of example, the PSC approved smart metering in NY (while it was wholly rejected by the Public Utility Commissions of NM and KY more recently both due to a faulty business case and allegations of harm from the radiation emissions). In DPS case 14-M-0196 on page 45, ¶2 of its Modification Order of October 20, 2017, the PSC writes⁶:

The Commission has carefully considered the evidence concerning the potential threat of RF from meters equipped with radio transmitters that emit measurable RF radiation, as well as the evidence with respect to non-RF equipped solid state meters, and also with respect to putative benefits of electromechanical meters.

(Emphasis Added)

and then says the polar opposite in response to FOIL requests from Stephen P. Romine on November 27, 2019 (see Exhibit 17):

⁶ Please take Judicial Notice of the PSC October 20, 2017 modification order: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0196&submit=Search+by+Case+Number>

You state, at page 13 of the Rehearing Order, the Commission claimed to have “reviewed” the studies. The Commission made no such claim....
.....The Commission did not claim to have reviewed the aforementioned studies. It instead cites, as support for its conclusion regarding safety impacts, other governmental entities’ investigations which included reviews of those studies....
....the Commission...is not in possession of the studies themselves.

The response to the January 27, 2020 FOIL shows that the Commission was not in possession of any studies. The Commission cannot credibly claim to have “*carefully considered the evidence concerning the potential threat of RF* from meters equipped with radio transmitters that emit measurable RF radiation” when they admit a little over 2 years later they did not review the studies, don’t have them and misrepresent that they never claimed they reviewed the studies when they had previously said they “carefully considered the evidence”. The point is, the PSC went as far as to deceive the public that it had reviewed the environmental effects of the pulse-modulated microwave radiofrequency radiation emissions of the smart meters by saying that it had in an order, but in reality had not done so. Given the unwillingness of the PSC to commit to withdrawing an application for the Town of Highlands’ streetlighting scheme upon any order of this Honorable Court, I respectfully assert it would be reasonable to assume that they are not interested in waiting for an environmental review of LED lights that on information and belief they never performed either.

17. With regard to the lights themselves, I used to walk in the neighborhood at night before the Pandemic) and don’t need the whole neighborhood to be lit up to the point where it is so bright, it is too irritating to walk. I, like the other locally circulated petition signatories, (Exhibit 3) do not wish the environment to be further degraded or to be exposed to extra risk for breast cancer or sleep degradation from these lights or deal with their over-bright nature and harshness to the eyes. Given anecdotes from many other people, I don’t think I am particularly sensitive in acknowledging that a brief look at the LED lights hurts my eyes and causes after-images while looking at the sodium vapor/mercury lights creates no ill effect. Certainly, given the evidence that retinal toxicity is associated with these lights, it should not be surprising that

people complain about the effects of looking at them. As described in the Petition, people in Town tend not to know what is going on until someone informs them or something is imminently about to happen⁷; the required review is a way for people to weigh in on the impacts of something that has a lot of controversy and negative effects. There is a prevalent view that I would describe as “learned helplessness” whereby people say, “the Town just does whatever they want” and indeed that is what occurred on April 27, 2020 with the signing of the Resolution and the deprivation to the citizenry of this process. A signal from a Court that the Town is likely to have violated its obligations under the law may stimulate immediate participation at Monday’s board meeting (though it may not since they are virtual right now) on the subject of LED lights and sneaking things through during a Pandemic. Regardless, since the Town neglected to follow a legally required step, there should be no further actions taken in support of this scheme.

18. There is no “equity” to the Town; the supposed savings from the lights take years to recoup and there would not be so many more savings from a few months delay. (The amount that they continue to waste on legal fees in support of this scheme are likely to cancel out the supposed savings in any regard). It will actually cost money if the Town later decides like so many other municipalities that the lights are unacceptable. Regardless, the Town needs to follow proper procedure first.

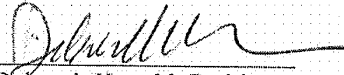
CONCLUSION

In conclusion, the immediate temporary restraint is requested along with a preliminary injunction due to the likelihood that the PSC approval process for this scheme may not be reversible once started and will lead to more procedural difficulty in invalidating this scheme (potential need to file a second Article 78 if there are conflicting rulings), because of ongoing

⁷ Also the issue has not been covered by the press recently; the chief reporter, Mary-Jane Pitt told me that *The News of the Highlands* is a family newspaper, prefers not to report on controversy and does not like to see the Town Board “berated”).

covert behavior by the Town Board including, but not limited to serial violations of NY Penal Law § 240.65 and the likelihood that more decisions in furtherance of this scheme could be made at the next Board meeting, the importance of not continuing to outlay scarce taxpayer dollars for a scheme that should be invalidated, the importance of not continuing to outlay scarce taxpayer dollars for more legal fees to support the Town's unlawful behavior for same as well. The gravamen of the Petition is quite basic: a SEQR review needed to be conducted before proceeding with this scheme, and it was not. On a personal note, at a virtual meeting of New Yorkers for Wired Technology last week that I attended, members from Brooklyn complained that LED lights went up during the pandemic and said the brightness is "horrific", something that I repeatedly documented in my Petition as a public concern. Again, the Town Clerk indicates the agreements have been signed. The parties should not be allowed to start the PSC approval process absent a proper local SEQR determination. There is no way to reverse this scheme absent an immediate restraint by this Honorable Court. Also, with regard to the TRO, if the Court grants it, I can email it to the parties quickly so they have it, but would ask for a few days to facilitate getting everything served personally. We have been in touch by email and I provided notice to them that I would seek to have the contracts invalidated and the SEQR determination reversed. (Exhibit 13).

In addition to the relief I requested, I ask for any other relief the Court deems appropriate in the interests of justice.


Deborah Kopald, Petitioner
P.O. Box 998
Fort Montgomery, NY 10922
(845) 446-9531

Sworn to Before Me this 24th Day of August 2020


Notary Public

LISA ALVARADO
Notary Public, State of New York
No. 01AL6101150
Qualified in Orange County
Commission Expires November 3, 20 23

Town of Highlands Town Hall 254 Main Street Highland Falls, NY 10928	Orange and Rockland Utilities c/o Consolidated Edison Corp. 4 Irving Place, New York, NY 10003	New York Power Authority 123 Main Street Mail Stop 10B Corporate Communications White Plains, NY 10601-3170
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Notarization made pursuant to NY Governor's Executive Order
202.7, as extended.

Exhibit 16 Correspondence with James Denn August 3, 2020
(909-910)

8/3/2020

Yahoo Mail - RE: Re:

RE: Re:

From: Denn, James (DPS) (james.denn@dps.ny.gov)

To: deborah_kopald@ymail.com

Date: Monday, August 3, 2020, 12:16 PM EDT

It's not that simple.

Shortly after a petition is filed, we will issue a notice seeking public comment under the State Administrative Procedures Act (SAPA). The SAPA comment period runs 60 days. However, the PSC accepts comments on proceedings that are before it during the pendency of the proceeding (up until a decision is made). I have no idea how long the proceeding you are interested in will take after the end of the 60 day SAPA comment period, but it would not take a very long time, assuming there were no issues.

As I might have mentioned, once a proceeding gets underway, there is a place on the upper right hand side of the proceeding's webpage where people can submit comments.

From: Deborah Kopald <deborah_kopald@ymail.com>
Sent: Monday, August 3, 2020 12:03 PM
To: Denn, James (DPS) <James.Denn@dps.ny.gov>
Subject: Re:

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Jim,

Once an application is filed, how many months are given to the public to weigh in on it before it is "closed".

thank you,

Deborah

On Monday, August 3, 2020, 10:13:26 AM EDT, Denn, James (DPS) <james.denn@dps.ny.gov> wrote:

The filer may request that an application be withdrawn. It may depend on the case/issues involved in the case whether the request will be granted. While such requests are typically granted, I cannot guarantee that the request will be granted.

From: Deborah Kopald <deborah_kopald@ymail.com>
Sent: Monday, August 3, 2020 10:03 AM
To: Denn, James (DPS) <James.Denn@dps.ny.gov>
Subject:

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Jim,

When a party puts an application before the PSC, do they need permission to withdraw it?

I am asking because I am wondering how "reversible" this process is.

I was about to put a motion in the court for TRO & prelim injunction, but don't want to ask for TRO if it is easy to yank a document.

Thanks and regards,

Deborah



**Public Service
Commission**

Public Service Commission

John B. Rhodes
Chair and
Chief Executive Officer

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
Commissioners

Thomas Congdon
Deputy Chair and
Executive Deputy

Robert Rosenthal
General Counsel

Michelle L. Phillips
Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

November 27, 2019

Via Email: pilgrimpeace@gmail.com

Mr. Stephen Romine
8 Fitzsimmons Lane
Woodstock, NY 12498

RE: Appeal of Records Access Officer determination – FOIL request for
peer-reviewed studies (FOIL No. 19-125).

Dear Mr. Romine,

On November 13, 2019, the Public Service Commission (Commission) received your appeal of an October 28, 2019 determination of the Records Access Officer (RAO) of the Department of Public Service. That determination denied your Freedom of Information Law (FOIL) request for an itemized list of more than 100 peer-reviewed studies concerning the safety of radio-frequency (RF) emissions from electric utility meters, which were referred to in the Commission's "Order Denying Petitions for Rehearing and Reconsideration" issued December 14, 2018 in Case 14-M-0196 (Rehearing Order). The RAO's determination also denied your alternative requests for the cover page of each study or "identifying data which would reveal the names" of those studies. It also suggested, however, that you consult a prior Commission order, referenced in the Rehearing Order, for the information you sought.

As a threshold matter, your appeal incorrectly characterizes the Rehearing Order's reference to the peer-reviewed studies. You state that, at page 13 of the Rehearing Order, the Commission claimed to have "reviewed" the studies. The Commission made no such claim. Rather, it stated that it had determined, in a previous order, that research has not established any negative health impacts allegedly caused by low-level RF transmissions from utility meters, and that "[t]he evidence supporting this determination includes more than 100 peer-reviewed scientific studies."¹ In that previous order – namely, the "Order Granting, in Part, and Denying,

¹ Rehearing Order at 13.

Mr. Stephen Romine
November 27, 2019

in Part, Requests for Modifications of Opt-Out Tariff,” issued October 20, 2017 in Case 14-M-0196 (Modification Order), the Commission stated:

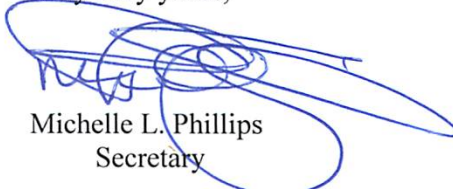
Numerous detailed investigations into the safety of RF transmissions from utility meters have been conducted in several states and jurisdictions. These investigations have in turn reviewed a wealth of evidence, including testimony in those proceedings offered by internationally renowned experts, exposure regulations in the United States and elsewhere, *and over one hundred peer-reviewed scientific studies*. The results of several of these investigations are summarized here.²

The Commission did not claim to have reviewed the aforementioned studies. It instead cites, as support for its conclusion regarding safety impacts, other governmental entities’ investigations which included reviews of those studies. The Commission summarized the reports and findings of those entities at pages 28 through 43 of the Modification Order.

Inasmuch as the Commission reasonably relied upon credible reviews of the studies, it is not in possession of the studies themselves. Under Public Officers Law § 86(4), a “record” subject to disclosure only includes information “kept, held or filed, produced or reproduced” with or for an agency. There is no requirement for the Commission to disclose information not in its possession. In responding to your initial FOIL request, then, the RAO properly referred you to the Modification Order’s summary of other governmental entities’ investigations.

Your appeal is denied.

Very truly yours,



Michelle L. Phillips
Secretary

cc: Committee on Open Government
via E-mail coog@dos.ny.gov

² Modification Order at 27-28 (emphasis added).



**Department of
Public Service**

Public Service Commission

John B. Rhodes
Chair and
Chief Executive Officer

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
Commissioners

Thomas Congdon
Deputy Chair and
Executive Deputy

Robert Rosenthal
General Counsel

Michelle L. Phillips
Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

January 27, 2020

Via Email: pilgrimpeace@gmail.com

Steve Romine
8 Fitzsimmons Lane
Woodstock, New York 12498

RE: FOIL No. 19-164

Dear Mr. Romine:

This letter constitutes the Department's final response to your request received on November 29, 2019 asking for the following records:

1. The records of the peer-reviewed scientific medical studies that the PSC reviewed in its January 25, 2005 approval of the GE I-210 digital utility meter documenting said utility meter was biologically safe for power consumers.
2. The records of any peer-reviewed scientific medical studies that the PSC has reviewed that documents the EMF microwave emissions of transmitting digital utility meters do not cause adverse biological health effects to power consumers.
3. The records of any peer-reviewed scientific medical studies that the PSC has reviewed that documents High Frequency Voltage Transient emissions of non-transmitting digital utility meters do not cause adverse biological health effects to power consumers.
4. The records of any survey/report/questionnaire ordered by the PSC to see if there are adverse biological health effects on power consumers from the installations of transmitting digital utility meters.

5. The records of any survey/report/questionnaire carried out by any utility in New York to see if adverse biological health effects of transmitting and non-transmitting digital utility meters installed on customers' homes are being experienced by power consumers.
6. The records of any warning the PSC ordered the Utility to give the power consumer to be aware of the possibility of harm from transmitting and non-transmitting digital utility meters.
7. The record of any warning the PSC ordered the utility to give pregnant women to be aware of the possibility of harm from transmitting and non-transmitting digital utility meters.

Insofar as you reasonably described the records, no records responsive to your request could be found after diligent search of records maintained by the Department.

To the extent this response denies you access to any records, you may seek a review of this decision pursuant to POL §89(4)(a) by filing a written appeal within 30 days of the date of this letter with Michelle L. Phillips, Secretary to the Commission, at the above address.

Sincerely,

/s/ Jessica R. Vigars

Jessica R. Vigars
Assistant Counsel
Records Access Officer

Town of Highlands Verified Answer September 29, 2020
(915-924)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of Deborah Kopald, X

Petitioner,

For a Judgment Pursuant to Article 78

-against-

The Town of Highlands New York, Orange and
Rockland Utilities, Inc., and The New York
Power Authority,

Respondents. X

VERIFIED ANSWER TO
PETITION BY RESPONDENT
THE TOWN OF HIGHLANDS
NEW YORK

Index No. EF004088-2020

Assigned Judge:

Hon. Maria S. Vasquez-Doles

Respondent Town of Highlands (the "Town"), by its attorneys Rider, Weiner & Frankel, P.C., states as follows in answer to the Petition:

1. Neither admits nor denies Petitioner's allegations in paragraph "1" of the Petition, which sets forth Petitioner's subjective opinions and arguments to which no responsive pleading is required, except admits that it entered into a resolution dated April 27, 2020 in the normal course of business authorizing an agreement with Respondent Orange and Rockland Utilities, Inc. ("O&R") to purchase existing O&R facilities. (A copy of the Resolution is annexed hereto as Ex. "D". A copy of the Agreement dated June 15, 2020 signed by Francis W. Peverly for O&R and by Town Supervisor Mervin Livsey is annexed as Ex. "E").

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "2" of the Petition, except admits upon information and belief that Petitioner Kopald resides in the Town and has filed within the last year at least two other Article 78 petitions against the Town and other residents, and otherwise denies her allegations directed against the Town.

3. Denies the allegations in paragraph “3” of the Petition, except admits that the Town passed the Resolution of April 27, 2020 to purchase O&R existing street lighting fixtures and to which the Court is referred for its true meaning and content; that the Town has entered into the Agreement to purchase from O&R approximately 168 existing street light fixtures for \$31,000. Contrary to Petitioner’s statement, the April 27, 2020 Resolution and June 15, 2020 O&R Purchase Agreement do not refer to LED lights. (See Exs. “D” and “E”).

4. Admits the allegations in paragraph “4” of the Petition that O&R and the Town have entered into a contract. (Ex. “E”).

5. Admits upon information and belief the allegations in paragraph “5” of the Petition that co-respondent New York Power Authority (“NYPA”) has performed research for the Town regarding the advantages of LED systems, and avers that, pursuant to its signed agreement of September 24, 2019 (Ex. “A”), there was a meeting on December 9, 2019 to continue planning for to launch the LED conversion project.

6. Denies Petitioner’s allegations in paragraph “6” of the Petition and denies that Petitioner’s grievances are subject to the Court’s jurisdiction or that Petitioner has standing or states any cognizable claim; except admits that, upon information and belief, the Respondent Town is within the personal jurisdiction of this Court.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “7” of the Petition, except admits that the Village of Highland Falls lies within the Town and that the Town considers that LED lighting is an energy and cost-efficient alternative to other forms of light; and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “8” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “9” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “10” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “11” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “12” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

13. Denies the allegations in paragraph “13” of the Petition, except admits that Richard Sullivan is a Town board member and that Petitioner knew by September 23, 2019 that the NYPA contract was about to be signed; and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

14. Denies the allegations in paragraph “14” of the Petition, except admits that Richard Sullivan is a Town board member; and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “15” of the Petition, and neither admits nor denies Petitioner’s self-serving statements, subjective opinions and beliefs and objects to same, as well as to her allegations based on hearsay and speculation.

16. Denies the allegations in paragraph “16” of the Petition, except admits that Petitioner knew of the draft April 2019 NYPA contract as early as September 2019 if not sooner; and that the Town adopted the April 27, 2020 resolution and that it falls within the definition of a Type II action under SEQRA, as the referenced contract is intended for the purchase of existing street lighting equipment such as poles, housing, hardware, wiring and other electrical components, which is an exempt Type II action under 6 NYCRR 617.5(c)(31) as being a “purchase or sale of furnishings, equipment or supplies....”.

17. Denies Petitioner’s “First Cause of Action” invoking CPRL 7803(1) alleging the Town had an obligation to perform a SEQRA review before adopting the April 27, 2020 Resolution, as well as the NYPA LED conversion agreement signed September 24, 2020, which by their express terms fall within the classification of a Type II action not requiring the SEQRA procedure.

18. Neither admits nor denies Petitioner’s “Second Cause of Action” invoking CPLR 7803(1) against NYPA except denies that Petitioner’s Petition may be maintained.

19. Denies Petitioner’s “Third Cause of Action” invoking CPLR 7803(2) falsely alleging that the Town’s April 27, 2020 Resolution authorizes “the signing of contracts for LED lights” and that the Resolution requires SEQRA review. As set forth below, and deliberately avoided by Petitioner, the Town entered into the contract with NYPA bearing the nominal date of April 5, 2019, signed on September 24, 2020, “to proceed with the full turn-key solution of LED street lighting project...” (See Ex. “A” hereto). Petitioner was aware of this contract and had orchestrated a protest several months earlier and continued to do so over the next several months. Her Petition and her grievance accrued on September 24, 2019 and is time-barred under CPLR 217. She cannot resuscitate the Statute of Limitations by attacking the Town’s April 27, 2020 Resolution and the O&R contract of June 15, 2020 for the purchase of existing street lights which are expressly Type II actions.

20. Denies Petitioner’s “Fourth Cause of Action” invoking CPLR 7803(3) and avers that the Town’s exercise of its duty to the residents and taxpayers of the Town to explore energy and cost-savings options neither implicates SEQRA nor can be validly claimed to be arbitrary or capricious. Moreover, here again Petitioner attempts to mislead the Court by alleging that the April

27, 2020 Resolution she challenges directs the “signing of contracts for LED lights.” It does not do so.

21. Denies Petitioner’s “Fifth Cause of Action” invoking CPLR 7803(2) in that Petitioner has utterly failed to identify the “bids” in question and falsely alleges that the Resolution refers to the LED lights.

22. Denies Petitioner’s “Sixth Cause of Action” invoking CPLR 7803(3) in that the actions are exempt from SEQRA; and avers that Petitioner has presented no facts to support her claim that any bids were refused or made and should be vacated or that the April 27, 2020 Resolution she challenges refers to LED lights.

FIRST AFFIRMATIVE DEFENSE

23. Petitioner lacks standing to maintain this Article 78 proceeding and has failed to plead, and cannot prove, through objective, credible and admissible evidence, that she is suffering an environmental injury in fact unique to her and significantly different in kind or in degree to that which the general public at large is exposed. The Petition must therefore be dismissed and the motion for injunctive relief denied.

SECOND AFFIRMATIVE DEFENSE

24. Petitioner’s claims are barred by the Statute of Limitations in that the Town’s decision to undertake the LED lighting conversion was finalized upon signing the NYPA contract on September 24, 2019 and Petitioner’s claim accrued no later than that date. (Ex. “A”). Petitioner herself admits the decision to install LED lighting was made by the Town at least as early as September 23, 2019. (Petition, ¶4, pg. 4; ¶13, pg. 12). This was no surprise to Petitioner, who wrote up and circulated a citizens petition in the summer of 2019, which is alleged in the Petition and mentioned in the Town Board meeting of July 8, 2019. (See Petition ¶2, pg. 2; minutes of

meeting July 8, 2019, Ex. “B”; minutes of meeting September 23, 2019, Ex. “C”). The Petition must therefore be dismissed as beyond the four-month period imposed by CPLR 217.

THIRD AFFIRMATIVE DEFENSE

25. The Town’s resolution of April 27, 2020 to purchase existing street lighting equipment and facilities is a Type II action exempt from SEQRA pursuant to 6 NYCRR 615(c)(2) and (31). The Petition must therefore be dismissed. (See Petition, “Wherefore Clause”, first bullet point).

FOURTH AFFIRMATIVE DEFENSE

26. The Town’s agreement with O&R to purchase O&R’s existing street lighting and equipment facilities dated June 15, 2020 is a Type II action exempt from SEQRA 6 NYCRR 615(c)(2) and (31). The Petition must therefore be dismissed. (See Petition, “Wherefore Clause”, second bullet point).

FIFTH AFFIRMATIVE DEFENSE

27. The Town’s agreement with NYPA signed September 24, 2019 is a Type II action exempt from SEQRA 6 NYCRR 615(c)(2) and (31). The Petition must therefore be dismissed.

SIXTH AFFIRMATIVE DEFENSE

28. Petitioner’s demand to annul “any contract related to the Resolution that was signed by the Town of Highlands and O&R since December 9, 2019 or whatever date is deemed four months ago...” is impermissibly vague and overbroad, not supported by any allegations of fact, and patently improper and must be dismissed. (See Petition, “Wherefore Clause”, third bullet point). The only relevant O&R contract alleged by Petitioner is the agreement for the purchase of O&R’s existing street lighting, contemplated by the Town’s resolution of April 27, 2020, which is not subject to SEQRA.

SEVENTH AFFIRMATIVE DEFENSE

29. Petitioner’s demand to annul “any contract related to the Resolution that was signed by the Town of Highlands and NYPA since “the control date” [which Petitioner states is “December 9, 2019 or whatever date is deemed four months ago...”] is impermissibly vague and overbroad, not supported by any allegations of fact, and patently improper and must be dismissed. (See Petition, “Wherefore Clause”, fourth bullet point).

EIGHTH AFFIRMATIVE DEFENSE

30. Petitioner’s demand to annul “any contract and/or agreement related to the project described in the Resolution that was signed between NYPA and O&R since the control date” (Petition, “Wherefore Clause”, fifth bullet point) is impermissibly vague and overbroad and not supported by any factual allegation in the Petition.

NINTH AFFIRMATIVE DEFENSE

31. Petitioner’s demand to annul “any contract and/or agreement related to the project described in the Resolution that was signed between NYPA, O&R and the Town since the control date” (Petition, “Wherefore Clause”, sixth bullet point) is impermissibly vague and overbroad and not supported by any factual allegation in the Petition, and therefore must be dismissed to the extent implicating the Town.

TENTH AFFIRMATIVE DEFENSE

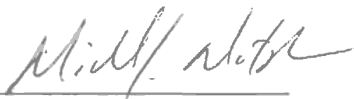
32. Petitioner’s demand to annul, vacate and void any action by NYPA to “put out any future project from the Town of Highlands to competitive bidding...” (Petition, “Wherefore Clause”, seventh bullet point) is impermissibly vague and overbroad, not supported by any factual allegation in the Petition, and therefore must be dismissed to the extent implicating the Town.

Petitioner has presented absolutely no facts and fails to state any claim to justify having this Court speculate, and rule, on the Town's competitive bidding procedures or their substantive content.

WHEREFORE, Respondent Town of Highlands respectfully requests that the Court dismiss the Petition, with costs imposed on Petitioner, and such other relief as the Court deems proper.

Dated: September 29, 2020
New Windsor, NY

Rider, Weiner & Frankel, P.C.
Attorneys for Respondent Town of Highlands
655 Little Britain Road
New Windsor, NY 12553
(845)562-9100

By: 
Michael J. Matsler

TO: Deborah Kopald, Petitioner Pro Se
PO Box 998
Ft. Montgomery, NY 10922

Grace Su, Esq.
Attorney for Orange and Rockland Utilities, Inc.
c/o Consolidated Edison Corp.
4 Irving Place
New York, NY 10003

Michael McCarthy, Esq.
Assistant General Counsel
New York Power Authority
123 Main Street, 9th Floor
White Plains, NY 10601

VERIFICATION

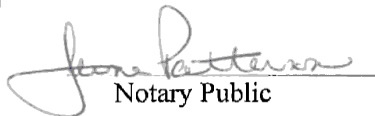
STATE OF NEW YORK)
)
) SS.:
)
COUNTY OF ORANGE)

Mervin Livsey, being duly sworn, deposes and says:

I am the Supervisor for the Town of Highlands, a Respondent in the above entitled action. I attest that I have read the foregoing Answer to Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true based upon the records and information contained in my files, or furnished by third parties.


Mervin Livsey

Sworn to before me this
29 day of September, 2020.


Notary Public

JUNE PATTERSON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01PA6146631
Qualified in Orange County
Commission Expires May 22, 2022

Exhibit A Letter Agreement Signed with NYPA September 24, 2019
(925-927)

EXHIBIT A

0925



COPY

ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

April 5, 2019

Supervisor Bob Livsey
Town of Highlands
254 Main Street
Highland Falls NY 10928

RE: Energy Services Program
Authorization to Proceed with turn-key street light project
Town of Highlands- LED Street Lighting

Dear Supervisor Livsey,

The New York Power Authority (NYPA) is excited to support the Town of Highlands in identifying and implementing a comprehensive street lighting upgrade. Improving the existing street lights is a widely used and effective strategy to achieve the goal of reducing energy consumption, lowering utility costs, and improving light quality throughout the community.

Consistent with the Master Cost Recovery Agreement, NYPA provides a turn-key solution to upgrade the Town of Highlands's existing street lights to energy efficient LED technology. NYPA is pleased to offer these services to replace approximately 167 existing street light fixtures with new high efficient LED technology.

By signing below, the Town of Highlands authorizes NYPA to proceed with the full turn-key solution of the LED street lighting project, which includes the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project. When the design and bidding is completed, you will receive an Initial Customer Installation Commitment (ICIC) for your review and signature. At this point, if you choose to proceed to project implementation all development costs will be rolled into the overall project. Conversely, should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase. NYPA will be fully transparent through this process and provide complete documentation as to how it determined all project costs.

By signing below, affirm that you agree to these conditions:



ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

PAGE 2
AUTHORIZATION TO PROCEED – Town of Highlands

Joseph Rende

(Name, printed)

MERVIN R. LIVSEY

(Name, printed)

Senior Director, Customer Business
Development

(Title)

Town Supervisor

(Title)

(Signature)

[Handwritten Signature]

(Signature)

(Date)

9-24-19

(Date)

Exhibit B Meeting Minutes July 8, 2019
(928-934)

EXHIBIT B

TOWN BOARD

The Town Board, Town of Highlands, held a Meeting on Monday, July 8th 2019, at Town Hall, 254 Main St, Highland Falls, NY, at 7:00pm

PRESENT: Mervin R. Livsey ---- Supervisor
 June Gunza ---- Council Member
 Richard Sullivan ---- Council Member
 Richard Parry ---- Council Member
 Amber Camio ---- Counsel

ABSENT: Tyrone King ---- Council Member

Supervisor Livsey opened the meeting at 7:00pm

PUBLIC COMMENT

Mindy Kimball and Mary Jo Schmidt spoke on behalf of the Environmental Advisory Committee regarding Environmental Grant Applications that are due July 26th.

Supervisor Livsey said that the Board would not be making any decisions at this time there are questions about the 10 step commitments, expect to vote on July 22nd.

MINUTES

Council Member Gunza said there needs to be a correction made on the new Police Officer hires from last meeting, she stated that the maximum probation and salary were not included in the minutes.

Council Member Sullivan also said that there needs to be a correction made on a statement where Council Member Parry's name was mentioned instead of his.

Council Member Gunza made a motion seconded by Council Member Sullivan to accept the minutes of June 24, 2019 in lieu of corrections to be made.

MOTION CARRIED: 4 - Ayes (Livsey, Gunza, Parry, Sullivan)
 0 - Nays
 1 - Absent (King)

COMMUNICATIONS

Supervisor Livsey said he received a letter of resignation from Joshua Wendell from the TOH Ambulance Corps effective immediately.

TOWN BOARD

JULY 8, 2019

Council Member Sullivan made a motion seconded by Council Member Parry to accept the resignation of Joshua Wendell from the TOH Ambulance Corps effective immediately.

**MOTION CARRIED: 4 - Ayes (Livsey, Gunza, Parry, Sullivan)
0 - Nays
1 - Absent (King)**

Supervisor Livsey said he had received a letter from Colin Schmitt our Assemblyman of the 99th District, he will have an inaugural salute for First Responders September 16, 2019. Assemblyman Schmidt is asking each Town & Village in his district to nominate one first responder that truly stands out in the community. Supervisor Livsey said the deadline to submit nomination is August 9, 2019.

Supervisor Livsey said that the Recreation Director, Aaron Falk, needs some clarification from the Board on the use of Long Pond.

Supervisor Livsey said he has reached out to the Garrison Commander to smooth over some of the issues Recreation are having.

FINANCIAL

Budget Transfers

Council Member Sullivan made a motion seconded by Council Member Parry to make the following transfers:

**MOTION CARRIED: 4-Ayes (Livsey, Gunza, Sullivan, Parry)
0-Nays
1-Absent (King)**

- \$575.00 from Liability Insurance to Tax receiver other Expenses.
- \$470.00 from Dial-A-Bus part time drivers to Dial-A-Bus Insurance.
- \$16,800.00 from Grass Cutting Contractual to Grass Cutting Personal Services.
- \$2,000.00 from Ambulance Insurance to Ambulance Vehicle Maintenance.
- \$1,500.00 from Long Pond Personal Services to Recreation Programs Supplies.
- \$515.00 from Water District #1 Water Charges to Water District #1 Personal Services.
- \$2,610.00 from Water District #2 Water Charges to Water District #2 Personal Services.
- \$4,825.00 from Sewer Bond Payment to Sewer Billing Personal Services.
- \$320.00 from Sewer Bond Payment to Sewer Billing Contractual.
- \$1,910.00 from Sewer Bond Payment to Sewer Liability Insurance.
- \$12,000.00 from Sewer Bond Payment to Sewer Contracted Services.
- \$650.00 from Town Hall Contractual Expenses to Town Clerk Other Expenses.

**MOTION CARRIED: 4-Ayes (Livsey, Gunza, Sullivan, Parry)
0-Nays
1-Absent (King)**

TOWN BOARD

JULY 8, 2019

BOARD REPORTS

Council Member Sullivan

Council Member Sullivan reported on the Sewer Plant Report for month of May.

Council Member Sullivan said that Dawn from Lanc & Tully sent out an email on their first phase report on the inspection of the Sewer Plant today, the cost for the inspection was \$1,800.

Council Member Sullivan said there are some issues that needed to be addressed and a meeting would be advised to discuss these issues.

Council Member Sullivan said he received an email stating there was a clog in the line today, prompting him to discuss the Dechlorination Bid. Mr. Sullivan stated he was disappointed that there were no bids.

Council Member Sullivan said there is going to be another inspection on the Sewer Plant from White Plains and he, unfortunately, will not be able to attend.

Council Member Sullivan reported that there is still a vacancy within the Building Department.

Council Member Sullivan said that the Building Inspector, Bruce Terwilliger, is swamped and to counteract some of that activity he has rescheduled his secretary's hours, she will no longer be in on Monday's but will work longer on Thursday and Friday.

Council Member Sullivan discussed the cellular water meter situation including the cost and efficiency of the meters. Mr. Sullivan said there are not that many water accounts and he would prefer if everything was analogue.

Council Member Sullivan announced the ZBA will meet on July 17th.

Council Member Sullivan reported on LED lighting and he stated that someone has a petition against the LED lighting.

Council Member Sullivan said he would like to move forward with the LED Lighting but expects some adversity from some of the public.

Council Member Sullivan spoke on how cost effective the LED Lights could be for the Town.

Supervisor Livsey asked for a motion for Council Member Sullivan to move on the contract for LED Lighting.

TOWN BOARD

JULY 8, 2019

Council Member Sullivan made a motion seconded by Council Member Gunza to move forward with a proposal and contract from Jeffrey Laino, New York State Power Authority.

**MOTION CARRIED: 4-Ayes (Livsey, Gunza, Sullivan, Parry)
0-Nays
1-Absent (King)**

Council Member Gunza

Council Member Gunza praised everyone involved in the 4th of July Parade and said it was very nice.

Council Member Gunza congratulated Ryan Gibson who graduated from Prince William Fire Department in Virginia, he started out in Highland Falls Fire Department and worked his way through the ranks. Ms. Gunza said Andrew Patterson and Erik Smith attended the graduation.

Council Member Parry

Council Member Parry said he also has heard nothing but good things regarding the 4th July parade.

Council Member Parry said he attended a 50th James I. O'Neill High School Graduation Reunion.

Chief Pierri

Chief Pierri stated that the first round of new candidates have completed 60 hours and will be ready this weekend for solo patrol.

Chief Pierri said the second round of new candidates started today and will be issued weapons tomorrow along with a refresher officer who will start this weekend as well.

Chief Pierri said that by this summer we should be at full patrol.

SUPERVISOR'S REPORT

Supervisor Livsey said he would like to make a motion to rebid the Dechlorination project for the Sewer Plant as the recent Bid was unsuccessful.

Council Member Parry made a motion seconded by Council Member Sullivan to Rebid the Dechlorination project for the Sewer Plant.

**MOTION CARRIED: 4-Aycs (Livsey, Gunza, Sullivan, Parry)
0-Nays
1-Absent (King)**

Council Member Gunza asked where would the Town advertise for this.

Supervisor Livsey said he had a discussion with the Town Clerk, June Patterson and it was decided to only advertise in the local paper.

TOWN BOARD

JULY 8, 2019

Supervisor Livsey stated that Fusco Engineering would take care of getting the word out to other bidders.

Council Member Sullivan said that the construction companies use the Dodge Report to find Bids.

Supervisor Livsey asked Comptroller, Kelly Pecoraro, once Al Fusco has prepared the Bid that she announce it on the Town's Facebook page and also the Town website.

Supervisor Livsey said that he would attend the Sewer Plant inspection on Thursday at 8:00am.

Supervisor Livsey announced also that he heard nothing but good comments regarding the 4th July Parade.

Supervisor Livsey said tomorrow he is meeting with the Highway Department to discuss their contract.

Supervisor Livsey made a statement about the parking lot in Fort Montgomery across from the Post Office he said it is being abused.

Supervisor Livsey quoted the code for parking within the Town but said the wording needed to be changed to reflect regulations for parking on Town Property so Police and Building Inspector can enforce, he would ask Town Attorney Justin Rider to take a look at that.

PUBLIC COMMENT

No public comment.

ADJOURN

Council Member Sullivan made a motion seconded by Council Member Parry to adjourn meeting 7:55pm.

**MOTION CARRIED: 4-Ayes (Livsey, Gunza, Sullivan, Parry)
 0-Nays
 1-Absent (King)**

FILED: ORANGE COUNTY CLERK 09/29/2020 02:33 PM

NYSCEF DOC. NO. 76

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 09/29/2020

Exhibit C Meeting Minutes with Resolution September 23, 2019
(935-946)

EXHIBIT C

0935

TOWN BOARD

The Town Board, Town of Highlands, held a Meeting on Monday, September 23, 2019 at Town Hall, 254 Main St, Highland Falls, NY, at 7:00pm

PRESENT:	Mervin R. Livsey	----	Supervisor
	June Gunza	----	Council Member
	Richard Sullivan	----	Council Member
	Richard Parry	----	Council Member
	Tyrone King	----	Council Member
	Justin Rider	----	Counsel
	Lesley Peterson	----	Deputy Town Clerk

Supervisor Livsey opened the meeting at 7:00pm

Supervisor Livsey asks Council Member Gunza to introduce to the Town, Kurt Hahn, Emergency Preparedness Coordinator.

Mr. Hahn informs the Town of his credentials and how he will help the Town put together an Emergency Preparedness plan.

Supervisor Livsey said that Mr. Hahn has not asked for payment for his services, but the Town has agreed to pay him a stipend of \$1,500, which has already been budgeted for Disaster Preparedness.

PUBLIC COMMENT

Deborah Kopald speaks regarding a copy of pre-contract between Town and NY Power Authority and having access to a copy before it was signed as she had foiled a request in advance.

Supervisor Livsey said that the Board had a few more steps to consider before any final decision or contract were to be finalized.

Mr. Rider also verified that there was another two page contract that the Town needed to review and sign from NY Power Authority.

Ms. Kopald asked the Board and Attorney if they had set a date for the Public Hearing for the Noise Ordinance.

Mr. Rider said that they have set the Public Hearing for the Noise Ordinance for Monday October 14, 2019 at 7pm.

Supervisor Livsey asked if there was anyone else for Public Comment.

TOWN BOARD

SEPTEMBER 23, 2019

Bryan Suchanyc from Fort Montgomery speaks regarding the Public Hearing on the Noise Ordinance and states that he is a property owner and developer and expresses his concerns regarding the noise ordinance.

Mr., Suchanyc states that most contractors work an 8 hour day plus dealing with demolition and rebuilding it is unlikely that they can complete any work without noise and for all residents to remember that the homes they live in were built with some kind of disturbance to the neighborhood.

Mr. Suchanyc said that if the Town locks builders in too small of a window, where it is not economically feasible, then we cannot afford to build.

Supervisor Livsey said, confirmed by Mr. Rider, that the proposed Noise Ordinance will be available no later than October 4, 2019 in the Town Clerk's Office.

Mr. Suchanyc also stated that there are some large projects coming up within the Town and that very often with contracting there are timelines so they work late hours for which you can obtain a late night permit which the contractor pays for generating funds for the Town.

Dave Tonneson spoke regarding the noise ordinance stating his opinions and concerns on the effects of having a noise ordinance law in place. Mr. Tonneson stated that he is afraid that un-amicable neighbors may use the noise ordinance against one another.

Tony Squicciarini also spoke about the same concerns and reservations he has regarding noise ordinance and asked the board to consider those who are only trying to make a living. Mr. Squicciarini also said that he has been doing business locally since 1986 and no one has complained to the police about any noise that he has made.

Ms. Kopald wanted to respond to comments made by Mr. Suchanyc, Mr Tonneson and Mr. Squicciarini.

Supervisor Livsey said all these issues can be discussed at the public hearing.

Supervisor Livsey asked Chief Pierri if he had a decibel reader and he said yes.

MINUTES

Council Member Parry made a motion seconded by Council Member King to accept the minutes of September 9, 2019 as prepared by the Town Clerk.

**MOTION CARRIED: 5 - Ayes (Livsey, Gunza, King, Parry, Sullivan)
0 - Nays**

TOWN BOARD

SEPTEMBER 23, 2019

FINANCIAL

Accounts Payable

Supervisor Livsey reported that the Town paid out \$62,178.04 on September 13, 2019.

Budget Transfer

Council Member Parry made a motion seconded by Council Member Gunza to make the following budget transfers:

- \$1,500.00 from Long Pond Personal Services to Recreation contractual.
- \$50.00 Record Management Contractual to Training over budget.
- \$8,000.00 from Contingent Account to Town Hall Contractual.
- \$300.00 from Supervisor Equipment to Treasurer other expenses.
- \$600.00 Officials Liability Insurance to Parks Improvements.
- \$80.00 from Summer Youth Programs Contractual to Summer Youth Programs Personal services.
- \$500.00 from Long Pond Personal Services to Summer Youth Programs Contractual.
- \$1,000.00 from Police Supplies to Police Vehicle Maintenance.
- \$2,000.00 from Sewer Utilities to Sewer Contractual.
- \$2,000.00 from Planning fees revenue to Planning legal fees.

MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays

BOARD REPORTS

Council Member Sullivan

Council Member Sullivan welcomed Kurt Hahn, Disaster Preparedness Coordinator and looked forward to see the results of his work.

Council Member Sullivan said ZBA met third Wednesday of every month and that there were two applications of which there will be public hearings on October 16, 2019 one being the former Nicole’s Restaurant.

Council Member Sullivan said he met with the Comptroller last week the meeting was also attended by Michelle Reese from MR Resources Corporation she wanted an opportunity to bid on supplying us with Electricity our current supplier being Direct Energy.

Council Member Sullivan said last week he attended a meeting at the Senior Center. Mr. Sullivan said he was invited by the village to join with a group called the Revitalization of the Waterfront, which included the Highland Falls Marina.

TOWN BOARD

SEPTEMBER 23, 2019

Council Member Sullivan also attended a meeting with Olga Anderson, member of the Environmental Advisory Council.

Council Member Sullivan wanted to wish Dr. Sheboy, Superintendent of Schools, good luck tomorrow as they are going to Capitol Hill to fight for Impact Aid.

Council Member Sullivan said that the Building Department Phil Hannawalt seems to be doing well and we are looking forward to making him full time.

Council Member Sullivan spoke about the Sewer Department getting Confined Space Training, Pat Patterson, Highway Superintendent, was going to set up dates where Sewer and Highway can do it together.

Council Member Sullivan announced that the Town Board went out to Goshen to see Don Smith, Fort Montgomery Fire Dept. and Arla James, Highland Falls Fire Dept. receive awards from Colin Schmitt rewarding their service as first responders.

Council Member King

Council Member King said the Senior Citizens had a good trip to the Catskills continued good work at the Center for organizing these trips.

Council Member King announced Thursday October 26, 2019 at the Senior Center there will be a Health Information Fair 10am – 12 noon with free continental breakfast.

Council Member King will spend some time with the Ambulance Corp discussing their budget and other issues.

Council Member Gunza said we need to make a motion to appoint Kurt Hahn as the Disaster Preparedness Consultant.

Council Member Gunza said Planning Board had a meeting on Sept. 19th that was lengthy but they had a lot to cover.

Council Member Parry

Council Member Parry had nothing to report.

Supervisor Livsey announced that Comptroller Kelly Pecoraro has prepared the Town Tentative Budget which we will review soon and the Board will try to keep it under the Tax Cap.

Kelly Pecoraro thanked the Department Heads for submitting their budgets timely and working hard to keep them down while keeping their resources.

TOWN BOARD

SEPTEMBER 23, 2019

Chief Pierrri

Chief Pierrri had nothing to report.

Council Member King announced at the Library tomorrow from 5-7pm there will be an English as a Second Language Course which assists the large Latino Community we have in the Town.

SUPERVISOR’S REPORT

Supervisor Livsey said he went out to Goshen to the District Attorney’s Office along with other Supervisor’s and Mayors of Orange County to talk about the Bail Law changes. An estimate of 5% of our budget will go towards these changes.

Supervisor Livsey said the Town put in for a grant to create a “Loop” from Canterbury Road thru Corbin Hill and down we need \$400,000.

Supervisor Livsey said there is going to be a Senior Dining Program Volunteer Recognition Luncheon Thursday, September 26, 2019, at Thomas Bull Park.

Supervisor Livsey said he received a letter from Lanc & Tully Engineers saying they applied for an MS4 waiver.

GENERAL BUSINESS

Assessor Appointment

Supervisor Livsey said is the time of year for the Assessor to be reappointed Jean Talman has been our Assessor for some time and she does a very good job.

Council Member Parry made a motion seconded by Council Member King to reappoint Jean Talman as the Sole Assessor for the Town.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

Crossing Guard

Supervisor Livsey said the Police Department has a new part-time crossing guard, Michael Gonzales, he has processed all paperwork with the Comptroller’s Office.

Council Member Gunza made a motion seconded by Council Member Parry to appoint Michael Gonzales as part-time school crossing guard starting September 23, 2019 with maximum probation and starting salary of \$11.67 an hour.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

TOWN BOARD

SEPTEMBER 23, 2019

Supervisor Livsey said the Highway Department is requesting, as part of their Collective Bargaining Agreement, for Ryan Falk to attend Morris State College to get his Class D Water License Oct 22nd & 23rd.

Council Member King made a motion seconded by Council Member Parry to allow Ryan Falk to attend class at Morris State College to receive his Class D Water License.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

NYPA

Supervisor Livsey reads a document from NY Power Authority asking permission to sign the document regarding comprehensive Street Lighting Upgrade.

Council Member Sullivan made a motion seconded by Council Member King to allow Supervisor Livsey to sign the document from NY Power Authority to start work on a comprehensive street lighting upgrade.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

Public Hearing – Noise Ordinance

Supervisor Livsey announced there is a Resolution to set Public Hearing for new Law “Noise Control to the code to the Town of Highlands,” he reads resolution.

Comptroller Pecoraro brings to the Town Board’s attention that the Public Hearing is scheduled for Monday Oct, 14 2019 @ 7pm that is going to coincide with the Budget Meeting scheduled same date @ 6pm.

Council Member Gunza made a motion seconded by Council Member Parry to schedule the Public Hearing for Noise Control on Monday October 14, 2019 @ 6pm.

**RESOLUTION ADOPTED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

******RESOLUTION ATTACHED******

Sewer Plant Progress

Supervisor Livsey asked Mr. Rider to discuss the events that are going on down at the Sewer Plant.

Mr. Rider announces briefly items that have been discussed on the Improvements on the Sewer Plant. Mr. Rider said the State Comptroller’s Office is preparing a letter for the Town, they are waiting on some items for clarification and once everything is in place the Town can accept Bids. Mr. Rider stated that the Town has an extension to November 1, 2019.

TOWN BOARD

SEPTEMBER 23, 2019

Mr. Rider also spoke briefly on Sewer de-chlorination Program, there is a bidder who is on hold while the Board explores other cost effective options.

Supervisor Livsey said that they did give the project to Lanc & Tully Engineering Company for review.

Building Department Hire

Supervisor Livsey received a letter from Building Inspector Bruce Terwilliger stating that Phil Hannawalt was the only candidate on the Orange County Resident List so Supervisor Livsey was asking for a motion to hire Phil Hannawalt full-time with maximum Probation at a salary of \$48,000 a year.

Council Member Sullivan made a motion seconded by Council Member King to hire Phil Hannawalt full-time with maximum probation at a salary of \$48,000 a year.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

Ambulance Corps - Resignation

Supervisor Livsey reads a letter of resignation from Captain Marty Byrnes Town of Highlands Ambulance Corps she had 20 years' service with the Town.

Council Member King made a motion seconded by Council Member Gunza to accept the resignation of Captain Marty Byrnes Town of Highlands Ambulance Corp effective immediately.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

Supervisor Livsey said there was one other resignation from the Ambulance Corps that they were going to table at this time.

Emergency Management Hire

Council Member Gunza made a motion seconded by Council Member King to hire Kurt Hahn Emergency Management/Disaster Preparedness Consultant with a stipend of \$1,500.00.

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
0-Nays**

Council Member Sullivan just wanted to thank Captain Marty Byrnes for all her dedication and hard work to the community while working within the Town of Highlands Ambulance Corps.

Council Member King also praised her years of her service.

Council Member Gunza asked Mr. Jeff Gathers who was in the audience would there be an election for a new captain.

TOWN BOARD

SEPTEMBER 23, 2019

Mr. Gathers said yes there will be and the Junior Ambulance program was coming along nicely.

Supervisor Livsey asked Mr. Gathers if he could arrange a meeting between all members, Council member King and himself in the near future.

Public Comment

Olga Anderson member of the Environmental Advisory Committee briefed the Board and Community on some of the events they took part in recently.

Council Member Sullivan made a motion seconded by Council Member King to adjourn meeting at 8:00pm

**MOTION CARRIED: 5-Ayes (Livsey, Gunza, King, Sullivan, Parry)
 0-Nays**

RESOLUTION

OF

SEPTEMBER 23, 2019

**A RESOLUTION TO INTRODUCE AND
SCHEDULE A PUBLIC HEARING TO RECEIVE
PUBLIC COMMENTS CONCERNING THE ENACTMENT OF
A LOCAL LAW ADDING A NEW CHAPTER 132
ENTITLED "NOISE CONTROL"
TO THE CODE OF THE TOWN OF HIGHLANDS**

Council Member Gunza presented the following resolution which was seconded by Council Member Parry.

BE IT RESOLVED that a Local Law Adding a New Chapter 132 entitled "Noise Control" to the Code of the Town of Highlands be and hereby is introduced before the Town Board of the Town of Highlands in the County of Orange and State of New York, and

BE IT FURTHER RESOLVED that a copy of the aforesaid proposed local law in final form be laid upon the desk of each member of the Town Board at least seven (7) days prior to a public hearing on said proposed local law, and

BE IT FURTHER RESOLVED that the Town Board shall hold a public hearing in the matter of the adoption of the aforesaid local law to be held at the Town Hall at 254 Main Street in the Village of Highland Falls, New York on the 14th day of October, 2019 at 7:00 o'clock, p.m., and

BE IT FURTHER RESOLVED that the Town Clerk give notice of such public hearing by the publication of a notice in the official newspaper of the Town, specifying the time when and the place where such public hearing will be held at least five (5) days prior to the public hearing, and posting of such notice together with a copy of such local law in accordance with the requirements

of the Municipal Home Rule Law.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Tyrone King, Councilman voting Aye

June Gunza, Councilwoman voting Aye_

Richard Parry, Councilman voting Aye_

Richard Sullivan, Councilman voting Aye_

Mervin R. Livsey, Supervisor voting Aye_

The foregoing constitutes a true and complete copy of a resolution duly made, seconded and adopted at a meeting of the Town Board, Town of Highlands, on Monday, September 23, 2019.

June Patterson, Town Clerk

FILED: ORANGE COUNTY CLERK 09/29/2020 02:33 PM

NYSCEF DOC. NO. 77

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 09/29/2020

EXHIBIT D

RESOLUTION

OF

APRIL 27, 2020

A RESOLUTION TO AUTHORIZE
THE TOWN OF HIGHLANDS TO
ENTER INTO AN AGREEMENT
FOR PURCHASE AND SALE OF STREET LIGHTING
FACILITIES WITH O&R

Council Member Sullivan moved the following resolution which was seconded by Council Member Parry.

WHEREAS, the Town of Highlands has negotiated an Agreement for Purchase and Sale of Street Lighting Facilities with Orange and Rockland Utilities, Inc. ("O&R") to purchase plus or minus 168 street lighting facilities in Town (the "Agreement"); and

WHEREAS, the Agreement has an approximate cost of Thirty Thousand Nine Hundred Twenty Two (\$30,922.00) Dollars; and

WHEREAS, the Agreement constitutes a legislative action pertaining to routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment, and accordingly is a Type II Action under the State Environmental Quality Review Act; and

WHEREAS, the Town Board deems it to be in the public interest for the Town of Highlands to enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED; that the Supervisor be and he hereby is authorized and directed to execute the Agreement substantially in the form of Exhibit A annexed hereto; and

BE IT FURTHER RESOLVED, that the Supervisor and officers of the Town are hereby authorized and empowered to make, execute and deliver, or cause to be made, executed and

delivered, in the name of and on behalf of the Town, all such certificates, documents and papers as may be necessary to effectuate and carry out the contents of the foregoing resolutions and the terms and conditions of the Agreement: and

BE IT FURTHER RESOLVED, that the aforesaid resolutions shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

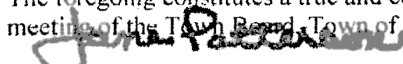
Tyrone King, Councilman voting Aye

Richard Parry, Councilman voting Aye

Richard Sullivan, Councilman voting Aye

Mervin R. Livsey, Supervisor voting Aye

The foregoing constitutes a true and complete copy of a resolution duly made, seconded and adopted at a meeting of the Town Board, Town of Highlands, on April 27, 2020.


June Patterson, Town Clerk

TOWN BOARD

The Town Board, Town of Highlands, held a meeting on Monday, April 27, 2020 at Town Hall, 254 Main St, Highland Falls, NY at 7:00pm.

PRESENT:	Mervin R. Livsey	----	Supervisor
	Richard Sullivan	----	Council Member
	Tyrone King	----	Council Member
	Richard Parry	----	Council Member
	Justin Rider	----	Counsel
	June Patterson	----	Town Clerk

Supervisor Livsey opened the meeting at 7:00pm.

PUBLIC COMMENT

No comments were received from the public.

MINUTES

Council Member Sullivan made a motion seconded by Council Member Parry to accept the minutes from the April 13 Town Board meeting as prepared by the Town Clerk.

**MOTION CARRIED: 4-eyes (Livsey, Sullivan, King, Parry)
0-nays**

COMMUNICATIONS

No communications.

FINANCIAL REPORTS

Accounts Payable

Supervisor Livsey said the Town paid out \$18,174.50 on April 17.

US Treasury Bond

Supervisor Livsey said the Town's bond for \$401,000 is due for renewal. The Supervisor was informed that the interest is only going to be 0.01%, The Supervisor let the Board know that he instructed the Comptroller to take the money and put it in a regular bank account for now and if the interest goes up this can be re-visited.

Association of Towns

Supervisor Livsey stated that the Association of Towns is asking municipalities to write a letter to their Federal Representatives asking them to protect the Federal money we receive. The Supervisor said he has already written the letter and the Board received a copy in their email.

TOWN BOARD

APRIL 27, 2020

BOARD REPORTS

Council Member Sullivan

Council Member Sullivan stating the Highway Department will be flushing hydrants next week.

Council Member Sullivan said the Building Department is getting ready for construction to begin.

Council Member Sullivan stated that he participated in a webinar meeting with the ZBA. Mr. Sullivan is not sure if they will be doing it again next month, but he will update the Board.

Council Member Sullivan said the Planning Board met remotely.

Council Member Sullivan said there have been changes in the personnel at the Sewer Plant and now all the pump station calls are being routed properly.

Council Member Sullivan said he believes a class will be held on the new de-chlorination system at the sewer plant.

Council Member Sullivan stated that he doesn't believe the new system will work without a tank.

Supervisor Livsey said everything is installed at the sewer plant and the engineer will be contacted to see if they need to come see it.

Council Member King

Council Member King said Brooks Park is being opened with restrictions.

Council Member King said the Recreation Director is working with Orange County to provide masks to children.

Council Member King stated The Center continues to support the senior citizens.

Council Member King said the Dial-A-Bus service is currently suspended and PPE has been requested for the drivers when it starts up again.

Council Member King thanked the Ambulance Corps for all they are doing. Mr. King said the new ambulance should be here in about 3 weeks.

Council Member King reported for Chief Pierri that the patrols are doing great and there are no manpower issues. Mr. King said the new radios are being installed and the new car will be here next week.

Council Member King was informed by Mr. Hahn, Emergency Management, that there are approximately 8,000 cases of COVID in Orange County.

TOWN BOARD

APRIL 27, 2020

Council Member Parry

Council Member Parry thanked the Highway Dept. for all they are doing.

SUPERVISOR’S REPORT

Supervisor Livsey reported that Brooks Park has been re-opened because the parks in Orange County are reported as being open by County Executive Neuhaus.

Supervisor Livsey said the Building Inspector received an email from the Ambulance Corps informing him they had trouble locating a house in Corbin Hill. The Supervisor talked a little about house numbering.

Supervisor Livsey said he has the agreement with Mr. Fusco that includes the rates.

Mr. Rider stated that he didn’t remember the Board voting on the rates.

Council Member Sullivan said it was voted on. Mr. Sullivan also said he is still working on getting all the bills in order.

GENERAL BUSINESS

Street Lighting Project

Mr. Rider said this is the next step in the Town acquiring 168 street lights from Orange and Rockland for approximately \$32,000.

Mr. Rider continued to say that the Town has to install within two years of the agreement.

Council Member Sullivan said there will be a lowered light cost and the payback time is about 7-8 years with a positive cash flow during that time.

Resolution – Purchase Street Lights

Supervisor Livsey said he will send Mr. Rider notes of things that need to be changed and they will need to be fixed before he signs the agreement.

Council Member Sullivan made a motion seconded by Council Member Parry to adopt the resolution to authorize Supervisor Livsey to enter into an agreement with Orange and Rockland for the purchase and sale of street lighting.

RESOLUTION ADOPTED: 4-eyes (Livsey, Sullivan, King, Parry)
 0-nays

*****RESOLUTION ATTACHED*****

TOWN BOARD

APRIL 27, 2020

Remote Meetings

Supervisor Livsey spoke to Council Member Parry and is reluctant to do ZOOM meetings. The Supervisor believes the way it is being done now is working.

Council Member Sullivan is comfortable with the way it is being done, but would like to push for Department Heads to get I-pads.

Council Members Parry and King stated that they were both comfortable with the way its being done.

ADJOURN

Council Member Parry made a motion seconded by Council Member King to adjourn the meeting at 7:48pm.

MOTION CARRIED: 4-eyes (Livsey, Sullivan, King, Parry)
0-nays

Exhibit E Purchase Agreement with O&R June 15, 2020
(954-957)

EXHIBIT E

**AGREEMENT FOR PURCHASE AND SALE OF
STREET LIGHTING FACILITIES**

THIS AGREEMENT (this "Purchase Agreement"), dated as of the 15th day of June, 2020, by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation with offices at One Blue Hill Plaza, Pearl River, New York 10965 ("Seller"), and the TOWN OF HIGHLANDS, NEW YORK, a municipal corporation with offices located at 254 Main Street, Highland Falls, New York 10928 ("Buyer"). Seller and Buyer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Seller owns, operates and maintains Street Lighting Facilities (as that term is defined below) within the geographical boundaries of Buyer; and

WHEREAS, Buyer wishes to purchase from Seller, and Seller is agreeable to selling to Buyer, the Street Lighting Facilities upon the terms and conditions contained in this Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and such other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. As used in this Purchase Agreement, the following terms have the meanings specified below in this Section 1.1.

"Ancillary Agreements" means (a) the Operating Agreement, and (b) the Mutual General Release and Settlement Agreement, as the same may be amended from time to time.

"Apportionable Items" has the meaning set forth in Section 3.3(a).

"Bill of Sale" means the Quit Claim Bill of Sale, substantially in the form of Exhibit A hereto, to be executed and delivered by Seller to Buyer at the Closing, to evidence the transfer by Seller to Buyer of Seller's right, title and interest in and to the Street Lighting Facilities.

"Business Day" shall mean any day other than Saturday, Sunday and any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

"Buyer" has the meaning set forth in the preamble to this Purchase Agreement.

"Buyer's Deliverables" has the meaning set forth in Section 8.5.

“Buyer Protected Parties” has the meaning set forth in Section 6.4(a).

“Buyer’s Required Approvals” means (i) approval of the Town Board of Buyer authorizing Buyer (by its Town Supervisor or other Person) to enter into this Purchase Agreement, the Bill of Sale, the Mutual General Release and Settlement Agreement and the Operating Agreement, and (ii) the written consent of Verizon Communications, Inc., successor to the New York Telephone Company, pursuant to the Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company Covering The Joint Use of Poles dated as of September 1, 1974 and the Administrative and Operating Practices Associated with the Joint Use Pole Agreement between Orange and Rockland Utilities, Inc. and the New York Telephone Company effective September 1, 1974, for the continued attachment of any and all of the Street Lighting Facilities currently attached either to poles jointly owned by Seller and Verizon Communications, Inc. or to poles solely owned by Verizon Communications, Inc.

“Breaching Party” has the meaning set forth in Section 9.1(e).

“Claiming Party” has the meaning set forth in Section 6.5(a).

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Commercially Reasonable Efforts” means efforts which are designed to enable the performing Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Purchase Agreement and which do not require the performing Party to expend any funds or assume any liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Purchase Agreement.

“Excluded Assets” has the meaning set forth in Section 2.3.

“Governmental Authority” means any applicable federal, state, local or other governmental, regulatory or administrative agency, taxing authority, commission, department, board, or other governmental subdivision, court, tribunal, arbitrating body or other governmental authority, including the PSC.

“Interim Period” has the meaning set forth in Section 6.1.

“Mutual Release and Settlement Agreement” means the Mutual Release and Settlement Agreement to be executed and delivered by Buyer and Seller at Closing, said agreement to be substantially in the form attached hereto as Exhibit B.

“Operating Agreement” means the Operating Agreement to be executed and delivered by Buyer and Seller at Closing, said agreement to be substantially in the form attached hereto as Exhibit C.

“Outside Date” has the meaning set forth in Section 9.1(b).

“Parties” has the meaning set forth in the preamble to this Purchase Agreement.

“Party” has the meaning set forth in the preamble to this Purchase Agreement.

“Permitted Lien” means (a) any lien for Taxes not yet due or delinquent, (b) any Lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000, (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller, (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any Governmental Authority to regulate any asset, and all matters of public record, and (e) any lien released prior to Closing.

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, association, or governmental entity or any department or agency thereof.

“Preliminary Apportioned Items Amount” has the meaning set forth in Section 3.3(b).

“PSC” means the State of New York Public Service Commission.

“Purchase Agreement” means this Agreement for Purchase and Sale of Street Lighting Facilities, together with the Exhibits and Schedules attached hereto, as the same may be amended from time to time.

“Purchase Price” has the meaning set forth in Section 3.2.

“Responding Party” has the meaning set forth in Section 6.5(a).

“Seller” has the meaning set forth in the preamble to this Purchase Agreement.

“Seller Protected Parties” has the meaning set forth in Section 6.4(b).

“Seller’s Deliverables” has the meaning set forth in Section 7.5.

“Seller’s Required Approvals” means (i) approval of the board of directors of Seller for Seller (by a Vice President or other Person) to enter into this Purchase Agreement, the Bill of Sale, the Mutual General Release and Settlement Agreement and the Operating Agreement, and (ii) an order of the PSC pursuant to Section 70 of the New York State Public Service Law approving the sale of the Street Lighting Facilities pursuant to the terms of this Purchase Agreement.

“Seller’s Tariff” shall mean and include any and all tariffs on file by Seller with the PSC (including, but not limited to, P.S.C. No. 3 ELECTRICITY), as the same shall be formally

issued, supplemented, amended, superseded, and/or interpreted from time to time, now or in the future.

“Street Lighting Facilities” means all of those certain overhead-fed street lighting facilities that are owned solely by Seller, attached to utility poles located within the geographical boundaries of the Buyer, used solely for street lighting purposes, and which consist of luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, including the In-Line Fused Disconnects referred to in Section 2.2, all as depicted in Exhibit A to the Operating Agreement.

“Street Lighting Facilities Assessed Values/Taxes” has the meaning set forth in Section 6.6.

“Survey” has the meaning set forth in Section 6.2.

“Third Party Losses/Claims” has the meaning set forth in Section 6.4.

Section 1.2 Certain Interpretive Matters. In this Purchase Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term “includes” or “including” shall mean “includes without limitation” or, as applicable, “including without limitation.” References in this Purchase Agreement to an Article, Section or Exhibit shall mean an Article, Section or Exhibit of this Purchase Agreement, and reference to a specified agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented, or restated from time to time.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Transfer of Street Lighting Facilities. Upon the terms and subject to the conditions contained in this Purchase Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase, assume, acquire and receive from Seller, all of Seller’s right, title and interest in and to the Street Lighting Facilities.

Section 2.2 Demarcation of Ownership. From and after the Closing, Buyer shall own all portions of each of the Street Lighting Facilities from the point in change (transition) from the Seller’s secondary conductor to the street light and including the luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to that point in change; provided that with respect to Street Lighting Facilities for which Buyer has caused an In-Line Fused Disconnect (as defined in the Operating Agreement) to be installed following the Closing, from and after the Closing, Buyer shall own all portions of such Street Lighting Facilities from and including the In-Line Fused Disconnect to the to the street light and including the luminaires, lamps, mast

arms, their associated wiring, electrical connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to the In-Line Fused Disconnect.

Section 2.3 Excluded Assets. Seller is not assigning, conveying, transferring or delivering to Buyer and Buyer is not purchasing, assuming, acquiring or receiving from Seller any of Seller’s right, title and interest in and to the following, all of which are being retained by Seller following the Closing (hereinafter collectively referred to as the “Excluded Assets”):

(a) Any and all of Seller’s right, title and interest in and to any poles, structures, equipment or equipment attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(b) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any injury or damage caused to any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(c) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any injury or damage caused to the Street Lighting Facilities prior to the Closing;

(d) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any and all costs and expenses incurred by Seller for relocating, adjusting, or protecting/maintaining in place any Street Lighting Facilities (including any planning, designing and engineering work in connection therewith) prior to the Closing in connection with any Governmental projects or private projects, including street relocation, adjustment, reconstruction or resurfacing projects, sewer infrastructure projects and water infrastructure projects;

(e) Any and all claims, counterclaims, causes of action, lawsuits or proceedings with respect to any costs and expenses incurred by Seller for relocating, adjusting, or protecting/maintaining in place any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities (including any planning, designing and engineering work in connection therewith) in connection with any Governmental Authority projects or private projects, including street relocation, adjustment, reconstruction or resurfacing projects, sewer infrastructure projects and water infrastructure projects;

(f) Any and all of Seller’s right, title and interest in and to any and all spare parts or spare components relating to the Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(g) Any and all of Seller’s right, title, and interest in and to any and all vehicles, equipment, tools and supplies relating to installing, operating, inspecting, maintaining, repairing, replacing or decommissioning in whole or in part any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities;

(h) Any and all of Seller’s right, title and interest in and to any and all agreements and contracts with third parties relating to installing, operating, inspecting, maintaining, repairing, replacing or decommissioning in whole or in part any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities; and

(i) Any and all of Seller’s right, title and interest in and to any and all franchise grants, licenses, permits, and interests in real property pertaining in any way to any Street Lighting Facilities or any poles, structures, equipment or components attached or appurtenant to, but not comprising, the Street Lighting Facilities.

ARTICLE III

CLOSING, PURCHASE PRICE, APPORTIONABLE ITEMS

Section 3.1 Closing. The Closing shall take place at the offices of Seller at 10:00 A.M. (Eastern time) on the tenth Business Day after the conditions to Closing set forth in Articles VII and VIII (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived by the Party entitled to waive such condition, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing. The date of Closing is hereinafter referred to as the “Closing Date.” The Closing shall be effective for all purposes as of 12:01 A.M. (Eastern Time) on the Closing Date.

Section 3.2 Purchase Price. The purchase price (the “Purchase Price”) for the Street Lighting Facilities shall be an amount equal to \$30,922, *increased* by the Preliminary Apportioned Items Amount if Buyer owes Seller such amount and *decreased* by the Preliminary Apportioned Items Amount if Seller owes Buyer such amount; provided that if the survey conducted pursuant to Section 6.2 hereof determines that (i) the number of overhead-fed Street Lighting Facilities is either more or less than 168, the Purchase Price shall be *increased* \$184 for each overhead-fed Street Lighting Facility more than 168 and *decreased* \$184 for each overhead-fed Street Lighting Facility less than 168.

Section 3.3 Apportionable Items.

(a) The following items (the “Apportionable Items”) shall be apportioned as of 11:59 P.M. of the day before the Closing Date with Seller bearing the expense of the item applicable to the period before the Closing Date and Buyer bearing the expense of the item applicable to the period on and after the Closing Date:

(i) Real property taxes (including special franchise taxes) assessed or imposed on Seller by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lighting Facilities; and

(ii) Any and all other personal property taxes, real estate taxes, occupancy taxes, assessments (special or otherwise) and any and all other applicable fees, taxes and charges assessed or imposed on Seller by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lighting Facilities.

(b) Each of the Apportionable Items shall be apportioned based upon (i) the extent to which (a) Seller, prior to the Closing, has paid such Apportionable Item with respect to any period on and after the Closing Date (*i.e.*, with respect to any period from and after Seller’s transfer of the Street Lighting Facilities to Buyer) or (b) Buyer, after the Closing, will be responsible to pay such Apportionable Item with respect to any period before the Closing Date (*i.e.*, with respect to any period before Seller’s transfer of Street Lighting Facilities to Buyer) and (ii) the number of days in the applicable tax or other period that are (a) before the Closing Date and (b) on and after Closing Date; provided that, for the purposes of such apportionment calculations, Buyer shall not be credited with being responsible to pay any special franchise tax or, to the extent Buyer is the direct or indirect recipient of any other Apportionable Item, any other Apportionable Item (although, for the avoidance of doubt, Seller shall be credited with any and all payments by Seller, prior to the Closing, of any special franchise tax and any other Apportionable Item with respect to any period on and after the Closing Date notwithstanding that Buyer may be the direct or indirect recipient of such payments). The result of the calculation of the Apportionable Items performed for purposes of the Closing, which shall be netted to a single number (the “Preliminary Apportionable Items Amount”), shall be based on the current amount of each Apportionable Item for the period that includes the Closing Date and, if any such current amount is not then available (*e.g.*, because the applicable taxing authority has not yet issued the amount of the Apportionable Item with respect to the period that includes the Closing Date), shall be based on the amount for the most recent former period. Following the Closing and within 60 days after the date that the last of the previously unavailable amounts of the Apportionable Items becomes available, the Parties shall use the available amounts to true-up the calculation that led to the Preliminary Apportionable Items Amount and the Party that owes the other Party based on such true-up calculation (and taking into account the Preliminary Apportionable Items Amount that was paid at Closing by adjusting the Purchase Price) shall pay such other Party within 30 days after the true-up calculation is made. The obligations set forth in this Section 3.3 shall survive the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization. Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 4.2 Authority, Binding Obligation. Subject to obtaining the Seller’s Required Approvals: Seller has all requisite corporate power and authority to execute and deliver this Purchase Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Purchase Agreement and the performance by Seller of its obligations hereunder have been duly and validly authorized by all necessary corporate action; and this Purchase Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 4.3 No Conflicts; Consents and Approvals. Subject to obtaining the Seller’s Required Approvals, the execution and delivery by Seller of this Purchase Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the certificate of incorporation or by-laws of Seller or under any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller’s ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Seller.

Section 4.4 Legal Proceedings. To the knowledge of Seller, there are no actions, suits or proceedings pending against Seller before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller’s ability to proceed with the transactions contemplated by this Purchase Agreement. To the knowledge of Seller, Seller is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Seller’s ability to proceed with the transactions contemplated by this Purchase Agreement.

Section 4.5 Liens. To the knowledge of Seller, the Street Lighting Facilities are free and clear of all liens except Permitted Liens.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

Section 5.1 Organization. Buyer is a municipal corporation duly formed, validly existing and in good standing under the laws of the State of New York.

Section 5.2 Authority, Binding Obligation. Subject to obtaining the Buyer’s Required Approvals: Buyer has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Purchase Agreement and the performance by Buyer of its obligations hereunder have been duly and validly authorized by all necessary action; and this Purchase Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

Section 5.3 No Conflicts; Consents and Approvals. Subject to obtaining the Buyer’s Required Approvals, the execution and delivery by Buyer of this Purchase Agreement do not, the performance by Seller of its obligations hereunder will not, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach under the charter or other organizational documents of Buyer or under any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer’s ability to perform its obligations hereunder or to consummate the transactions contemplated hereby;

(b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or

(c) require any consent or approval of any Governmental Authority under any law applicable to Buyer.

Section 5.4 Legal Proceedings. To the knowledge of Buyer, there are no actions, suits or proceedings pending against Buyer before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Buyer’s ability to proceed with the transactions contemplated by this Purchase Agreement. To the knowledge of Buyer, Buyer is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority which, individually or in the aggregate,

could reasonably be expected to have a material adverse effect on Buyer’s ability to proceed with the transactions contemplated by this Purchase Agreement.

Section 5.5 Availability of Funds. Buyer has sufficient funds available to it to enable Buyer to pay the Purchase Price to Seller.

ARTICLE VI

COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Street Lighting Facilities. During the period from the date of this Purchase Agreement up to, but not including, the Closing Date (the “Interim Period”), Seller shall operate and maintain the Street Lighting Facilities in the ordinary course of its business consistent with its past practices.

Section 6.2 Survey of Street Lighting Facilities. During the Interim Period, Seller shall cause a survey of the Street Lighting Facilities (“Survey”) to be performed in good faith to determine the number of Street Lighting Facilities. Prior to the commencement of the Survey, Seller shall notify Buyer of the dates the Survey will be conducted and Buyer shall be allowed to have a representative present when Seller conducts the Survey. Seller shall provide Buyer with written notice of the result of the Survey, which result shall be used in connection with determining the Purchase Price.

Section 6.3 Pursuit of Required Approvals. During the Interim Period:

(a) Seller will, in order to consummate the transactions contemplated hereby, (i) exercise Commercially Reasonable Efforts to obtain the Seller’s Required Approvals as promptly as practicable, including making all required filings with, and giving all required notices to, each applicable Governmental Authority or other Person and (ii) cooperate in good faith with each applicable Governmental Authority and other Person and promptly provide such other information and communications to each such Governmental Authority or other Person as such Governmental Authority or other Person may reasonably request in connection therewith.

(b) Buyer will, in order to consummate the transactions contemplated hereby, (i) exercise Commercially Reasonable Efforts to obtain the Buyer’s Required Approvals as promptly as practicable, including making all required filings with, and giving all required notices to, each applicable Governmental Authority or other Person and (ii) cooperate in good faith with each applicable Governmental Authority and other Person and promptly provide such other information and communications to each such Governmental Authority or other Person as such Governmental Authority or other Person may reasonably request in connection therewith.

(c) Seller, with respect to the Seller’s Required Approvals, will provide prompt notification to Buyer, and Buyer, with respect to the Buyer’s Required Approvals, will provide prompt notification to Seller, of any material communications with the applicable

Governmental Authority or other Person from whom the Seller's Required Approvals or Buyer's Required Approvals are sought and when any such approval is obtained, taken, made, given or denied, as applicable.

Section 6.4. Indemnification Against Third Party Claims And Losses.

(a) From and after the Closing, Seller shall retain liability for and shall defend, indemnify and hold harmless Buyer, its parents, subsidiaries, affiliates and its and their respective trustees, directors, officers, employees, attorneys, shareholders, contractors, subcontractors, agents, representatives, successors and assigns (collectively, the "Buyer Protected Parties") from and against any and all claims, counterclaims, causes of action, lawsuits, proceedings, judgments, losses, liabilities, damages, fines, penalties, interest, costs and expenses (including court costs, reasonable fees of attorneys, accountants and other experts and reasonable expenses of investigation, preparation, and litigation) for personal injuries (including death) or damages to property arising from or claimed to arise from the Street Lighting Facilities (collectively, "Third Party Losses/Claims") that third parties have suffered or sustained prior to the Closing or that third parties claim to have been suffered or sustained prior to the Closing, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Buyer Protected Parties.

(b) From and after the Closing, Buyer shall have liability for and shall defend, indemnify and hold harmless Seller, its parents, subsidiaries, affiliates and its and their respective trustees, directors, officers, employees, attorneys, shareholders, contractors, subcontractors, agents, representatives, successors and assigns (collectively, the "Seller Protected Parties") from and against any and all Third Party Losses/Claims that third parties have suffered or sustained on or after the Closing or that third parties claim to have been suffered or sustained on or after the Closing, except to the extent that such Third Party Losses/Claims arise from the negligence or other acts or omissions of any one or more of the Seller Protected Parties on or after the Closing Date for which negligence or other acts or omissions the Seller's Tariff (*i.e.*, Schedule for Electric Service, PSC No. 3 – Electricity, General Information Section 10.1, or its successor) does not provide an applicable exclusion from or limitation of liability.

(c) The obligations set forth in this Section 6.4 shall survive the Closing.

Section 6.5 Procedure with Respect to Third Party Claims And Losses.

(a) If any Party becomes subject to a pending or threatened Third Party Claim/Loss and such Party (the "Claiming Party") believes it is entitled to indemnification pursuant to Section 6.4 hereof from the other Party (the "Responding Party") as a result, then the Claiming Party shall notify the Responding Party in writing of the basis for its claim for indemnification setting forth the nature of the claim in reasonable detail. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of any liability or obligations under Section 6.4 or this Section 6.5 except to the extent that the defense of such Third Party Claim/Loss is prejudiced by the failure to give such notice.

(b) If any Third Party Claim/Loss proceeding is brought by a third party against a Claiming Party and the Claiming Party gives notice to the Responding Party pursuant to this Section 6.5, the Responding Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Responding Party provides written notice to the Claiming Party that the Responding Party intends to undertake such defense, (ii) the Responding Party conducts the defense of the Third Party Claim/Loss actively and diligently with counsel reasonably satisfactory to the Claiming Party and (iii) if the Responding Party is a party to the proceeding, the Responding Party has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Claiming Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Claiming Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Claiming Party. The Claiming Party shall fully cooperate with the Responding Party and its counsel in the defense or compromise of such Third Party Claim/Loss. If the Responding Party assumes the defense of a Third Party Claim/Loss proceeding, no compromise or settlement of such Third Party Claim/Loss may be effected by the Responding Party without the Claiming Party’s consent unless (A) there is no finding or admission of any violation of law or any violation of the rights of any Person and no effect on any other Third Party Claims/Loss that may be made against the Claiming Party and (B) the sole relief provided is monetary damages that are paid in full by the Responding Party.

(c) If (i) notice is given to the Responding Party of the commencement of any Third Party Claim/Loss proceeding and the Responding Party does not, within 30 days after the Claiming Party’s notice is given, give notice to the Claiming Party of its election to assume the defense of such proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of Section 6.5(b) become unsatisfied or (iii) the Claiming Party determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Responding Party under this Agreement, then the Claiming Party shall (upon notice to the Responding Party) have the right to undertake the defense, compromise or settlement of such Third Party Claim/Loss; provided that the Responding Party shall reimburse the Claiming Party for the costs of defending against such Third Party Claim/Loss (including reasonable attorneys’ fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third Party Claim/Loss, in both cases to the extent it is determined that such Responding Party is liable to the Claiming Party under this Agreement with respect to such Third Party Claim/Loss. The Responding Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

(d) The obligations set forth in this Section 6.5 shall survive the Closing.

Section 6.6 Property Tax Reduction. Buyer shall exercise Commercially Reasonable Efforts to cause any and all assessed values and related special franchise tax assessments and real property tax assessments reasonably associated with the Street Lighting Facilities (the “Street Lighting Facilities Assessed Values/Taxes”) to be reduced as of the Closing such that the assessed values and related special franchise tax assessments and real property tax assessments

with respect to property that Seller retains after the Closing (including the Excluded Assets) does not include, from and after the Closing, any Street Lighting Facilities Assessed Values/Taxes and Seller is not requested or required to pay any special franchise tax or real property tax associated with the Street Lighting Facilities Assessed Values/Taxes from and after the Closing. To the extent that Buyer does not cause the reductions contemplated by this Section to be effective as of the Closing, (i) Buyer shall continue to exercise Commercially Reasonable Efforts after the Closing to cause the reductions contemplated by this Section and (ii) if Seller pays any special franchise tax or real property tax associated with the Street Lighting Facilities Assessed Values/Taxes from and after the Closing, Buyer shall reimburse Seller for any and all such payments (including by means of a credit on Seller's subsequent bill(s)).

Section 6.7 Tax Matters.

(a) Buyer acknowledges that Seller will not comply with the provisions of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Purchase Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

Section 6.8 Risk of Loss. Seller shall bear the risk of loss of and damage to the Street Lighting Facilities during the period from the date of this Purchase Agreement up to but not including the Closing Date and Buyer shall bear the risk of loss of and damage to the Street Lighting Facilities from and after the Closing Date.

Section 6.9 Brokerage Fees and Commissions. Each Party covenants to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such covenant. Each Party (an indemnifying Party) will pay or otherwise discharge, and will indemnify, defend and hold the other Party harmless from and against, any and all claims against and liabilities of the other Party for any and all brokerage fees, commissions and finder's fees in connection with the transactions contemplated hereby by reason of any action taken or the breach of this covenant by the indemnifying Party.

Section 6.10 Expenses. Except to the extent expressly provided to the contrary in this Purchase Agreement, and whether or not the transactions contemplated herein are consummated, all costs and expenses incurred by a Party in connection with the negotiation, execution and consummation of the transactions contemplated hereby, including the cost of filing for and prosecuting applications for the Seller Required Approvals and the Buyer Required Approvals, shall in all instances be borne by the Party incurring such costs and expenses.

Section 6.11 Further Assurances. Subject to the terms and conditions of this Purchase Agreement, at either Party's request and without further consideration, the other Party shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting Party may reasonably request in order to consummate the transactions contemplated by this Agreement; provided that the other Party shall not be obligated to execute

or deliver any instruments, provide any materials or information or take any actions that modify the rights, remedies, obligations or liabilities of such other Party pursuant to this Purchase Agreement or applicable law.

ARTICLE VII

BUYER'S CONDITIONS TO CLOSING

The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer in its sole discretion):

Section 7.1 Seller's Representations and Warranties. The representations and warranties made by Seller in this Purchase Agreement shall have been materially true and correct as of the date of this Purchase Agreement and shall be materially true and correct as of Closing; provided that Seller shall have no liability to Buyer for any such representation not being materially true and correct as of Closing due to occurrences, matters, events, facts or circumstances occurring after the date of this Purchase Agreement.

Section 7.2 Seller's Performance. Seller shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

Section 7.3 Orders and Laws. There shall not be any temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any Governmental Agency of competent jurisdiction or other law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Purchase Agreement; provided that any judgment or order that restrains, enjoins or otherwise prohibits or makes illegal the consummation of the transactions contemplated hereby, or any such temporary restraining order, preliminary or permanent injunction or other judgment or order must not have resulted from any litigation or proceeding filed by Buyer or its affiliates.

Section 7.4 Buyer's Required Approvals. The Buyer's Required Approvals, in form and substance satisfactory to Buyer in its sole discretion, shall have been obtained and be in full force and effect; provided that the absence of any appeals and applications for rehearing or reargument and the expiration of any appeal, rehearing or reargument period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 7.5 Seller's Deliverables. Seller shall have delivered, or caused to have been delivered, to Buyer each of the following (collectively, the "Seller's Deliverables") at or before the Closing:

- (a) a counterpart of the Bill of Sale duly executed by Seller;
- (b) a counterpart of the Operating Agreement duly executed by Seller;

(c) a counterpart of the Mutual Release And Settlement Agreement duly executed by Seller;

(d) resolutions of the board of directors of Seller certified by the Secretary, Assistant Secretary or other officer of Seller authorizing the execution and delivery of this Purchase Agreement and the consummation of the transactions contemplated hereby; and

(e) a certificate of the Secretary, Assistant Secretary or other officer of Seller as to the incumbency of the Person executing this Purchase Agreement on behalf of Seller and the genuineness of such Person's signature.

ARTICLE VIII

SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller in its sole discretion):

Section 8.1 Buyer's Representations and Warranties. The representations and warranties made by Buyer in this Purchase Agreement shall have been materially true and correct as of the date of this Purchase Agreement and shall be materially true and correct as of Closing, provided that, except with respect to the representation and warranty in Section 5.5 Buyer shall have no liability to Seller for any such representation not being materially true and correct as of Closing due to occurrences, matters, events, facts or circumstances occurring after the date of this Purchase Agreement.

Section 8.2 Buyer's Performance. Buyer shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Purchase Agreement to be performed or complied with by Buyer at or before the Closing.

Section 8.3 Orders and Laws. There shall not be any temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any Governmental Authority of competent jurisdiction or other law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Purchase Agreement; provided that any such judgment or order restrains, enjoins or otherwise prohibits or makes illegal the consummation of the transactions contemplated hereby, or any such temporary restraining order, preliminary or permanent injunction or other judgment or order must not have resulted from any litigation or proceeding filed by Seller or its affiliates.

Section 8.4 Seller's Required Approvals. The Seller's Required Approvals, in form and substance satisfactory to Seller in its sole discretion, shall have been obtained and be in full force and effect; provided that the absence of any appeals or applications for reargument or

rehearing and the expiration of any appeal, reargument or rehearing period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 8.5 Buyer’s Deliverables. Buyer shall have delivered, or caused to have been delivered, to Seller each of the following (collectively, the “Buyer’s Deliverables”) at or before the Closing:

- (a) A wire transfer of immediately available funds (to such account or accounts as Seller shall have given notice to Buyer not less than five Business Days prior to the Closing Date) in an amount equal to the Purchase Price;
- (b) A counterpart of the Bill of Sale duly executed by Buyer;
- (c) A counterpart of the Operating Agreement duly executed by Buyer;
- (d) A counterpart of the Mutual Release and Settlement Agreement duly executed by Buyer;
- (e) Resolutions of the board of trustees of Buyer certified by the Secretary, or other officer of Buyer authorizing the execution and delivery of this Purchase Agreement and the consummation of the transactions contemplated hereby; and
- (f) A certificate of the Secretary, or other officer of Buyer as to the incumbency of the Person executing this Purchase Agreement on behalf of Buyer and the genuineness of such Person’s signature.

ARTICLE IX

TERMINATION

Section 9.1 Termination Prior To Closing.

- (a) This Purchase Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.
- (b) This Purchase Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if (i) any Governmental Authority of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and non-appealable or (ii) any statute, rule, order or regulation shall have been enacted or issued by any Governmental Authority (excluding the Buyer, if acting or attempting to act as a Governmental Authority) which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the Closing contemplated hereby shall not have occurred on or before the first annual anniversary of the date of this Purchase Agreement (the “Outside Date”); provided that the right to terminate this Purchase Agreement under this Section 9.1(b)(iii) shall not be

available to any Party whose failure to fulfill any obligation under this Purchase Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

(c) This Purchase Agreement may be terminated at any time prior to the Closing by Buyer upon written notice to Seller if any Buyer’s Required Approvals shall have been denied or shall have been granted but are not in form and substance satisfactory to Buyer in its sole discretion.

(d) This Purchase Agreement may be terminated at any time prior to the Closing by Seller upon written notice to Buyer if any Seller’s Required Approvals shall have been denied or shall have been granted but are not in form and substance satisfactory to Buyer in its sole discretion.

(e) This Purchase Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if the other Party (the “Breaching Party”) has materially breached or violated a representation, warranty, covenant or agreement hereunder so as to cause the failure of a condition to Closing set forth in Article VII or Article VIII, as applicable, and such breach (other than a breach of Buyer’s obligation to pay the Purchase Price in accordance with the terms of Article III, for which no cure period shall be allowed) has not been cured by the earlier of 30 days following written notice thereof or the Outside Date, provided that if such violation or breach is not capable of being cured within such 30 day period and such 30 day period shall have ended before the Outside Date, the Breaching Party shall have an additional period to cure that expires on the earlier of 30 days thereafter or the Outside Date.

Section 9.2 Remedies Upon Termination Prior To Closing.

(a) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 9.1(a),(b),(c) or (d) hereof, neither Party shall have any liability to the other Party arising from this Agreement.

(b) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 9.1(e) hereof, such Party may pursue any remedies against the Breaching Party available under this Purchase Agreement or applicable law, subject to provisos in Sections 7.1 and 8.1 and subject to the limitation of liability set forth in Section 10.1(c) hereof.

ARTICLE X

LIMITATIONS OF LIABILITY AND WAIVERS

Section 10.1 Limitation of Liability. Notwithstanding anything in this Purchase Agreement to the contrary, except in the case of a claim based on fraud or willful misconduct which shall not be subject to the following limitations:

(a) The representations and warranties in this Agreement shall survive for a period of six months following the Closing Date and any claim by a Party that the other has breached or violated a representation or warranty must be made in writing and received by the Party against which the claim is made no later than the expiration of this survival period; provided that if written notice of such a claim has been given prior to the expiration of the survival period, then the claim may be prosecuted to resolution notwithstanding the expiration of the survival period;

(b) If a Party’s breach or violation of a representation or warranty in this Purchase Agreement is not used by the other Party to validly terminate this Purchase Agreement prior to the Closing pursuant to Section 9.1(e), then the breaching Party’s aggregate liability to the other Party for any and all breaches or violations of representations and warranties in this Purchase Agreement shall not exceed 10% of the Purchase Price; and

(c) The aggregate liability of a Party to the other Party in the event that the other Party validly terminates this Purchase Agreement prior to the Closing pursuant to Section 9.1(e) shall not exceed 100% of the Purchase Price.

Section 10.2 Waiver of Other Representations and Warranties. THE STREET LIGHTING FACILITIES ARE BEING SOLD AND TRANSFERRED “AS-IS, WHERE-IS” CONDITION AND SUBJECT TO ALL FAULTS OF WHATEVER NATURE, AND, EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN ARTICLE IV OF THIS PURCHASE AGREEMENT, SELLER HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING THE STREET LIGHTING FACILITIES OR WITH RESPECT TO THIS PURCHASE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING, IN PARTICULAR WITH RESPECT TO THE STREET LIGHTING FACILITIES, THEIR DESIGN, MANUFACTURE, CONSTRUCTION, FABRICATION, CONDITION OR PERFORMANCE, INCLUDING, IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH ANY LAWS OR STANDARDS, INCLUDING THE NATIONAL ELECTRIC SAFETY CODE, THE NATIONAL ELECTRIC CODE, THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, THE OCCUPATIONAL SAFETY AND HEALTH ACT AND ANY RULES OR REGULATIONS THEREUNDER, WHETHER OR NOT SELLER KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

Section 10.3 Waivers of Certain Remedies. NOTWITHSTANDING ANYTHING IN THIS PURCHASE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR

OTHERWISE, ARISING FROM THIS PURCHASE AGREEMENT OR THE BREACH OR VIOLATION THEREOF.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Notices.

(a) Unless this Purchase Agreement specifically requires otherwise, any notice, demand or request (“Notice”) provided for in this Purchase Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by fax or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer, to:

Town of Highlands
254 Main Street
Highland Falls, NY 10928
Attention: Kelly Pecoraro, Comptroller

with a copy to:

RIDER, WEINER & FRANKEL, P.C.
PO Box 2280 (mail address)
Newburgh, NY 12550
Attention: M. Justin Rider, Esq.

If to Seller, to:

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, New York 10977
Attention: Vice President - Operations

with a copy to:

Consolidated Edison Company of New York, Inc.
Law Department
4 Irving Place, 18th Fl
New York, New York 10003
Attention: Grace Su, Associate Counsel

(b) Notice given by personal delivery, mail or overnight courier pursuant to Section 11.1(a) shall be effective upon the intended recipient's physical receipt of, or refusal to receive such Notice. Notice given by fax pursuant to Section 11.1(a) shall be effective as of the date of delivery is confirmed by electronic transmission confirmation if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day.

Section 11.2 Entire Agreement. This Purchase Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and contains the sole and entire agreement between the Parties with respect to such subject matter.

Section 11.3 Waiver. Any term or condition of this Purchase Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Purchase Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Purchase Agreement on any future occasion.

Section 11.4 Amendment. This Purchase Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Section 11.5 No Third Party Beneficiaries. The terms and provisions of this Purchase Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

Section 11.6 Assignment; Binding Effect. Neither this Purchase Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party. Subject to this Section 11.6, this Purchase Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 11.7 Headings. The headings used in this Purchase Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

Section 11.8 Invalid Provisions. If any provision of this Purchase Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Purchase Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Purchase Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Purchase Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and in lieu of such illegal, invalid or unenforceable provision, there will be

added automatically as a part of this Purchase Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 11.9 Counterparts; Fax. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any fax or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 11.10 Governing Law; Jurisdiction; Waiver of Jury Trial.

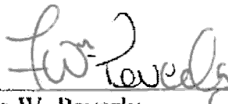
(a) This Purchase Agreement shall be governed by and construed in accordance with the Law of the State of New York, without giving effect to any conflict or choice of law provision that would result in the application of another state's Law.

(b) Each of the Parties hereby submits to the exclusive jurisdiction of the State courts located in New City (Rockland County) in the State of New York and the Federal courts located in the City of White Plains in the State of New York with respect to any action or proceeding relating to this Agreement and the transactions contemplated hereby.

EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING RELATING TO THIS PURCHASE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Purchase Agreement as of the date first written above.

ORANGE AND ROCKLAND
UTILITIES, INC.

By 
Francis W. Peverly
Vice President - Operations

TOWN OF HIGHLANDS, NEW YORK

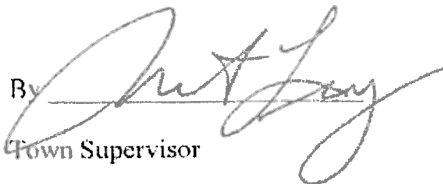
By 
Town Supervisor

Exhibit A

Form of Quit Claim Bill of Sale

Exhibit B

Form of Mutual Release and Settlement Agreement

Exhibit C

Form of Operating Agreement

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of Deborah Kopald,
Petitioner,

**AFFIRMATION IN
OPPOSITION TO PETITION
AND MOTION FOR
RESTRAINING ORDER**

For a Judgment Pursuant to Article 78

Index No. EF004088-2020

– against –

The Town of Highlands New York, Orange and
Rockland Utilities, Inc., and The New York
Power Authority,

Respondents.

Assigned Judge:

Hon. Maria S. Vazquez-Doles

Michael J. Matsler, an attorney duly admitted to practice in the courts of the State of New
York, affirms under penalty of perjury:

1. I am an officer of Rider, Weiner & Frankel, P.C., attorneys for Respondent Town
of Highlands (the “Town”). I am fully familiar with the facts I set forth herein, submitted in
opposition to the Petition and motion for a restraining order, pursuant to which Petitioner Kopald
seeks to annul the Town’s contract to purchase existing street lighting fixtures from Orange and
Rockland Utilities, Inc. (“O&R”) and to annul the Town Resolution of April 27, 2020 authorizing
the purchase. As set forth infra, the purchase of existing facilities is exempt from SEQRA review
as a Type II Action under Part 617.5(c).

2. Petitioner also seeks to overturn the Town’s contract with the New York Power
Authority (“NYPA”) to design and implement the Town’s conversion of its street lighting to LED
lighting. The LED light conversion project is, in fact, Petitioner’s primary target and has been
since the summer of 2019. The Town-NYPA contract in question, referenced in paragraph “13” of

the Petition, is the agreement signed by the Town and NYPA on September 24, 2019 although bearing the nominal date of April 5, 2019 in the preamble. (See Ex. "A" to the Town's Answer). As discussed below, her claim is barred by the four-month statute of limitations under CPLR 217.

3. The Court is also respectfully referred to the annexed affidavit of Town Supervisor Mervin Livsey, the Verified Answer to the Petition, and the exhibits thereto: Exhibit "A", Agreement between the Town and New York Power Authority ("NYPA") nominally dated April 5, 2019 and signed on September 24, 2019 for the LED lighting conversion project; Exhibit "B", the Meeting Minutes from the Town meeting held July 8, 2019; Exhibit "C", the Meeting Minutes from the Town meeting held September 23, 2019; Exhibit "D", the Resolution and Meeting Minutes dated April 27, 2020 authorizing the purchase of existing fixtures from O&R; and Exhibit "E", the June 15, 2020 purchase agreement with O&R for approximately 168 existing street light fixtures and related equipment.

4. In the interests of judicial economy and ease of reference, I respectfully beg leave of court to allow me to refer to legal citations in this affirmation rather than submit a separate legal brief.

Procedural and Factual Background

5. Petitioner Kopald is a serial pro se litigant with several divers lawsuits pending against the Town of Highlands and her neighbors, most recently before the Hon. Robert Onofry. (See Kopald v. Town of Highlands, et al, Index Numbers 007757-2019 and EF000818-2020). Whereas in her other Article 78 Petitions she complains about noise and her neighbors' construction of their single-family house, here she complains about lamps with light-emitting diodes the Town will be installing in the existing public fixtures along Route 9W within the Town, pursuant to its contract with NYPA signed September 24, 2019. (Ex. "A").

6. Petitioner’s grassroots attack on the Town’s decision to install LED public street lights began well over a year ago, as she admits in her Petition (¶2 at page 2; ¶12 at page 13) when she circulated a citizen’s petition and voiced her objections at public meetings during the summer of 2019. Ms. Kopald’s petition is referenced in the Town board meeting minutes of July 8, 2019. (Ex. “B”). Ms. Kopald discussed her citizens’ petition at the Town board meeting on September 23, 2019 and was aware the Town was about to sign the NYPA contract. (Minutes, Ex. “C”; Petition ¶13 at page 12). As set forth in the annexed affidavit of Supervisor Livsey, the Town had been studying for several years the cost and energy-savings advantages of LED lighting, and on September 24, 2019 signed the contract with NYPA, bearing the nominal date of April 5, 2019, to proceed with the LED street lighting project. (Answer, Ex. “A”).

7. In that O&R owned the existing street lighting fixtures, equipment and facilities, by Resolution dated April 27, 2020 the Town board authorized the Town Supervisor and officials to execute an agreement with O&R for the purchase of approximately 168 fixtures at a cost of \$30,922. (Ex. “D” hereto). The agreement was executed on June 15, 2020. (Ex. “E”). Neither the Resolution nor the Agreement mention LED lighting or any construction activity, contrary to Petitioner’s statements. The Agreement is a contract for the purchase of existing fixtures. Although a necessary step in the overall LED conversion project, the April 27, 2020 Resolution and O&R contract are discrete actions in their own right and do not require SEQRA approval. (See 6 NYCRR 617.5(c)(2) and (31), discussed infra).

8. In this Article 78 proceeding Petitioner Kopald challenges the April 27, 2020 Resolution and the O&R Agreement of June 15, 2020 on the ground that the Town purportedly violated SEQRA in declaring the purchase of existing light fixtures to be a Type II action exempt from environmental review under SEQRA. She is also challenging the Town’s decision to convert

the street lighting to LED lamps, made on September 24, 2019 but which, because the decision was made a year ago, cannot be attacked due to the four-month statute of limitations set forth in CPLR 217. For that reason she has sought to attack the April 27, 2020 Resolution and June 15, 2020 O&R purchase contract as an end-run around the Statute of Limitations.

9. In adopting Environmental Conservation Law Article 8 the Legislature designated the DEC to define the regulatory framework municipalities are to follow in determining whether a project, private or public, is subject to one or more phases of environmental review. The regulations are found in 6 NYCRR Part 617. Type I actions expressly list frequently-occurring activities which on their face impact the environment and therefore trigger at least a mandatory initial determination of applicability and whether an Environmental Impact Statement (“EIS”) must be prepared. (See 6 NYCRR 617.4). “Unlisted Actions” are those which, although not specifically identified in the regulations as Type I, nonetheless require, due to their nature, an initial determination of applicability and potentially an EIS. (See 617.2 Definitions).

10. Type II Actions are set forth in 617.5 and show a common-sense approach to exclude activities which cannot reasonably be claimed to have any deleterious effect on the environment, such as a municipality’s purchase of equipment and existing facilities. 6 NYCRR 617.5(a) provides:

(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part, except as otherwise provided in this section. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) apply to all agencies.

6 NYCRR 617.5(c) provides in relevant part:

(c) The following actions are not subject to review under this Part:

(1) maintenance or repair involving no substantial changes in an existing structure or facility;

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

* * * *

(31) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous material;

11. Both the September 24, 2019 NYPA contract and the June 15, 2020 O&R contract are exempt Type II actions.

Petitioner Lacks Standing

12. Petitioner Kopald lacks standing to maintain her Article 78 Petition. In order for a petitioner to have requisite standing to challenge an agency’s determination she must plead facts and prove through admissible evidence that she has or will suffer actual, specific injury or harm in fact substantially different in degree or kind from that suffered by the general public at large. See, e.g., Matter of Sheive v. Holley Volunteer Fire Co., Inc., 170 A.D.3d 1589, 95 NYS3d. 700 (4th Dept. 2019); Matter of Kindred v. Monroe County, 119 A.D.3d 1347, 989 N.Y.S.2d 732 (4th Dept. 2014).

13. There is no presumption of standing in a SEQRA challenge. Kindred, supra, 119 A.D.3d at 1348, 989 N.Y.S.2d at 733. Petitioner’s self-proclaimed status as an expert and concerned activist and reliance on inadmissible hearsay and speculative opinion are too conjectural and not sufficient to demonstrate she has or will suffer any actual and specific injury in fact and

she therefore lacks standing. See Matter of Propane Gas Association v. New York State, 17 A.D.3d 915, 793 N.Y.S.2d 601 (2005); Matter of Sierra Club v. Village of Painted Post, 115 A.D.3d 1312, 983 N.Y.S.2d 380 (2014); Matter of Save Our Main Street Buildings, 293 A.D.2d 907, 740 N.Y.S.2d 715 (2002). See also Gasoline Heaven at Commack, Inc. v. Town of Smithtown Town Board, 2013 N.Y.Misc. LEXIS 5748, 2013 NY Slip Op. 33095(U) (Sup. Ct. Suffolk Cty. 2013) (complaints which relate to increased traffic, light pollution, are not unique to the complainant). As stated by the Second Department in Matter of Long Island Pine Barrens Society, Inc. v. Planning Board, Town of Brookhaven, 213 A.D.2d 484, 485, 623 N.Y.S. 613 (2d Dept. 1995):

The burden of establishing standing to raise a challenge based on a N.Y. Env'tl. Conserv. Law §8 claim rests upon the petitioners who must demonstrate (1) that they will suffer an environmental injury in fact, i.e., an environmental injury that is in some way different from that of the public at large, and (2) that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the governmental action was taken.

See also Matter of Tuxedo Land Trust, Inc. v Town of Tuxedo, 34 Misc.3d 1235, 950 N.Y.S.2d 611 (Sup. Ct. Orange Cty. 2012).

14. Accordingly, Petitioner Kopald's lack of standing requires dismissal of her Petition as well as her application for an injunction.

The Petition is Barred by the Statute of Limitations

15. An Article 78 Petition challenging a municipal determination or action or alleged failure to comply with SEQRA or other laws must be brought within four months of the date by which the claim accrued, that is, the date the decision or determination was made. CPLR 217; see also Matter of Stengel v. Town of Poughkeepsie Planning Board, 167 A.D.3d 752, 89 N.Y.S.3d 287 (2d Dept. 2018); Matter of Young v. Board of the Village of Blasdell, 89 N.Y.2d 846, 848, 652 N.Y.S.2d 729 (1996).

16. It is obvious that Petitioner is attacking, through the purchase agreement of June 15, 2020, the Town’s decision to install LED lights, which was made by September 24, 2019 when the Town and NYPA signed the contract having the nominal date of April 5, 2019 (Ex. “A”) and therefore ten months before she filed this Article 78 Petition. It is obvious that Petitioner, a self-taught lawyer without a license, is well aware of her dilemma caused by the statute of limitations, as she strives to get around her obstacle by mischaracterizing the Town’s April 27, 2020 Resolution and O&R Agreement as being contracts for LED lights. She also expressly refers to her four-month dilemma in her “Wherefore Clause”, wherein she asks this Court to guess that there might be unidentified contracts or resolutions or bids lurking about in 2020 which she demands the Court nullify or prohibit, in the same way a blind-folded dart player throws a dozen barbs against a wall hoping that one might hit the target. Petitioner’s request that this Court overturn, vacate, nullify or prohibit the Town’s LED lighting conversion project, is barred, as her claim accrued at the latest by September 24, 2019 when the Town entered into the contract and the four-month deadline expired by January 24, 2020. The Petition must therefore be dismissed and the application for an injunction denied.

Petitioner Has Failed to Sustain her Burden for Injunctive Relief

17. A preliminary injunction is a drastic remedy that should be issued with great caution. Related Properties, Inc. v. Town Board of the Town and Village of Harrison, 22 A.D.3d 587, 802 N.Y.S.2d 221 (2d Dept. 2005); Cipriani Fifth Ave., LLC v. RPCI Landmark Properties, LLC, 4 Misc.3d 850, 782 N.Y.S.2d 522 (N.Y. Cty. 2004). The movant has the burden of establishing a clear right to relief under the law and the undisputed facts within the motion papers. County of Orange v. Lockey, 111 A.D.2d 896, 490 N.Y.S.2d 605 (2d Dept. 1985). Movant must show, through admissible relevant evidence, the likelihood of ultimate success on the merits;

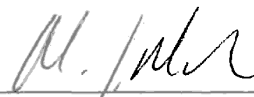
irreparable harm absent relief; and that an equitable comparison of the hardships incurred by the parties with or without the injunction favor the movant. Faberge International, Inc. v. Di Pino, 109 A.D.2d 235, 491 N.Y.S.2d 345 (1st Dept. 1985). If key facts are in dispute, the application must be denied. Id.

18. Appellant has failed to satisfy the elements required to justify an injunction, let alone a temporary restraining order as against Respondent Town. She has failed to demonstrate conduct which, absent Court intervention, will create an objectively real and substantial danger in fact to her health, life or property; there is no objective admissible evidence of any wrongdoing, inequitable or illegal conduct by Respondent Town; she has failed to show a substantial likelihood of success on the merits of her allegations; and she cannot prove that the balance of the equities are in her favor. Appellant has not demonstrated irreparable harm if her application is denied, and she cannot show that she has any cognizable special interest at stake entitling her to an injunction, which is a condition precedent she has failed to meet. See, e.g., Kempner v. Patsy Bello Nurseries, Inc., 31 A.D.2d 748, 297 N.Y.S.2d 338 (2d Dept. 1969); Slevin v. Long Island Jewish Medical Center, 66 Misc.2d 312, 319 N.Y.S.2d 937 (Sup. Ct. Nassau Cty.1977).

19. By contrast, the delay she has caused by this Petition in going forward with this project will serve only to increase the cost to the taxpayers, particularly since the price for the LED equipment is scheduled to increase by 20% at the end of this year. (See Livsey Aff.).

20. Accordingly, the Town respectfully requests that the request for injunctive relief be denied and the Petition dismissed.

Dated: September 29, 2020



Michael J. Matsler

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of Deborah Kopald, X
Petitioner,

**AFFIDAVIT IN SUPPORT OF
RESPONDENT TOWN OF
HIGHLANDS' ANSWER TO
THE PETITION AND
OPPOSITION TO MOTION**

For a Judgment Pursuant to Article 78

Index No. EF004088-2020

-- against --

The Town of Highlands New York, Orange and
Rockland Utilities, Inc., and The New York
Power Authority,

Respondents.

Assigned Judge:

X Hon. Maria S. Vazquez-Doles

STATE OF NEW YORK)
)SS.:
COUNTY OF ORANGE)

Mervin Livsey, being duly sworn, deposes and says:

1. I am the Supervisor of the Town of Highlands. I am personally familiar with the facts I set forth in this affidavit and the Town's project to convert street lighting to LED illumination. I am familiar with Ms. Kopald and have read her Petition.

2. The Town and our Board owe a duty to our residents and taxpayers to explore ways to reduce our energy consumption and control if not reduce the costs of providing services. One such area concerns street lighting for the several public roads and highways in our Town, including Route 9W which runs roughly on a north-south axis and is our main thoroughfare. Most of the Town's commercial establishments including restaurants, hotels, garages, merchants and other businesses along with schools, churches and municipal offices are along Route 9W clustered in the hamlet of Fort Montgomery and in the Village of Highland Falls within our Town boundaries.

Ms. Kopald resides at 88 Forest Hill Road, a remote residential forested area approximately one-half mile to a mile away and far removed from Route 9W and Fort Montgomery where most of the public street lighting she challenges is found.

3. For many years I and the Town Board have been looking into ways to reduce the cost of providing adequate road illumination. To that end we invited the New York Power Authority (“NYPA”) and Orange and Rockland Utilities (“O&R”) to assist us.

4. That effort led to my signing on behalf of the Town on September 24, 2019 a letter agreement with NYPA, nominally dated April 5, 2019, for the purpose of implementing energy-efficient and cost-effective LED lighting. As stated in the agreement, the role of the NYPA was and is “to support the Town of Highlands in identifying and implementing a comprehensive street lighting upgrade...to achieve the goal of reducing energy consumption, lowering utility costs, and improving light quality throughout the community.” (A copy of the letter agreement signed September 24, 2019 is annexed to the Town’s Answer as Ex. “A”).

5. At a public Town meeting on July 8, 2019 the benefits of LED lighting were discussed, as well as the fact that Ms. Kopald’s petition was being circulated opposing the Town’s decision to go with LED. (“Ex. “B” to the Town’s Answer).

6. Ms. Kopald is a frequent and outspoken participant at our Town meetings, and I am well aware of her subjective feelings about numerous topics such as noise, garbage collection, neighbors’ activities, and LED lighting. I believe she was the author of the anti-LED petition circulating in the Town in the Summer of 2019. She attended Town meetings where the Town’s decision to install LED lights was widely discussed, with Petitioner herself voicing her objections. She attended the September 23, 2019 Town meeting to which she refers in her Petition, the minutes for which are annexed to the Town’s Answer as Ex. “C”. The minutes show Ms. Kopald speaking

about the draft agreement, among other items. In her Petition she states that she knew the NYPA agreement was to be signed, and she voiced her objections at the meeting.

7. The Town and NYPA continued their planning for the LED conversion throughout 2019 in conjunction with other measures to improve the lighting in the Town, and to optimize potential grant money and other funding programs available to encourage municipalities to upgrade their systems and reduce energy consumption. On April 27, 2020 the Town Board adopted the resolution referred to in the Petition to allow the Town to enter into a purchase agreement with O&R for its approximately 168 existing street lighting fixtures and equipment. (A copy of the resolution and minutes dated April 27, 2020 is annexed to the Town’s Answer as Ex. “D”).

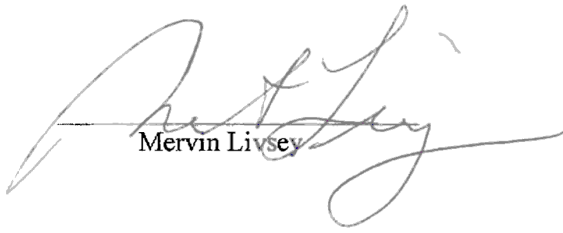
8. The resolution correctly states that the purchase of existing street lighting facilities is a Type II action not requiring SEQRA review. I understand that the purchase of equipment or existing structures is not a SEQRA matter.

9. The purchase agreement with O&R was signed by me for the Town on June 15, 2020. (A copy, without attachments, is annexed to the Town’s Answer as Ex. “E”). The Town has not yet paid the \$30,922 recited in the contract and O&R has not yet delivered the bill of sale for the estimated 168 existing units. To-date the PSC has not yet approved the transition, and NYPA has not completed all the preparation work for the LED conversion. The Town and NYPA have not finalized bid documentation and cannot enter into any contracts until the Court lifts its TRO and PSC gives its approval.

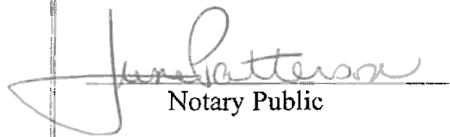
10. In order for the work to proceed without undue delay, this Court’s temporary injunction must be lifted soon, for we are fast approaching the wintertime where it may prove difficult to proceed with the physical conversion work, or at the very least slow down the process and increase the costs. The conversion work will entail no new major construction or disturbance

of ground conditions. Almost all of the physical work will consist of replacing existing fixtures and hardware and adding new pieces of equipment such as control boxes, wiring and the LED lights themselves, and installing computer software. I understand that none of this work requires any SEQRA review. According to NYPA, the cost for the LED materials is scheduled to increase by 20% as of the end of 2020.

11. The conversion of our existing street lighting to LED is an energy and cost-savings measure that will benefit the public. It is pure speculation that LED lighting may be allegedly harmful and if some people feel they are not comfortable with it, such feelings are subjective. It is inevitable that dissenting voices may be raised; in the democracy we cherish it is a person's right to state their objections. However, Petitioner first raised her objections over a year ago and she is time-barred, as I understand it, from bringing this Petition. As Supervisor of the Town of Highlands I therefore ask the Court to lift the current TRO, deny her request for an injunction and to dismiss the Petition.


Mervin Livsey

Sworn to before me this
29 day of September, 2020.


Notary Public

JUNE PATTERSON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01PA6146631
Qualified in Orange County
Commission Expires May 22, 2022

NYPA Verified Answer and Return and Opposition to a Preliminary Injunction
(992-1002)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

-----X
In the Matter of the Application of Deborah Kopald,

Petitioner,

For a Judgment pursuant to CPLR Article 78

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc., and
The New York Power Authority,

Respondents.
-----X

**VERIFIED ANSWER
AND RETURN
AND OPPOSITION TO A
PRELIMINARY INJUNCTION**

Index No. EF004088-2020

Return Date: November 3, 2020

Hon. Maria S. Vazquez-Doles

Respondent New York Power Authority ("NYPA") by its attorney, Justin E. Driscoll, Esq., Executive Vice President and General Counsel, as and for its Verified Answer and Return to the Verified Petition respectfully alleges as follows:

1. With respect to paragraph 1 of the Verified Petition, and its associated footnote, this paragraph contains a statement of petitioner's case or conclusions of law to which no answer is required, but insofar as an answer may be deemed required, NYPA denies each and every allegation contained therein.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Verified Petition, including its associated footnote.
3. Denies each and every allegation contained in paragraph 3 of the Verified Petition and respectfully refers this Court to the April 27, 2020 Town of Highlands Resolution and the email from Richard Sullivan for the complete terms thereof.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Verified Petition and respectfully refers this Court to the April 27, 2020 Town of Highlands Resolution for the complete terms thereof.

5. Denies each and every allegation contained in paragraph 5 of Verified Petition, except admits that NYPA and the Respondent Town of Highlands New York (“Town of Highlands”) entered into an Energy Services Project Master Cost Recovery Agreement on July 23, 2019, a kickoff meeting was held on December 9, 2019 for the Project, and NYPA respectfully refers this Court to the Agreement for the complete terms thereof.

6. Paragraph 6 of the Verified Petition contains conclusions of law, not averments of fact to which an answer is required. To the extent an answer may be required, NYPA hereby denies each and every allegation contained therein.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Verified Petition, including its associated footnote, and respectfully refers this Court to the referenced exhibits for the complete terms thereof.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8, 9, 10 and 11 of the Verified Petition and respectfully refers this Court to the referenced exhibits for the complete terms thereof.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Verified Petition and respectfully refers this Court to the referenced exhibits for the complete terms thereof.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Verified Petition and respectfully refers this Court to the referenced exhibits for the complete terms thereof.

11. Denies each and every allegation contained in paragraph 14 of the Verified Petition, including the allegation that Mr. Richard Sullivan was or is a NYPA employee, and respectfully refers this Court to the referenced exhibit for the complete terms thereof.

12. Denies each and every allegation contained in paragraph 15 of the Verified Petition, except admits that NYPA's Manager of Key Accounts, Jesse Scott, advised petitioner that NYPA does not install orange lights on roads or in neighborhoods and respectfully refers this Court to Petitioner's Exhibit 4 for the complete terms thereof.

FIRST CAUSE OF ACTION

13. Denies each and every allegation contained in the unnumbered paragraph designated as the first cause of action in the Verified Petition.

SECOND CAUSE OF ACTION

14. Denies each and every allegation contained in the unnumbered paragraph designated as the second cause of action in the Verified Petition.

THIRD CAUSE OF ACTION

15. Denies each and every allegation contained in the unnumbered paragraph designated as the third cause of action in the Verified Petition.

FOURTH CAUSE OF ACTION

16. Denies each and every allegation contained in the unnumbered paragraph designated as the fourth cause of action in the Verified Petition.

FIFTH CAUSE OF ACTION

17. Denies each and every allegation contained in the unnumbered paragraph designated as the fifth cause of action in the Verified Petition.

SIXTH CAUSE OF ACTION

18. Denies each and every allegation contained in the unnumbered paragraph designated as the sixth cause of action in the Verified Petition.

THE RETURN

19. The Return, consists of the following documents:
- o Proposal (Attached as Exhibit A);
 - o Project Summary (Attached as Exhibit B);
 - o Master Cost Recovery Agreement between NYPA and the Town of Highlands, dated July 2019. (Attached as Exhibit C):
 - o Authorization to Proceed between NYPA and the Town of Highlands, signed by the Town on September 24, 2019. (Attached as Exhibit D);
 - o NYPA’s Assignment of the Town of Highlands LED Street Lighting Replacement Project to Guth DeConzo Consulting Engineers in February 2020. (Attached as Exhibit E); and
 - o NYPA’s Agreement with Phillips Lighting North America, now known as Signify North American Corporation, (NYPA Value Contract number 4600003452) to purchase LED streetlights in support of its Smart Street Lighting Program (Attached as Exhibit F).

STATEMENT OF FACTS

20. NYPA is a corporate municipal instrumentality and political subdivision of the State of New York. It was created pursuant to Public Authorities Law §§ 1000-1017.

21. NYPA generates, transmits, and sells electric power and energy, principally at wholesale to industries, municipalities, and electric cooperatives, and to utilities for resale to their customers throughout New York.

22. NYPA is one of New York State's leading suppliers of electricity, operating 16 generating facilities and more than 1,400 circuit miles of transmission lines.

23. NYPA finances its operations through the sale of bonds and revenues earned largely through the sale of electricity. NYPA does not use New York State tax money or state credit.

24. Since 1994, NYPA provided energy efficiency programs to county and municipal governments, including governmental customers in Orange County. NYPA's programs provide energy-efficiency improvements, with no up-front costs, to government facilities and public schools. From start to finish, NYPA works with its customers to identify, design, and install new lighting and motors, as well as other energy efficiency projects such as upgrades to heating, ventilation, and air-conditioning systems.

NYPA's Smart Street Lighting Program

25. Announced by Governor Cuomo in his 2018 State of the State address, NYPA's Smart Street Lighting Program seeks to replace at least 500,000 streetlights with energy-efficient LED technology by 2025.

26. NYPA seeks to contract with local municipalities throughout New York State to offer a turnkey proposal to upgrade the municipalities' existing streetlight system to energy efficient LED streetlights. The upgrade to the LED streetlights offers the individual municipalities significant costs savings in both energy and maintenance costs. In addition, NYPA initially finances each Project, so the individual communities do not incur upfront out of pocket costs to implement the Project.

27. Two years into this Program, NYPA has commitments to replace 150,000 streetlights in New York State and has successfully installed 73,000 streetlights under this Program.

NYPA's Bid and Subsequent Award of a Contract Re: LED Street Lights

28. After the competitive bid process, NYPA entered into a contract in April 2018 with Phillips Lighting North America, now known as Signify North American Corporation (NYPA Value Contract number 4600003452).

Town of Highlands Street Lighting Replacement Project

29. On April 8, 2019, NYPA's Customer Business Development Representative, Jeffrey Laino, made a presentation to the Highlands Town Board at a public forum regarding the Town's potential participation in NYPA's Smart Street Lighting Program. See Exhibits A and B attached hereto.

30. Specifically, NYPA presented a proposal that estimated, among other things, yearly electricity costs savings of \$25,545 and reduced maintenance costs since the LED lights have a life expectancy of 15 years or more. NYPA's proposal contemplated that the entire cost of the replacement of the current inefficient streetlights, including the purchase of the current streetlights by the Town of Highlands from Respondent Orange & Rockland Utilities, Inc. ("O&R"), would cost the Town \$169,784, and that entire amount could be financed through NYPA's project financing package.

31. In July 2019, NYPA and the Town of Highlands entered into a Master Cost Recovery Agreement ("MCRA"), effective July 23, 2019. See Exhibit C attached hereto. This Agreement sets out the general framework for the responsibilities of NYPA and the Town in terms of any particular project specific Energy Services Program. Since this document does not

specifically contemplate any specific energy services project, including the replacement of the Town of Highlands streetlights, this Agreement is classified as a Type II action and SEQR is satisfied with no further action.

32. In addition, the Town signed on September 24, 2019 an Authorization to Proceed with the Project. See Exhibit D. The Town of Highlands authorized NYPA to replace light fixtures for 167 pre-existing streetlights. Specifically, the Town authorized NYPA to proceed with “the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project.”

33. In furtherance of that Authorization to Proceed, NYPA conducted a kickoff meeting for the Project on December 9, 2019 and assigned this Project to one of its Implementation Contractors, Guth DeGonzo Consulting Engineers, in February 2020. See Exhibit E. Guth DeGonzo Consulting Engineers was selected after a competitive bidding process, and as such, is assigned projects such as the Town of Highlands Street Light Replacement Project.

34. Since February 2020, Guth DeGonzo Consulting Services completed a draft 90% design of the Project, which has been reviewed by NYPA.

Town of Highlands Street Light Replacement Project

35. Town of Highlands Street Light Replacement Project seeks to replace the existing light fixtures with energy efficient LED lights. While the design contains an allowance for a \$20,000 NYPA Smart City Grant, which would allow for the installation of other technologies (e.g., cameras, Wi-Fi hotspots, weather sensors), the Town, as of September 15, 2020, has not applied for this grant, and the contemplated work would not include these installations.

36. The replacement of light fixtures is classified as a Type II action, and SEQR is satisfied with no further action.

37. Upon information and belief, this treatment is thoroughly consistent with NYPA’s thirty-year history in its involvement in the replacement of inefficient light fixtures, first with fluorescent lights and now as the technology has evolved, with LED lights. NYPA has replaced inefficient streetlights under this Program with LED lights throughout New York State. There have been no deleterious health effects with these installations.

Effects of TRO and Proposed Preliminary Injunction

38. On August 24, 2020, Petitioner obtained a temporary restraining order which halted all work on the Project. For example, NYPA has not forwarded the draft 90% design to the Town for its approval.

39. The continuation of any injunctive relief will negatively impact the Project’s cost. After December 31, 2020, the streetlights that will be installed will be subject to an estimated 20% increase in costs since NYPA’s contract with Signify North American Corporation guaranteed a fixed price for the first two years of the contract. That increase in material costs will affect both NYPA’s fee and Guth DeGonzo Consulting Engineers’ fee, since both fees are calculated as a percentage of the materials and labor costs. Increases in Project costs will also negatively impact the amount of potential savings to the Town.

40. Lastly, delays in implementation of this streetlighting replacement project deprives the Town of the benefit of this Project, namely decreased electricity bills and maintenance costs.

FIRST OBJECTION IN POINT OF LAW

41. The Petition, in whole or in part, fails to state a cause of action against NYPA.

SECOND OBJECTION IN POINT OF LAW

42. Petitioner lacks standing to pursue the claims asserted or the relief requested in the Petition.

THIRD OBJECTION IN POINT OF LAW

43. The Petition is barred by the applicable statute of limitations.

FOURTH OBJECTION IN POINT OF LAW

44. The Petition, to the extent it seeks to force NYPA, among other things, to void contracts or issue bids, must be dismissed because petitioner has no clear right to such relief and thus a mandamus to compel is unavailable to her.

FIFTH OBJECTION IN POINT OF LAW

45. NYPA's determination to enter into a contract with Phillips Lighting North America, now known as Signify North American Corporation, (NYPA Value Contract number 4600003452) to purchase LED streetlights in support of its Smart Street Lighting Program was a Type II action and is not subject to SEQR review.

SIXTH OBJECTION IN POINT OF LAW

46. The Town of Highlands Street Lighting Replacement Project replacement of light fixtures is classified as a Type II action, and SEQR is satisfied with no further action.

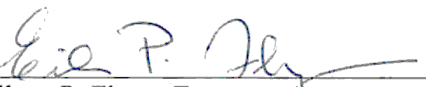
SEVENTH OBJECTION IN POINT OF LAW

47. NYPA's determinations as challenged in the petition were neither arbitrary nor capricious, an abuse of discretion, affected by errors of law, nor made in violation of lawful procedure.

WHEREFORE, it is respectfully submitted that this Court issue an Order and Judgment denying the motion for a preliminary injunction and dismissing the petition and granting such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
October 2, 2020

JUSTIN E. DRISCOLL, ESQ.
Executive Vice President
and General Counsel for the Respondent
New York Power Authority

By: 
Eileen P. Flynn, Esq.
New York Power Authority
123 Main Street
White Plains, New York 10601
(914) 390-8014

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ROCKLAND) ss:

JESSE SCOTT, NYPA's Manager Key Account Management, hereby affirms under the penalty of perjury that he has read the foregoing answer, and knows the content thereof, and asserts upon information and belief that the contents thereof are true; that the source of his information and belief are his personal knowledge, his review of NYPA's files, applicable laws and regulations, and his discussions with NYPA staff; and that this verification is made pursuant to CPLR § 3020(d)(2) by deponent because he is acquainted with the facts that are the subject of the Verified Petition.


JESSE SCOTT

Sworn to before me this
2nd day of October 2020


NOTARY PUBLIC

EILEEN P. FLYNN
Notary Public, State Of New York
Qualified In Westchester County
No. 02FL6016923
Commission Expires November 30, 2022

Notarization is made pursuant to Executive Order 202.7, as extended.
The affiant is in Rockland County, and the notary is in Westchester County.

Exhibit A NYPA LED lights proposal for the Town of Highlands
(1003-1005)

FILED: ORANGE COUNTY CLERK 10/02/2020 07:17 PM

NYSCEF DOC. NO. 84

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 10/02/2020

Exhibit A

Town of Highlands LED Street Light Proposal

Project Summary

The New York Power Authority (NYPA) appreciates the opportunity to provide The Town of Highlands with a turnkey proposal to upgrade its existing street light system to energy efficient LED street lights. NYPA is delivering the Smart Street Lighting NY Program to communities around the State and has 300,000 street lights in our pipeline. We are delighted to be considered as a resource by the Town of Highlands to implement this project on its behalf. NYPA will team with the Town in order to design and implement a project that meets the Town's specific requirements. Another part of our value proposition is that we offer our customers low cost project financing. Additionally, NYPA can make all milestone payments to vendors so the Town will not need to incur any out of pocket costs to implement the work. Through this project, and shown in the proposal summary sheet, the Town of Highlands will upgrade all of its street lights, estimated at 167 for this proposal. In developing this proposal estimate, NYPA used the inventory that was furnished by the Town as per the Street Lighting invoice from Orange and Rockland Electric Company for the month of January 2019 to develop the cost and savings estimate. The annual savings generated by implementing this project is estimated to be \$23,545 in energy and system maintenance costs.

Scope of Services

NYPA proposes to provide the following services:

- Create an accurate post installation street lighting inventory and provide updates to O&R so tariffs can be adjusted.
- Provide engineering design and procurement by a licensed PE firm. This firm will serve as the implementation contractor and engineer of record under the project supervision of a New York State Power Authority Project Manager.
- Purchase of LED fixtures through a NY State RFP procurement that NYPA conducted. NYPA does not place a mark-up on materials costs to the customer. The LED fixtures will include photocells. Wireless smart city controls and grants are available as well per customer request
- NYPA and its implementation contractor will procure and make a recommendation for the selection of an installation contractor in accordance with NY State procurement guidelines and follow all regional prevailing wage rate standards.
- Provide project and construction management along with field supervision and project closeout. This will include ensuring that traffic and pedestrian safety plan is established and adhered to.
- Overseeing hazardous waste management and disposal in accordance with environmental law.

Benefits

- \$25,545 per year in estimated electricity cost savings
- Simple payback estimate of 7.21 years
- Annual positive cash flow estimate of \$2,459 with a 9 year loan term.
- Improved light quality, visibility, and reliability. The LED lights NYPA installs are night sky compliant.
- Reduced maintenance costs. LED lights have a life expectancy in excess of 15 years. Since LED street light bulbs last much longer, ongoing replacements become infrequent.

Financials

- The cost to develop and implement this project on a full turn-key basis is estimated to be \$169,784. This includes the purchase of the existing street lights from the Utility. NYPA can include the purchase in the project financing package. This estimated cost will be refined as the project is designed and bid.

Next Steps

- Execute Energy Services Program Master Contract and Authorization to Proceed.
- Schedule a project kickoff meeting with NYPA and our implementation contractor

Exhibit B Proposed Project Summary
(1006-1007)

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NYSCEF DOC. NO. 85

INDEX NO. EF004088-2020

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Exhibit B

**Total Project Summary
New York Power Authority - Energy Efficiency Program
Town of Highlands LED Street Lighting Project**

March 19, 2019

Project Cost: CONCEPTUAL COST ESTIMATE			
		Material	Labor
Existing Fixtures:	167	Construction Costs:	\$21,735.00
Existing LED Fixtures:	1	Mandatory Fuses:	\$12,525.00
	168	Wiring:	\$0.00
		Tree Trimming:	\$0.00
		Registry and GPS:	\$0.00
		Arms:	\$814.13
		Photocells:	\$3,340.00
		Payment and Performance Bonds:	\$0.00
		Totals:	\$38,414.13
			\$33,642.15
		Total Material, Labor, & Asbestos:	\$72,056.28
		Contingency: 10%	\$7,205.63
		Subtotal:	\$79,261.90
		Hazardous Waste Disposal Cost:	\$668.00
		Environmental Subtotal:	\$668.00
		Design, & Construction Mgt:	\$11,889.29
		NYP&A Project Mgt. & Administrative:	\$13,772.88
		Project Management Subtotal:	\$25,662.16
			(See Note # 1)
		Purchase of Fixtures:	\$58,450.00
		Project Subtotal:	\$164,042.07
		Interest During Construction (IDC):	\$5,741.47
			(See Note # 2)
		Total Project Cost:	\$169,783.54
Estimated Energy Savings			
	<u>Estimated Electrical Savings:</u>	<u>Estimated Fuel Savings:</u>	<u>MMBtu Savings:</u>
	kWh Savings: 85,187	Natural Gas: 0 ccf	0.0
	kWh Cost Savings: \$ 11,277.01	Oil Savings: 0 gal	0.0
	Monthly kW Savings: N/A	Steam (100 psi): 0 lbs	0.0
	kW Cost Savings: N/A	Other: 0	0.0
	Total Electrical Savings: \$11,277.01		0.0
	Total Energy Savings: \$11,277.01		0.0
		<u>Cost Savings:</u>	<u>\$0.00</u>
Estimated Annual Maintenance & Facilities Savings			
		Maint. Savings:	\$12,288.38
		Pole Leasing Cost:	(\$1,680.00)
		Post Maintenance Cost:	(\$3,340.00)
			(See Note #3)
			(See Note #4)
		Total Annual Maintenance & Facilities Savings:	\$12,268.38
		Est. Total Savings:	\$23,545.39
Simple Payback			
		Total Project Cost With IDC:	\$169,783.54
		Estimated Rebates & Incentives:	\$0.00
		Net Project Cost:	\$169,783.54
		Total Amount Saved:	\$23,545.39
		Simple Payback:	7.21
Project Financing			
		TOTAL AMOUNT FINANCED:	\$169,783.54
		Interest Rate:	2.50%
		Years Financed:	9
		Number of Payments:	108
		Annual Debt Service to NYP&A:	\$21,086.21
		Monthly Debt Service to NYP&A:	\$1,757.18
		Total Project Cost after Financing:	\$189,775.91
		Total Annual Savings:	\$23,545.39
		Payback With Financing:	8.06
		Annual Cash Flow:	\$2,459.18
			(Rebates & Incentives Not Included)
			(See Note # 5)
			<- CHANGE MANUALLY

Notes:

1. NYP&A Project Mgt. & Administrative represents a fee of 15% of the Construction Costs, Asbestos Abatement, Design & Construction Fee, and associated contingencies.
2. Interest During Construction (IDC) Estimated based on 3.5% interest rate.
3. Assumed to be \$10/fixture for this proposal
4. Post installation maintenance costs assumed to be \$20/year per fixture

Exhibit C Proposed Master Cost Recovery Agreement between NYPA and the Town
1008-1048

FILED: ORANGE COUNTY CLERK 10/02/2020 07:17 PM

NYSCEF DOC. NO. 86

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 10/02/2020

Exhibit C



Master Cost Recovery Agreement No. _____
Effective Date: _____

ENERGY SERVICES PROGRAM
MASTER COST RECOVERY AGREEMENT
BETWEEN
POWER AUTHORITY OF THE STATE OF NEW YORK
AND
TOWN OF HIGHLANDS

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**ENERGY SERVICES PROGRAM
MASTER COST RECOVERY AGREEMENT**

This Master Cost Recovery Agreement (this "Master Agreement"), dated Jul 23, 2019, is entered into by and between POWER AUTHORITY OF THE STATE OF NEW YORK, a corporate municipal instrumentality of the State of New York with offices located at 123 Main Street, White Plains, New York 10601 ("Authority") and the Town of Highlands, a municipality with offices located at 254 Main Street, Highland Falls, NY 10928 ("Customer").

WHEREAS, Public Authorities Law §1005(17) permits the Authority, as deemed feasible and advisable by the Trustees, to finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity and certain other specified entities; and

WHEREAS, the Trustees have authorized the establishment of the Authority's Energy Services Program ("ESP") to include, among other things, energy efficiency projects and services, clean energy technology projects and services and high-performance and sustainable building projects and services (including technologies that reduce air and other pollution and conserve materials and resources such as water); and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services; and

WHEREAS, Public Authorities Law §1005(17) permits Customer, a public entity, to enter into an energy services contract with the Authority for such energy-related projects, programs and services as authorized by Public Authorities Law; and

WHEREAS, Authority and Customer desire to work together to develop and implement Projects contemplated under the ESP and to enter into this Master Agreement as more particularly set forth herein.

NOW, THEREFORE, Authority and Customer (sometimes referred to herein collectively as the "Parties" and individually as a "Party"), in consideration of the mutual covenants and conditions contained herein and in these recitals, hereby agree as follows:

DEFINITIONS

The following definitions apply for all purposes of this Master Agreement:

"Advisory Services" means the consulting services provided by Authority or Service Providers to assist Customer in its efforts to reduce energy consumption and associated operations and maintenance costs, to realize environmental benefits, including but not limited to the reduction of air pollution; to conserve natural resources; and/or facilitate the use of clean energy sources at Customer's Facilities.

"Advisory Services Terms and Conditions" means the additional terms and conditions set forth in Exhibit C applicable to Advisory Services Projects provided by Authority or Service Provider to Customer hereunder.

“Ancillary Documents” means documents, other than this Master Agreement and the Customer Project Commitment (and documents that modify them, such as Change Orders and Contingent Work Orders), covering information necessary for the implementation of a specific Project, such as authorizations, Substantial Completion and Operation Transfer Reports, Milestone Completion Reports and Final Inspection Reports, etc.

“Authority’s Authorized Representative” means an individual designated by Authority in accordance with Section 10.1(b) to coordinate a Project on behalf of Authority and to communicate with Customer concerning such Project.

“Authority Implemented Work” means Work undertaken by Authority for Customer as more fully set forth in a CPC (subject to the terms and conditions of this Master Agreement and any applicable Transaction Document) through the services of qualified Service Providers or Subproviders engaged by Authority.

“Authority Material Handling Fee” is a fee applied by the Authority to the cost of materials purchased directly by the Authority for a Project, where applicable, to reimburse the Authority for procurement, material handling, storage and/or restocking. The amount of such fee, when applicable to a Project, will be set forth in the CPC, as superseded by the Final CPC.

“Authority Program Fee” mean Authority’s fee applicable to each Project. Details of the Authority Program Fee will be set forth in the Compensation Schedule, attached hereto as Exhibit A, and the amount of such fee will be set forth in the CPC, as superseded by the Final CPC.

“Background Intellectual Property Rights” means Intellectual Property Rights of a Party owned, controlled, acquired, developed, invented, generated, authored, conceived or reduced to practice prior to the date of this Master Agreement, or acquired parallel to and independent of this Master Agreement or any Transaction Documents entered into under this Master Agreement.

“Capital Project” is a Project involving the design, construction, installation and/or modification of facilities and/or equipment in Customer’s Facility.

“Capital Project Terms and Conditions” means the additional terms and conditions set forth in Exhibit B applicable to Capital Projects provided by Authority or Service Provider to Customer hereunder.

“Change Order” is a Transaction Document that memorializes a modification to the CPC that cannot be made by Contingency Work Order, setting forth agreed-upon additions, deletions or revisions to the Work, and the cost and/or time impact to the Project.

“Compensation Schedule” is a schedule attached hereto as Exhibit A setting forth details about the Authority Program Fee and other relevant Project costs, where applicable, for the different services offered by Authority under this Master Agreement.

“Contingency Work Order” is a Transaction Document that memorializes the Authority’s use of the Project Contingency for a Project, such use to be reflected on subsequent CPCs that are executed for the particular Project.

“Customer’s Authorized Representative” means an individual designated by Customer in accordance with Section 10.1(a), to coordinate a Project on behalf of Customer and to assist Authority, its Service Providers and Subproviders with the implementation of the Project.

“Customer Project Commitment” or “CPC” is a Transaction Document containing terms and conditions for one or more specific Projects at a Customer’s Facility(ies) that includes, at a minimum, the location of Customer’s Facility, a detailed scope of Work (including a description of milestones, if any), the projected Project costs and any specific payment terms applicable to the Project.

“Debris” shall mean unregulated materials removed from a Customer Facility and unsuitable for further use.

“Environmental Laws” means all current and future federal, state and local laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), environmental permits, and obligations and other requirements imposed by any “Governmental Authority” (as defined herein), including New York State Department of Environmental Conservation (“NYS DEC”) Technical Administrative Guidance Memoranda and other guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, protection of the environment, natural resources, or protection of human health and safety from conditions in the environment, the presence, “Release” (as defined herein) of, threatened Release of, or exposure to, “Hazardous Substances” (as defined herein), or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

“Environmental Liabilities” means all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses, and costs, relating to environmental conditions or activities, including (i) Remediation costs, engineering costs, environmental consultant and expert fees, laboratory fees, permitting fees, investigation costs, defense costs, and reasonable attorneys’ fees and expenses; (ii) any claims, demands, and causes of action relating to or resulting from any personal injury (including wrongful death), property damage (real or personal) or natural resource damage; and (iii) any penalties, fines or costs associated with the failure to comply with any Environmental Law.

“Energy Services Program” or “ESP” includes energy efficiency projects and services; clean energy technology projects and services; high-performance and sustainable building programs and services (including technologies that reduce air and other pollution, conserve materials and resources such as water); and the construction, installation and/or operation of facilities or equipment done in connection with any such project, programs and services.

“Facility” means the building, structure or premises owned and/or operated by Customer that may benefit from Customer’s participation in Authority’s ESP Program.

“Final CPC” means the document that reflects the final reconciliation of Project costs and all amendments to the CPC that is issued by Authority to Customer upon completion of the Work for a Project.

“Final Inspection Report” means the report, if any, to be executed by Authority and Customer after completion of a Project.

“Hazardous Substances” means (i) any petroleum, petroleum products or byproducts, and all other regulated hydrocarbons (including without limitation, petrochemicals and crude oil), or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons, and other ozone-depleting substances; and (ii) any chemical, material, substance, product or waste (including thermal discharges and hazardous waste) that is prohibited, limited, or regulated by or pursuant to any Environmental Laws.

“Intellectual Property Rights” means any and all intellectual property rights, including, but not limited to rights in any and all of the following: (i) technical information and know-how; (ii) discoveries, improvements, enhancements, upgrades, inventions, (whether or not patentable); (iii) patents, patent applications, patent disclosures, and any other patentable subject matter; (iv) copyrights, applications to register copyrights, works of authorship and any other copyrightable works; (v) trademarks, trade names, trade dresses, brand names, logos and similar marks; (vi) any sketches, drawings, outlines, drafts; (vii) computer software (including source code, executable code, databases, data and related documentation); (viii) trade secrets and know-how; and (ix) all improvements or modifications to any of the foregoing.

“Labor Cost” is that portion of the Total Reimbursement Costs for installation labor performed by Service Provider and Subprovider in connection with the Work performed in connection with a Project pursuant to a CPC based on this Master Agreement. Such costs will be detailed in each CPC.

“Long-Term Repayment Obligation” means the obligation of Customer to repay Authority in accordance with and subject to the terms of a loan agreement after conversion of a Short-Term Repayment Obligation.

“Material Cost” is that portion of the Total Reimbursement Costs related to equipment, materials and supplies in connection with the Work performed in connection with a Project pursuant to a CPC based on this Master Agreement. Such costs will be detailed in each CPC.

“Milestone Completion Report” means a document generated by Authority or Service Provider that identifies a milestone(s) satisfactorily completed during the progress of a Project or phase of a Project (i.e., design, construction, or otherwise), signifies Customer’s concurrence with the completion of such milestone and represents Customer’s authorization to proceed to the next milestone or phase of the Work, as applicable.

“Other Agreement” means any stand-alone agreements entered into between the Parties at any time, including, without limitation, non-disclosure agreements, privacy agreements, or grant agreements, but shall not include any Master Cost Recovery Agreement, Energy Efficiency Services Agreement or other agreements governing services under the ESP entered into by the Parties prior to the execution of this Master Agreement.

“Project” means any project or service undertaken through Authority’s ESP pursuant to a CPC based on this Master Agreement.

“Project Contingency” means a defined budget to be utilized at the Authority’s discretion in accordance with Section 2.3 hereof for, among other things, unexpected costs and expenses that may arise during the performance of a Project (usually calculated as a percentage of Material Cost and Labor Cost).

“Release” means any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching, or migration into the environment or within any building, structure, facility, or fixture and/or the exacerbation of any preexisting condition of Hazardous Substances.

“Remediation” means the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including in-situ treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances and any Release(s), that may be required to satisfy Environmental Laws, in each case, including, without limitation, any closure, restoration or monitoring, operations and maintenance activities, including any engineering or institutional controls, that may be required by any Governmental Authority after the completion of such investigation, study, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed pursuant to an Environmental permit or a consent order).

“Service Provider(s)” means a third party provider of goods and/or services that Authority, acting as the contracting entity, contracts with through its procurement policies, procedures and guidelines to perform Work in connection with a Project at Customer Facilities.

“Service Provider Fees” means the costs associated with the payment to Service Providers, its Subproviders and other third party professionals for Work performed with respect to a specific Project. Service Provider Fees will be detailed in each CPC.

“Short-Term Interest” is a cost component of the Total Reimbursement Costs of a Project representing the costs incurred by the Authority in connection with financing the delivery of a Project during the time within which such funds remain unpaid by Customer.

“Short-Term Repayment Obligation” refers to Customer’s obligation to reimburse Authority for the costs of delivering a Project, as identified in the Final CPC.

“Short-Term Repayment Obligation Maturity Date” means the date set forth in the Final CPC, no later than ninety (90) days following the approval of the Final CPC.

“Specific Subject Matter” shall mean intellectual property rights, Authority’s liability and limitation thereof, Project warranties, and amendments to this Master Agreement and/or any Transaction Documents.

“Subprovider(s)” refers to individuals or entities retained by the Service Provider(s) to perform all or part of the Work.

“Substantial Completion and Operation Transfer Report” is a document signed by the Parties signifying that the equipment and/or facilities installed at the Project have been inspected, tested and accepted by Customer.

“Third Party” means any utility company, permit agency, governmental authority having jurisdiction over a Project, any contractor or service provider hired by Customer, or any other third party that is not a Service Provider or Subprovider but is, directly or indirectly, involved in or whose approval is required in connection with, a Project and not under contract, directly or indirectly, with the Authority.

“Total Annual Energy Savings” is the estimated net reduction in Customer’s annual usage of (a) energy service, (b) other utilities including, but not limited to, water and sewer, and (c) any related operation or maintenance savings, if applicable, resulting from the installation of one or more energy conservation measures in accordance with this Master Agreement.

“Total Reimbursement Costs” is the sum of all of the costs of a Project as set forth in the CPC and Final CPC, including, but not limited to, to the extent applicable to such Project: (1) Material Cost; (2) Labor Cost; (3) the amount of the Project Contingency applied as a Project cost; (4) Service Provider Fees; (5) Authority Program Fee; (6) Short-Term Interest; and (7) other Project-related costs and expenses.

“Transaction Document(s)” means with respect to a Project, this Master Agreement and any related Customer Project Commitment and any document that modify them, such as Change Orders and Contingency Work Orders.

“Waste” refers to waste PCBs (as defined by the United States Environmental Protection Agency (“USEPA”) in 40 CFR Part 761) and hazardous waste (as defined by the USEPA in 40 CFR Part 261 and the NYS DEC in 6 NYCRR Part 371) as well as other material regulated for purposes of release, reuse, disposal, or recycling (e.g. CFCs, ethylene glycol, mercury, oil, asbestos), which form a part of the equipment removed from Customer Facilities due to implementing the Work. Disposal of such Waste shall be conducted in accordance with the provisions set forth in Article IV.

“Work” means the services performed for Customer for a selected Customer Facility pursuant to this Master Agreement and the other Transaction Documents for a Project. The scope of Work shall be described in the CPC, as amended by subsequent Change Orders, Contingency Work Orders, and the Final CPC.

ARTICLE I

**SCOPE AND APPLICATION OF AGREEMENT;
ORDER OF PRECEDENCE**

1.1 Transaction Documents. In connection with each Project, the Parties will, either concurrently with or subsequently to this Master Agreement, enter into one or more Customer Project Commitments, or similar memoranda, that define a specific Project(s) and the costs and fees associated with such Project, and associated Ancillary Documents. Except as otherwise expressly set forth therein, all Transaction Documents, upon execution by the Parties, shall be

governed by the terms and conditions of this Master Agreement. Each Transaction Document shall contain a specific reference to this Master Agreement and CPC, as applicable. This Master Agreement does not obligate Authority to accept requests for Projects issued by Customer or obligate any Party to enter into a CPC.

1.2 Entire Agreement. Subject to the provisions of Section 1.4 below, with respect to a Project, this Master Agreement (including Exhibits A, B, and C and any other exhibits, schedules or appendices hereto) and any Transaction Document which specifically references a Project, constitute the entire agreement between Authority and Customer concerning such Project, and supersedes all prior negotiations, representations, contracts and agreements concerning such Project.

1.3 Conflict and Order of Precedence. In the event of a conflict between the terms of this Master Agreement and the terms and conditions set forth in another Transaction Document, or between the terms of two or more Transaction Documents in effect for a Project, the order of precedence shall be as follows: (i) the terms of the CPC for such Project (as amended by Contingency Work Orders and/or Change Orders and as superseded by the Final CPC) but solely with respect to the price (i.e., the Project's Total Reimbursement Costs), payment terms, and scope of Work (including description of milestones) of the Project; (ii) the terms of this Master Agreement; (iii) the remaining terms of the Project CPC; and (iv) the terms of any Ancillary Document. Notwithstanding the foregoing, the Parties agree that with respect to Specific Subject Matters, if the terms of a Transaction Document concerning a Specific Subject Matter are more favorable to Authority than the respective terms set forth in this Master Agreement, the more favorable terms of the Transaction Document shall prevail with respect to the Project to which it relates. (By way of example, if a Transaction Document includes a term that disclaims any warranties by Authority (or Service Provider) for Work performed, such term would prevail over the warranties set forth in Section 7.1. hereof.)

1.4 Other Agreements. This Master Agreement supersedes all Master Cost Recovery Agreements, Energy Services Agreements or other agreements governing services under the ESP entered into by the Parties prior to the execution of this Master Agreement. Notwithstanding the foregoing, this Master Agreement does not supersede and does not apply to any Other Agreements existing between Customer and Authority. Any projects which Authority has undertaken or undertakes at Customer Facilities pursuant to such Other Agreements, or under prior Energy Services Agreements under which projects remain incomplete as of the date of this Master Agreement, shall be governed by those agreements and related documents, unless otherwise agreed in writing. Termination of this Master Agreement shall have no effect on the Other Agreements which will remain in full force and effect according to their respective terms.

1.5 Amendments. This Master Agreement and any other Transaction Document executed in connection herewith may be amended only in writing signed by an authorized officer or designee of Authority and Customer.

ARTICLE II

GENERAL PROJECT STRUCTURE

2.1 Customer Project Commitment or CPC. For each Project undertaken under this Master Agreement, the parties will enter into one or more CPC(s), each of which will state the specific terms and conditions applicable to such Project, segregating the Project into logical phases to be performed consecutively. Each CPC will include, at a minimum, the phasing plan setting forth how the Project will proceed, the location of Customer’s Facility, scope of Work, (including description of milestones, if any), projected Total Reimbursement Costs, and payment terms.

The Authority is not obligated to commence any Work for a particular Project unless or until a CPC is executed by Authority and Customer. Notwithstanding the foregoing, the Parties may agree to expedite the commencement of a portion of the Work associated with a particular Project prior to the execution of a CPC provided that the Parties memorialize such agreement prior to the commencement of such Work in a writing that sets forth the specific items of Work to be commenced and the associated cost of such Work. In such event, Customer agrees to bear the costs of any Work undertaken by Authority or its Service Providers for Customer in preparation for or with respect to such Project or potential Project even if no CPC is ultimately executed.

2.2 Final CPC. As soon as practicable following completion of the Work and receipt of all invoices associated with a Project, Authority will generate a Final CPC which will include all Contingency Work Orders, and all agreed-upon Change Orders, if any. The Final CPC will reconcile the Total Reimbursement Costs set forth in the CPC on the basis of Authority’s actual costs and will supersede all prior CPCs. The Final CPC shall also describe the Project-specific terms for the Work completed at the Facility or Facilities, Customer’s Short-Term Repayment Obligation, and the final repayment terms. Authority and Customer shall execute such Final CPC, which shall be “deemed executed” unless Customer disputes such Final CPC in writing within forty-five (45) days of the Authority’s transmission thereof. If Customer timely disputes the Final CPC, then the Parties shall endeavor to resolve the dispute as expeditiously as possible in accordance with the procedures set forth in Section 11.2; provided, however, that Customer shall pay any undisputed amounts of Customer’s Short-Term Repayment Obligations set forth in the Final CPC in accordance with Article V hereof.

2.3 Contingency Work Order. If unexpected costs and expenses arise during the performance of a Project, the Authority may utilize the Project Contingency, provided that (i) the scope modifications, if any, are consistent with the general nature of the Project; (ii) the modifications do not render the Project ineligible under the Authority’s Energy Services Program requirements; and (iii) the cumulative increased Project costs do not exceed the Project Contingency. Contingency Work Orders may be utilized to account for, among other things, remedial work required due to design or construction omissions (whether remedial work is caused by omissions of Authority, its Service Providers or Customer) to the extent that the requirements set forth above are met. If the requirements for a Contingency Work Order are not met, Authority and Customer may negotiate a Change Order as described in Section 2.4 below.

As the Project Contingency is utilized, the Authority will issue a Contingency Work Order, which shall be effective upon issuance and automatically update the terms of the respective CPC without the need for express Customer approval. Any objections to the manner in which the Authority is utilizing the Project Contingency must be raised by the Customer in writing to the Authority within seven (7) days of the Authority's issuance of any such Contingency Work Order, or such other period of time identified in the Contingency Work Order. Failure to comply with this notice requirement by the Customer will be deemed a waiver of any claim that (i) the Project Contingency was used improperly; or (ii) that payment on account of such Contingency Work Order is disputed. Upon request, the Authority will provide Customer with periodic reports that establish an accounting of how the Project Contingency is being utilized.

2.4 Change Order. Any party to a CPC may at any time by written notice to the other party request modifications to the Work described in the executed CPC. Authority shall provide Customer with a written analysis of the effects of the requested modification(s) and, provided that the requested modification(s) do not materially alter the general scope of the Project, the Parties will negotiate a Change Order to the CPC. No Change Order shall take effect until it is approved within the time period specified in the Change Order by Authority and by Customer in accordance with Customer's procedures to authorize amendments to the CPC. In the event of a dispute over a request for a Change Order, Authority may elect to proceed with the Work in accordance with the scope of Work as set forth in the CPC (as revised by agreed-upon Change Orders and/or Contingency Work Orders), or the dispute may be treated under the provisions of Section 11.1 hereof.

2.5 Unforeseen Circumstances or Conditions. In the event that circumstances or conditions at Customer's Facility are encountered after a CPC is executed, that may require changes to the Project schedule and/or result in an increase to the Total Reimbursement Costs of the Project, Authority shall as soon as practicable notify Customer. The CPC shall be revised by a Contingency Work Order or a Change Order, as applicable, to incorporate necessary changes to the Project schedule, the scope of Work and/or any increase in the Total Reimbursement Costs, as a result of the existence of the unforeseen circumstance or condition. Customer shall assume any increase in costs as part of its Short-Term Repayment Obligation.

2.6 Third Party Obligations. The Authority shall not be held responsible for any action or failure to act of Customer, its officers, employees, agents, representatives or any Third Party, including, but not limited to, any delay in issuance or any non-issuance of a permit or approval necessary to perform or close out the Work under a Project. Any changes to the Project schedule or scope of Work or any increase in the Total Reimbursement Costs caused by such act or failure to act, shall be Customer's responsibility. If the Third Party conduct necessitates the issuance of a Change Order to compensate the Authority for any changes to the Project schedule, scope of Work or Total Reimbursement Costs resulting from such act or failure to act, Authority may suspend its Work on the Project until Customer approves such Change Order. If Customer fails to approve the Change Order within thirty (30) days of its issuance or the Project is suspended as a result for more than ninety (90) days, Authority, in its sole discretion, may terminate all Project Work and issue a Final CPC as provided in Section 3.4(d) below.

2.7 Execution and Disputes Regarding Reports. The execution of a Milestone Completion, Final Inspection, Substantial Completion and Operation Transfer Report or similar

report(s) shall not be unreasonably withheld by either Party, and the Parties shall endeavor to fully execute such report within thirty (30) days after its submittal to Customer or it shall be deemed executed unless it was disputed by Customer in writing within such thirty (30) day period. In the event of any disputes by Customer with respect to such report(s), the Parties shall endeavor to resolve such dispute as expeditiously as possible in accordance with Sec. 11.1 hereof.

2.8 Limitation on Work in Certain Premises. Absent the express written consent of Authority, no Work of any kind shall be performed in any premises of Customer used for private business use within the meaning of Section 141(b) of the U.S. Internal Revenue Code of 1986, as amended.

2.9 Eligibility Criteria. Projects will be undertaken on an individual basis in Customer's Facilities as deemed feasible and advisable by Authority and mutually agreed to by Authority and Customer. A Project will not proceed unless it satisfies (as determined by Authority in its sole discretion) Authority's requirements related to reduction in overall primary energy costs, energy conservation, results in environmental benefits and/or other requirements of the Authority's Energy Services Program, then in effect.

ARTICLE III

SUSPENSION AND TERMINATION OF PROJECTS

3.1 Suspension of Work.

(a) Suspension by Customer. Customer may direct Authority to suspend Work at any Customer Facility by written notice to Authority. Authority, and the Service Providers and Subproviders, will thereupon cease Work at that Facility as soon as practicable.

(b) Suspension by Authority. In addition to any other right by Authority to suspend Work on a Project set forth herein, Authority may suspend Work at any Customer Facility if any of the following occurs: (i) Customer fails to make payment to Authority when due; and such payment default continues for a period of ten (10) days after written notice thereof by Authority to Customer; (ii) circumstances or conditions at Customer's Facility are discovered after a CPC is executed which require changes to the Project and/or result in an increase to the Project's Total Reimbursement Costs that cannot be covered by the use of any remaining Project Contingency budgeted for the Project; (iii) a Third Party's act or failure to act causes a delay to the critical path of the Project schedule that continues for a period of thirty (30) days after written notice thereof by Authority to Customer; (iv) a delay caused by a Force Majeure event continues for a period of fifteen (15) consecutive days; (v) the existence of a hazard not caused by Authority or its Service Provider(s) that threatens the safety and protection of the site, its inhabitants or the public; or (vi) the existence of an unforeseen circumstance or condition the correction of which could reasonably be expected to (A) create an unreasonable risk for Authority or Service Provider not ordinarily associated with projects of similar size and scope (as determined by Authority); (B) create a threat to life or safety of the inhabitants or the public in general, or (C) violate applicable federal, state or local laws, regulations, codes or standards.

(c) Liability for Cost Increase as Result of Suspension. The suspension of Work by either Party pursuant to the provisions of this Section 3.1 may adversely impact the Project schedule, the scope of Work and/or the Total Reimbursement Costs. The CPC may be revised by a Contingency Work Order or Change Order, as applicable, to incorporate any necessary changes. Customer shall assume any increase in the Total Reimbursement Costs in full as part of its Short-Term Repayment Obligation unless the suspension was caused by the gross negligence or willful misconduct of Authority, its Service Provider or Subprovider, in which case Customer will not be responsible for any increase in the Total Reimbursement Costs to the extent such increase is caused by such gross negligence or willful misconduct.

(d) Resumption of Work After Suspension. In the event Work on a Project was suspended by a Party (whether pursuant to this Section 3.1 or otherwise), Authority and Customer have to agree in writing that Work shall resume before any Work on the Project can continue. In the event Work is suspended for more than ninety (90) days, Authority, in its sole discretion, may terminate Work for that Project and Authority shall issue a Final CPC as provided in Section 3.4(d) below.

3.2 Emergency. If an emergency results in or could reasonably be expected to result in personal injury or loss of life or damage or harm to property or public safety, Customer, acting in good faith in order to prevent, avoid or mitigate personal injury or loss of life or damage or harm to property or public safety may direct a Service Provider to suspend Work. Customer shall provide written notification to Authority of the suspension and events leading up to the suspension within eight (8) hours after the emergency has been stabilized. Sections 3.1(c) and (d) shall also be applicable to a suspension under this Section 3.2.

3.3 Termination of a Project. Authority may terminate a Project (and the related CPC) at any time upon thirty (30) days' prior written notice to Customer. In addition, the following incidents shall be deemed to immediately terminate a Project: (i) closure, abandonment, destruction or material damage to the Facility for which Project Work is being performed; (ii) reduction or elimination of energy savings or other modification to the Project that, in the Authority's opinion, renders the Project ineligible under the Authority's requirements for inclusion in its Energy Services Program, whether due to removal, by-passing or alteration of equipment or due to any unforeseen event; (iii) discovery of asbestos or other hazardous material in Customer's Facility that impedes the execution of the Work; and (iv) failure by Customer to make payment to Authority when due and such payment default continues for a period of thirty (30) days after written notice thereof by Authority to Customer.

3.4 Actions Upon Project Termination or Cancellation. In the event that a Project is canceled or terminated in whole or in part subsequent to execution of a CPC but prior to completion of such Project, Authority shall:

(a) Discontinue or direct Service Provider(s) to discontinue all Work and the placement of all orders for materials, equipment or labor otherwise required for the Project or terminated part of the Project, as applicable;

(b) Cancel or direct Service Provider to cancel all existing orders and subcontracts related to performance of the Project or terminated part of the Project, as applicable;

(c) Take actions reasonably necessary, or as directed by Customer in writing, for the protection and preservation of the Work and all Project-related equipment, materials and property within Authority’s or Service Provider’s possession and control; and

(d) Issue a Final CPC covering (i) that portion of the Total Reimbursement Cost (excluding the Authority Program Fee) actually incurred by Authority at or prior to such termination/cancellation both for the performed and for the terminated portion(s) of the Work (including, but not limited to, non-cancelable material and equipment not yet incorporated into the Work); (ii) the costs for any additional services performed by Authority or Service Provider pursuant to 3.4(c) hereof; (iii) any wind-down costs incurred by Authority and its Service Providers and Subproviders as a result of the termination/cancellation, along with Service Providers’ and Subproviders’ reasonable and customary overhead and profit on the Work not executed; and (iv) the Authority Program Fee. The Authority Program Fee for a Project that is terminated or canceled prior to completion shall be as set forth in the Compensation Schedule, unless otherwise agreed upon by the Parties in the CPC.

ARTICLE IV

ENVIRONMENTAL PROVISIONS

4.1 Hazardous Materials and Disposal of Waste and Debris.

(a) General Responsibilities. With respect to Authority Implemented Work, Authority shall require that Service Provider and/or Subprovider (as applicable) be responsible for environmental air monitoring and thoroughly cleaning the job site, including the removal of Waste and Debris generated as a result of a Project. Such removal may involve the management, transportation and disposal of Waste and Debris. If in the course of performing the scope of the Project Work as described in the CPC for any Authority Implemented Work, Authority encounters existing Hazardous Materials, including but not limited to Waste, any such materials shall be handled, transported and disposed of in accordance with applicable local, state and federal laws and regulations, as well as Authority’s policies and procedures.

(b) Customer is Generator of Waste. The Customer acknowledges that, in accordance with USEPA and NYS DEC regulations, it is, and remains the Generator of, and holds title to, any Waste encountered during Work performed pursuant to this Master Agreement. If the Customer holds a Hazardous Waste “Generator Identification Number” for the specific site where work is being performed (as defined in Section 3010 of Subtitle C of RCRA), that number will be utilized for any and all hazardous waste disposal. If a Hazardous Waste “Generator Identification Number” does not exist, one may need to be obtained from the USEPA for each site from which Authority removes Waste. The Customer authorizes Authority, where required by USEPA and/or NYS DEC regulations, to apply in the name of the Customer for Hazardous Waste Generator Identification Numbers in order to dispose of Waste pursuant to this Master Agreement and to act as the contact Party for such applications. To the extent that the Customer is the generator of the Waste, a duly authorized representative of the Customer must sign such applications when requested by Authority. The Customer also authorizes Authority, where required by USEPA and/or NYS DEC regulations, to prepare, in the name of the Customer, any manifests or other forms required for the disposal of the Waste generated pursuant to activities under this Master

Agreement. A duly authorized representative of the Customer shall sign any manifests or other shipping records required to ship Waste offsite for disposal.

(c) Notification and Cost of Waste Disposal. With respect to Authority Implemented Work, Authority shall advise Customer (whenever possible, in advance of removal) where material determined to be Waste has been encountered which must be disposed of pursuant to USEPA and NYS DEC regulations. Authority shall keep the Customer fully informed of Authority's activities on its behalf and shall provide the Customer with copies of all applications and other materials provided or received in connection with actions taken pursuant to this authorization. The direct costs of Waste disposal will be included in the Final CPC. Any costs to Authority relating to the Project that may arise subsequent to the time the Final CPC is executed (or deemed executed) under present or future laws or regulations due to pollution, clean-up or otherwise at the site of disposal shall be borne by the Customer. If, however, such costs are due to the negligence or willful acts of Authority's Service Provider or Subprovider or due to the willful acts of Authority, the Customer shall not be responsible. With respect to Authority Implemented Work, Authority shall use reasonable diligence in overseeing the removal and disposal of Waste, shall maintain complete and accurate records thereof, and shall make those records available to the Customer upon request. In addition, any existing equipment determined by the Customer to be useful to the Customer may, at the Customer's request, be retained by the Customer and shall be the sole responsibility of the Customer.

(d) Customer Disposal of Waste. Notwithstanding the foregoing, the Customer shall have the option of disposing of Waste and Debris generated as a result of a Project at its own expense in accordance with all applicable local, state and federal laws and regulations, as well as Authority's policies and procedures.

4.2 Remediation. The Customer shall be responsible for the performance of any Remediation required under applicable local, state and federal Environmental Laws in order to address the existence or suspected existence of Hazardous Substances in, on, or under the job site that are discovered or encountered during Work performed and any Release or threatened Release in, on, under, over or migrating to, from or through the job site. The Customer shall promptly take all actions as are necessary to perform Remediation of any such Release or Discovery, and such other work as may be required by any Governmental Authority to safeguard the health, safety or welfare of any persons, the land and any improvements thereon or there under, from any Release or threatened Release or Discovery. In the case any Remediation is required, the Customer shall be responsible for restoring the affected portion or portions of the job site, together with any and all affected soil and groundwater, to the functional and topographical condition that existed prior to the Release and Remediation, as well as to the condition required by Environmental Laws, and as necessary to satisfy the requirements of any Governmental Authority exercising jurisdiction with respect to the job site for such Release or Discovery.

4.3 Environmental Indemnification. Customer shall be solely responsible for any and all loss, damage or injury to persons or property and for any cleanup costs associated with any site where Waste and Debris are disposed of or comes to be situated including, but not limited to, response and remedial costs. In addition, to the extent permitted by law, the Customer shall, at its sole cost and expense, indemnify, defend and hold harmless Authority and the State of New York against any loss, liability (including, without limitation, judgments, attorney's fees, court costs,

penalties or fines), or expenses of any type (including, but not limited to, required corrective actions) which Authority or the State of New York incurs because of injury to, or death of any person, or on account of damage to property, or any other claim arising out of, in connection with, or as a consequence of (a) the disposition or use of retained equipment by the Customer or anyone for whose acts the Customer may be liable, and (b) any cleanup costs associated with any site where Waste and Debris are disposed of or come to be situated traceable to such Waste and Debris including, but not limited to, response and remedial costs.

ARTICLE V

RECOVERY OF COSTS/REPAYMENT OBLIGATION

5.1 Project Cost. Authority shall initially pay for and/or incur costs for all components of the Total Reimbursement Costs applicable to a Project at the selected Customer Facility. Customer agrees to pay the Authority the Total Reimbursement Costs specified in the respective CPC as reconciled by the Final CPC.

5.2 Total Reimbursement Costs. The following components of the Total Reimbursement Costs may be delineated in a CPC for a particular Project:

(a) Material Cost. The Material Cost represents the cost of materials, equipment, fixtures, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

(b) Labor Cost. The Labor Cost represents (i) the sum of all wages paid to skilled trade and craft workers, plus employee benefits, payroll taxes, insurance and related costs; or (ii) the fees paid to skilled trade and craft workers that are not employees, in each case as represented on the Service Providers' or Subproviders' invoice.

(c) Project Contingency. The Project Contingency, or a portion thereof, actually applied by the Authority to the Project as set forth in a Contingency Work Order.

(d) Service Provider Fees. The Service Provider Fees represent the costs associated with the payment of Service Providers, Subproviders and other third party professionals based on actual invoices, individual billing rates based on hourly increments, or a percentage fee applied to certain Project costs, plus reimbursable expenses;

(e) Authority Program Fee. The Authority Program Fee reimburses Authority for services provided by Authority during the implementation of a Project. The Authority Program Fee can be based on a percentage fee applied to certain Project costs, a lump sum fee, individual billing rates based on hourly increments and/or other fee arrangements identified in the Compensation Schedule.

(f) Short-Term Interest. Short-Term Interest reimburses the Authority for costs incurred in connection with financing the delivery of a Project. It is based on the underlying source of funds chosen by the Authority, in its sole discretion, to finance a Project during its

implementation and may vary depending upon the actual financing product the Authority selects. In addition to the actual interest expense incurred by the Authority on the short-term debt issued for Project expenses, Short-Term Interest may include additional fees for administering the financing program including but not limited to costs incurred to secure liquidity facilities, remarketing services, purchase of an interest rate cap(s), issuing and payment agents and other financing related costs and credit premiums, if any.

(g) Other Project-Related Costs. Other Project-related costs may include Authority Material Handling Fee, Waste disposal costs, additional Project-specific insurance, surety bond costs, specialty services and other Project-specific costs not otherwise included in any of the above categories.

5.3 Billing. The specific billing method for each Project is set forth in the CPC and/or the long-term financing agreement associated with the particular Project. The final repayment amount due to the Authority will be the Total Reimbursement Costs as reconciled in a Final CPC to reflect adjustments to account for payments made or additional charges incurred by Customer and will constitute the Customer's Short-Term Repayment Obligation. In the event a Project is terminated before completion, Authority shall issue a Final CPC as provided in Section 3.4(d).

5.4 Payment.

(a) Payments. Customer shall pay any invoiced amounts to Authority within thirty (30) days of Customer's receipt of Authority's invoice. Any outstanding amounts not paid within such thirty (30) day period shall accrue additional Short-Term Interest until the date when payment is made in full. Such additional Short-Term Interest will be reflected on subsequent invoices and/or the Final CPC.

(b) Late Payment. Customer's final Short-Term Repayment Obligation shall be fully repaid on or before the Short-Term Repayment Obligation Maturity Date. Any amount due and unpaid on the Short-Term Repayment Obligation Maturity Date shall be subject to a late payment charge determined as the greater of (i) interest in accordance with the late payment rate set forth in State Finance Law §179(g); or (ii) the late charges payable under the terms of Authority's electric service, in accordance with provision 454.6 (b) of Authority's Rules and Regulations for Power Service, as such regulation may be amended from time to time. Authority, in its sole discretion, may waive the application of such late payment charge for a Project upon sufficient justification demonstrated by Customer.

5.5 Grants and Funding. Authority may pursue and apply for grants or other available funding for the respective Project, where applicable, when authorized by Customer. The Customer may assign the right to receive such grants or other available funding to the Authority, and the Authority may, at its sole discretion, accept such assignment. If Authority accepts such assignment, the Authority will apply the funds to reduce the Total Reimbursement Costs, provided the funds are actually received by the Authority by the Short Term Repayment Obligation Maturity Date.

5.6 Long-Term Financing for Capital Projects. Should Customer require financing to satisfy its Short Term Repayment Obligation for a Capital Project, the Customer may apply for permanent long-term financing through any of the financing products offered by the Authority to

convert Customer’s Short-Term Repayment Obligation to a Long-Term Repayment Obligation. Authority may agree to such financing, in its sole discretion. Regardless of whether the Customer elects to utilize any of the Authority’s available financing products, the Customer is responsible for satisfying its Short Term Repayment Obligation within the time constraints set forth herein.

If the Customer is interested in any of the Authority’s long-term financing products, it must indicate its interest by marking the appropriate section of the CPC for the design phase of a Capital Project. To be eligible for the Authority’s long-term financing products, Customer must comply with the Authority’s policies and procedures for long term repayment. If Customer’s long-term financing application is approved by the Authority, the Parties’ obligations with respect to long-term financing will be set out in a separate loan agreement with terms and conditions agreed to by the Parties. This long-term financing option will allow the Customer to convert the Short-Term Repayment Obligation to a Long-Term Repayment Obligation.

ARTICLE VI

INSURANCE REQUIREMENTS.

Authority’s agreements with the Service Providers shall provide that the Service Provider or Subproviders shall obtain and maintain the policies of insurance with the identified limits set forth in Section 6.1, unless additional policies of insurance and/or higher limits are required under the applicable CPC. The costs of such insurance will be part of the Total Reimbursement Costs.

6.1 Insurance Requirements:

(a) Workers’ Compensation (inclusive of New York State disability benefits) and Employer’s Liability coverage;

(b) Commercial General Liability insurance policy, including Contractual Liability and Products/Completed Operations Liability coverages, with limits of not less than \$2,000,000 per occurrence for bodily injury and not less than \$2,000,000 for property damage, such policies naming Authority, Customer and the State of New York as additional insureds under the policy;

(c) Automobile Liability coverage with a minimum limit of \$1,000,000 per accident; and

(d) if required under the applicable CPC:

(i) Pollution Liability, including coverage for asbestos abatement, with minimum limits of \$1,000,000 per occurrence;

(ii) Professional Liability insurance with a minimum limit of \$1,000,000; and

(iii) Builder’s risk insurance in the amount of the estimated Total Reimbursement Cost to be issued on a replacement cost basis without optional deductibles and

will include the interests of Customer, Authority, and the Service Providers. Such insurance shall be maintained until final payment has been made by Customer to Authority.

6.2 Adjustments. The types of insurances required and/or policy limits listed in Sections 6.1 above may be adjusted as Customer and Authority deem appropriate in connection with a specific CPC. The form and sufficiency of each insurance policy required to be obtained hereunder by the Service Provider or Subprovider shall be subject to approval by Authority. Authority shall hold all Certificates of Insurance submitted to the Authority by its Service Providers and Subproviders with respect to any Project implemented under this Master Agreement.

6.3 Customer Insurance Requirements. With specific regard to the ESP equipment, for so long as any portion of Customer's Short-Term or Long-Term Repayment Obligation, as applicable, remains unpaid, Customer shall procure an all risk policy of insurance which will insure the equipment for full replacement cost value against loss while the equipment is in Customer's care, custody and control. The insurance policy shall name Authority and the State of New York as additional insured and loss payees, and shall contain a full waiver of subrogation against Authority, its agents, Service Providers, Subproviders and the State of New York. Customer shall also procure a Commercial General Liability insurance policy with minimum limits of \$5,000,000 per occurrence for bodily injury and property damage naming Authority and the State of New York as additional insured. In lieu of obtaining all risk and commercial general liability insurance, Customer may request in writing to Authority to self-insure against risk of loss. Authority may approve or deny such request in its sole discretion. Customer agrees to provide any relevant documents or information requested by Authority in order for Authority to make the determination that Customer has sufficient resources to self-insure. The decision to self-insure will not relieve Customer of any of the obligations imposed herein and shall afford Authority the protection against loss and rights it would have received, if Customer had obtained such policies of insurance.

ARTICLE VII

WARRANTIES, DAMAGES, LIABILITY, ETC.

7.1 Service Provider's Warranty Requirements. Authority's agreements with its Service Providers shall provide that all Work performed and any materials provided by the Service Providers under the agreements shall be free from any defects. Such agreements shall further provide that any defective Work or materials identified within one (1) year after (i) execution (or deemed execution) by the Parties of a Substantial Completion and Operation Transfer Report or (ii) if no such report must be signed, completion of the Project, shall be promptly corrected, repaired, replaced, re-performed or otherwise remedied by the Service Provider and/or Subprovider(s) at no additional expense to Customer. Authority's agreements with Service Providers shall also provide that any manufacturers' warranties for equipment installed at Customer's Facilities be assigned to Customer.

Authority shall have no obligation to assist Customer with any warranty claims against a Service Provider or equipment manufacturer. Customer shall coordinate any warranty claims directly with the respective Service Provider or equipment manufacturer.

7.2 Authority Warranty Disclaimer. THE WARRANTY PROVIDED BY SERVICE PROVIDER AND THE ASSIGNED WARRANTIES OF THE EQUIPMENT MANUFACTURERS ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES. AUTHORITY EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION OR QUALITY NOT EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY LAW. NO AFFIRMATION OF AUTHORITY, BY WORDS OR ACTION, SHALL CONSTITUTE A WARRANTY. DESCRIPTIONS, SPECIFICATIONS, DRAWINGS, AND OTHER PARTICULARS FURNISHED TO CUSTOMER ARE ONLY ESTIMATES AND DO NOT CREATE A WARRANTY.

7.3 Projected Energy Savings. Authority and its Service Providers shall use their best efforts to prepare accurate engineering estimates. After energy efficiency Work is completed in Customer's Facility, it is the intent and expectation of the Parties that Customer's annual energy usage for that Facility shall not increase above the pre-installation level except due to changes in rates or increases in usage not related to the implementation of the ESP Work. Customer is responsible for providing Authority with accurate information concerning the operation of its Facility. Customer understands that the projected energy savings are based upon such Customer input. It is Customer's sole responsibility to ensure that the expected energy savings meet Customer's satisfaction at the time the CPC for a Project is executed.

AUTHORITY HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR ANY ENERGY SAVINGS PROJECTED BY AUTHORITY OR OTHERWISE EXPECTED BY CUSTOMER THAT CANNOT BE ACHIEVED.

7.4 Uncontrollable Forces. Authority shall not be responsible for delays or failures in performance resulting from occurrences beyond its reasonable control including, but not limited to, acts of God, strikes, walkouts, acts of war, or any law, regulation, or action of any court or governmental authority, fire, malfunctions in communication lines or computer hardware, power failures, shipping or delivery delays or other events caused by those not party to this Master Agreement (including, without limitation, any Third Parties, and any Service Providers or Subproviders of Authority). In the event Authority or the Service Providers or Subproviders are unable to fulfill any obligations hereunder by reason of such uncontrollable forces, Customer will be notified in writing and the completion dates described in the CPC will be extended by the amount of additional time reasonably necessary to complete the Work. If necessary, Authority will issue a Contingency Work Order or a Change Order, as applicable.

7.5 Damages, Indemnification by Service Provider.

(a) Damages. Authority's agreements with the Service Providers shall include a provision that all damage of whatever nature resulting from the performance of the Work or resulting to the Work during its progress, from whatever cause shall be borne by the Service Provider, and all Work performed shall be solely at the Service Provider's risk until the Work has been finally inspected and accepted by Authority. The Service Provider, however, shall not be responsible for damages resulting from gross negligence or willful misconduct of officials or employees of Authority or Customer.

(b) Indemnification. Authority's agreements with the Service Providers will include a provision that to the extent permitted by law, the Service Provider shall assume the entire responsibility and liability for and defense of, and pay and indemnify, Authority, Customer, and the State of New York (where a Project undertaken for Customer is located on property of New York State), against any loss, damage, expense or liability and will hold each of them harmless from and pay any loss, damage, cost or expense (including without limitation, judgments, attorney's fees, and court costs) which Authority, Customer or the State of New York incur because of injury to or death of any person or on account of damage to property, or any claim arising out of, in connection with, or as a consequence of, the performance of the Work and/or any act or omission of the Service Provider or any of its Subproviders, employees, agents or anyone directly or indirectly employed by the Service Provider or anyone for whose acts the Service Provider may be liable.

7.6 Limitation of Authority's Liability.

(a) Obligation to Exhaust Remedies against Service Provider. In the event of any alleged Authority liability to Customer, Customer shall first pursue and exhaust all remedies in law against the Service Providers and Subproviders and under the insurance identified in Article VI above and carried by the Service Providers and Subproviders before making any claim or taking any action against Authority.

(b) Exclusion of Indirect, Incidental, Consequential Damages. To the fullest extent permitted by law, Authority shall not be liable to Customer, for any indirect, special, incidental, or consequential damages of any kind (including without limitation, any loss of property or equipment, loss of profits or revenue, loss of use of equipment or power systems, cost of capital, cost of purchased or replacement power or temporary equipment, including additional expenses incurred in using existing facilities) related to or arising in connection with this Master Agreement or any other Transaction Document executed in connection herewith, regardless of the form of action (whether in contract, tort or otherwise), even if Authority has been advised of the possibility of such damages.

(c) Total Liability Cap. The Parties agree that in no event shall Authority's total liability (whether in contract, tort or otherwise) for all claims relating to a Project exceed ten percent (10%) of the Total Reimbursement Costs for such Project set forth in the respective CPC.

(d) No Limitation of Service Provider/Subprovider Liability. Nothing in this Section 7.6 shall be construed as limiting the liability of a Service Provider or Subprovider to Authority or Customer in connection with the performance of such Service Provider's or Subprovider's Work on Customer's premises.

7.7 Customer's Responsibility for Project Equipment and Performed Work. Upon delivery at Customer's Facility, Customer shall be responsible for all damage to all Project materials, supplies and equipment of every description and all Work performed at Customer's site unless such damages are caused by Authority or its Service Providers or Subproviders.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property; Proprietary Information.

(a) Intellectual Property Rights. Neither Party shall acquire, directly or by implication, any ownership of any Background Intellectual Property Rights of the other Party. Each Party shall retain title to any Intellectual Property Rights developed, authored, conceived or reduced to practice independently and solely by that Party during the performance of this Master Agreement without the other Party's Background Intellectual Property Rights. Notwithstanding any of the foregoing, it is agreed by the Parties that Authority shall be the sole owner of all Intellectual Property Rights related to any Project which is jointly developed, invented or otherwise generated during the performance of this Master Agreement or any Transaction Document.

(b) Work Product; Proprietary Information. Unless and until Customer has repaid its Short-Term or Long-Term Repayment Obligation, as applicable, the Facility data, evaluations, design and other information produced by Authority or its Service Providers in connection with a Project shall be the property of Authority. Customer shall have the right to use any such proprietary information for the maintenance of Project installations in its Facilities. Upon payment in full by Customer, such information shall become the property of Customer. Any information identified as confidential which is exchanged by Authority and Customer shall be duly protected by the recipient to the extent permitted by law. It is understood that the Public Officers Law and other statutes and regulations regarding Freedom of Information may require the disclosure of information in certain situations.

ARTICLE IX

TERM AND TERMINATION

9.1 Term. This Master Agreement shall end on the tenth anniversary of the date first shown in the preamble above unless earlier terminated in writing by either Party in accordance with the terms of this Master Agreement.

9.2 Termination of Master Agreement. Unless otherwise provided in this Master Agreement, either Authority or Customer may terminate this Master Agreement at any time upon one hundred twenty (120) days' prior written notice to the other Party.

9.3 Pending Projects. Authority and Customer acknowledge that a Project implemented pursuant to a CPC executed during the Term of this Master Agreement may extend beyond the expiration or early termination of this Master Agreement. Provided that the Project was commenced pursuant to a CPC that was executed during the Term of this Master Agreement, then this Master Agreement will be extended, as it applies to such CPC only and for the sole purpose of completing the Project. The Project implemented pursuant to such CPC may continue until completed or otherwise terminated earlier pursuant to the terms and conditions of this Master Agreement.

9.4 Extension. This Master Agreement may be renewed at the end of the current term for an additional period, such additional period not to exceed a period equal to the original Term, to be mutually determined by the Parties in writing and signed by an authorized officer or designee of Authority and Customer.

ARTICLE X

GENERAL OBLIGATIONS OF THE PARTIES

10.1 Authorized Representatives.

(a) Customer's Authorized Representative. For each Project, Customer shall designate a Customer's Authorized Representative and shall inform Authority in writing accordingly. If Customer desires to change its Customer Authorized Representative, it must notify Authority in writing (in accordance with notice requirements set forth herein) at least five (5) business days prior to such change. Customer's Authorized Representative shall coordinate the Project on behalf of Customer and assist Authority and the Service Providers and Subproviders with the implementation of the Project in the selected Facilities of Customer. Customer's Authorized Representative shall be responsible to obtain all necessary approvals, authorizations, and signatures of Customer with respect to any CPC, Change Order, Final CPC and other Transaction Document.

(b) Authority's Authorized Representative. For each Project, Authority shall designate an Authority's Authorized Representative and shall inform Customer accordingly. Authority's Authorized Representative shall coordinate the Project on behalf of Authority and communicate with Customer. Authority will inform Customer of any changes to its Authorized Representative.

10.2 Authority Obligations. With respect to any Authority Implemented Work, Authority shall comply with the following:

(a) Reporting and Information. Authority shall keep Customer informed as to the progress of the Work and shall provide Customer with periodic reports of all activities by the Service Providers and Subproviders at Customer's Facilities. Authority and its Service Providers shall meet with representatives of Customer upon reasonable notice to discuss any matters concerning the Projects.

(b) Permits, Licenses, Authorizations. Authority shall require that the Service Providers and Subproviders obtain and maintain all permits, licenses and authorizations required to perform the Work in Customer's Facilities and that they will comply with all applicable local, state and federal laws, guidelines and regulations, including applicable local, state and federal building, fire and electrical codes and standards. Any costs associated with permits and licenses that must be obtained by Service Provider or Subprovider for a specific Project will be reflected in the Total Reimbursement Costs. Notwithstanding the foregoing, neither Authority nor Service Provider (or Subprovider) shall be responsible for closing out open permits obtained by Service Provider (or Subprovider) due to existing deficiencies or code violations in Customer's Facility which are outside the Project scope.

(c) Service Provider/Subprovider Performance. Authority shall require its Service Providers and Subproviders to comply with regulations governing access to and performance of the Work in the selected Customer Facilities and to perform such Work in such a manner as not to unreasonably interfere with Customer's business at the Facilities. Authority shall also require its Service Providers and Subproviders to comply with Customer's operational and safety requirements, which in certain instances may require substantial supervision and control over the site by Customer.

(d) Records. Authority's Service Providers shall maintain accurate records of Project Work for a period of six (6) years after completion of a Project.

10.3 Customer Obligations. With respect to any Project entered into in connection with this Master Agreement, Customer shall have the following rights and obligations:

(a) Right to Inspect. Customer and Customer's Authorized Representative may observe and inspect all Work in any of Customer's Facilities and shall have the right to attend all Project job meetings, upon written notice of its intent to attend a particular meeting.

(b) Attendance at Meetings. Upon reasonable request and notice from Authority or Service Provider, Customer shall attend meetings scheduled by Authority or Service Provider to discuss any Project-related matters.

(c) Site Rules and Regulations. Customer must promptly notify Authority of any site specific construction, safety, technical or other requirements and restrictions related to its Facility(ies) prior to the start and during the Project. If Customer becomes aware of any defect in the Work or any failure of Authority or the Service Provider or Subprovider to meet the respective Project requirements, the Customer shall give prompt notice to Authority.

(d) Access. Customer shall provide Authority and its Service Providers safe, proper and timely access to the Facility as necessary to perform the Work. Upon Authority's request, Customer's Authorized Representative will accompany Authority and its Service Providers to Customer Facilities. Customer shall promptly provide verbal and written notice of limitations or changes in site access.

(e) Permits and Licenses.

(i) Customer shall provide Authority or Service Provider with such assistance (including, but not limited to, all necessary information requested by Service Provider) as may be required for Authority or Service Provider to obtain all permits, licenses and authorizations necessary to perform the Work in accordance with all applicable local, state and federal laws, regulations, codes and standards applicable to the Facility.

(ii) Customer shall be responsible and shall hold all licenses, permits, authorizations and regulatory approvals necessary for the lawful conduct of its business as presently conducted, and shall comply with all applicable statutes, laws, ordinances, rules and regulations of all governmental bodies, agencies and subdivisions having, asserting or claiming jurisdiction over it, with respect to any part of the conduct of its business and corporate affairs.

(f) Project Equipment. As long as Customer’s Short-Term or Long-Term Repayment Obligation, as applicable, remains outstanding, (i) Customer will keep all Project-related equipment free from any and all liens, claims, encumbrances, and the like; (ii) Customer will not grant a security interest in such equipment to any party without the prior written consent of Authority; (iii) the equipment will remain at the Facility site as designated in a CPC; (iv) Customer will not sell, offer for sale, transfer, or dispose of such equipment without notice to Authority; (v) Customer will not use or permit any person to use the equipment in a manner prohibited by law or in a manner which would void any manufacturer’s warranty; (vi) Customer agrees to maintain the equipment in good order and repair at all times, and will not waste or destroy the equipment or any part of it; and (vii) Customer will keep the equipment insured in accordance with the requirements set forth in Section 6.3 hereof.

(g) Coordination. Customer shall be responsible for facilitating coordination with Third Parties as required. Furthermore, Customer shall promptly resolve any disputes or issues that arise with any Third Parties. Customer shall be responsible for any changes to the Project schedule, the scope of Work and/or the Total Reimbursement Costs resulting from any delays due to unresolved disputes or issues with Third Parties pursuant to Section 2.6 hereof.

(h) Review and Approval. Customer will promptly review any documents submitted to it by Authority requiring Customer’s decision and shall render any required decision pertaining thereto without undue delay.

(i) Assistance; Timely Performance. Customer shall cooperate with Authority and its Service Providers and Subproviders and provide Authority with such other assistance as necessary to facilitate the performance of the Work. Customer shall perform all obligations set forth in this Master Agreement and any other Transaction Document in a timely manner so as to permit the orderly progress of the Projects. Authority shall not be responsible for any Project delays due to Customer’s non-compliance with its obligations set forth herein or in a Transaction Document.

ARTICLE XI

MISCELLANEOUS

11.1 Disputes. In the event of any dispute regarding ESP Work at any Customer Facility, Work there may be suspended by Authority until the matter is resolved to the mutual satisfaction of the Parties in accordance with the procedures set forth in Section 11.2 hereof. In the event the Parties are unable to resolve any such dispute after good faith efforts, the Work at that Facility shall terminate and Authority shall issue a Final CPC as provided in Section 3.4(d) hereof.

11.2 Dispute Resolution. The Parties shall use good faith efforts to settle promptly all disputes arising under this Master Agreement or in connection with any ESP Work. In the event that any dispute, including but not limited to a billing dispute, a dispute regarding the quality of the Work, or a dispute regarding the interpretation of this Master Agreement, arises and cannot be resolved in the normal course of business by operating personnel within twenty (20) days after commencement of a dispute, either Party may give the other Party formal notice of the dispute in accordance with the notice requirements set forth herein. In the event that such notice is given,

the Parties shall attempt to resolve the dispute by negotiation between representatives who have the necessary authority to resolve the dispute in question. Within twenty (20) days after delivery of the notice, the receiving Party shall consider all information relevant to the dispute and shall submit to the other Party (in accordance with the notice requirements set forth herein) a proposal for resolution. Thereafter, the representatives shall confer in person or by telephone, promptly and no later than five (5) days after receipt of the proposal for resolution, to attempt to resolve the dispute. All reasonable requests for information by one Party to another Party will be honored. To the extent that disputes are not resolved pursuant to this process, the Parties reserve all rights under law or equity to seek and pursue remedies through the judicial process.

11.3 Publicity.

(a) Public Announcements. No marketing, publicity, promotion, social media, or advertising regarding this Master Agreement, or any Project undertaken pursuant to this Master Agreement, will be issued by Customer without Authority's prior written approval, which approval will not be unreasonably withheld. Any responses to news media inquiries or social media activities developed by Customer, related to this Master Agreement, or any Project undertaken pursuant to this Master Agreement, must be coordinated with Authority for review and approval prior to their release. Letters, speeches, news and/or press releases, articles for publication, website and social media postings, etc., related to this Master Agreement, or any Project undertaken pursuant to this Master Agreement, must be coordinated with Authority for review and approval prior to their release. Any and all communications, whether verbal, electronic or written, must be submitted to Authority's Corporate Communication Business Unit for prior review and approval. Customer agrees to abide by these terms regarding public announcements during the term of this Master Agreement and for a period of two (2) years following the expiration or termination of this Master Agreement.

(b) Signage. The parties agree that Authority may, at no cost to Customer, install and maintain appropriate publicity signage at or in the vicinity of a Project. Customer will cooperate with Authority, and/or any third-party vendor designated by Authority, by timely responding to any questions regarding the design, manufacture, installation and maintenance of the signage. Customer will provide ordinary maintenance to the signage and promptly notify Authority after Customer becomes aware of any damage that may occur to the signage. The publicity signage may include the identity of the Project, including a brief statement highlighting the Project, any applicable Authority program, New York State program or other initiative under which the Project is implemented and the identity of the parties supporting the Project, including those parties' respective logos. The publicity signage is intended to be placed in an area of Customer's designation with significant public visibility within close proximity to the Project. Authority will be responsible for removing the publicity signage upon the conclusion of a Project, or such earlier time as either Party deems it appropriate.

11.4 Notices. All notices permitted or required hereunder or in connection with any Transaction Document shall be in writing and transmitted either: (i) via certified or registered United States mail, return receipt requested; (ii) by personal delivery; (iii) by expedited delivery service; or (iv) by e-mail, with a copy sent via U.S. Mail.

Such notices shall identify the Master Agreement and the Transaction Document to which it relates, and be addressed as follows or to such different addresses as the Parties may from time-to-time designate in accordance herewith:

To Authority:

NEW YORK POWER AUTHORITY
PROCUREMENT DIVISION
Name: John Canale
Title: Vice President, Strategic Supply Management
Address: 123 Main Street, 5th Floor, White Plains, NY 10601
E-Mail Address: john.canale@nypa.gov

with a copy to:

NEW YORK POWER AUTHORITY
LAW DEPARTMENT
Name: Debra Hopke, Esq.
Title: Principle Attorney
Address: 123 Main Street, 11th Floor, White Plains, NY 10601
E-Mail Address: debra.hopke@nypa.gov

To Customer:

TOWN OF HIGHLANDS
Name: Kelly Pecoraro
Title: Comptroller
Address: 254 Main Street, Highland Falls, NY 10928
E-Mail Address: kpecoraro@highlands-ny.gov

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt. The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Master Agreement (and any Transaction Document) by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Master Agreement.

11.5 No Waiver. The failure of any Party to insist upon strict adherence to any term of this Master Agreement or any Transaction Document executed in connection herewith on any occasion shall not be considered a waiver nor deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Master Agreement.

11.6 Assignment. This Master Agreement and any Transaction Document executed in connection herewith may not be assigned, transferred nor conveyed by either Party without the prior written consent of the other Party. Any attempted assignment, transfer or conveyance without such consent shall be entirely void ab initio and have no force or effect.

11.7 Governing Law; Venue. This Master Agreement (and any Transaction Document executed in connection herewith) and any and all disputes arising in connection herewith (whether in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of laws provision or rule that would cause the application of the laws of any jurisdiction other than New York. Any action at law, or in equity, for the enforcement of this Master Agreement (and any Transaction Document executed in connection herewith) or any dispute arising in connection herewith shall be instituted only in a court of competent jurisdiction located in the County of Albany, State of New York.

11.8 No Third Party Beneficiaries. Nothing contained in this Master Agreement shall, directly or indirectly, create a contractual relationship with, or give any claim or right of action in favor of, any third party (including, without limitation, any Service Provider or Subprovider) against Authority.

11.9 Severability. The invalidity or unenforceability of any provisions of this Master Agreement or of any Transaction Document executed in connection herewith shall not affect the validity or enforceability of any other provisions of this Master Agreement or Transaction Document, as applicable, which other provisions shall remain in full force and effect.

11.10 Survival of Provisions. The articles that contain provisions related to the following will survive the expiration, termination or completion of this Master Agreement: Conflict and Order of Precedence; Recovery of Costs and Repayment Obligation, Warranty, Damages, Liability, Ownership of Installed Work and Intellectual Property, Publicity; and Governing Law, Venue.

11.11 Not Construed Against Drafter. Authority and Customer acknowledge that they have read this Master Agreement, have had the opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, Authority and Customer agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Master Agreement and that in the event of any ambiguity in any of the terms or conditions of this Master Agreement, including any exhibits or schedules hereto, such ambiguity shall not be construed for or against any Party hereto on the basis that such Party did or did not author same.

11.12 Headings. The articles and section headings contained in this Master Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Master Agreement.

11.13 Counterparts. This Master Agreement may be executed in counterparts via inked signature or electronic mark, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The fully executed Master Agreement may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have duly executed this Master Agreement as of the effective date first written above.

POWER AUTHORITY OF THE STATE OF TOWN OF HIGHLANDS
NEW YORK

By: John Canale
John Canale (Jul 23, 2019)
Name: John Canale
Title: Vice President, Strategic Supply Management
Date: Jul 23, 2019

By: MERVIN R. LIVSEY
MERVIN R. LIVSEY (Jul 23, 2019)
Name: Mervin Livsey
Title: Supervisor
Date: Jul 23, 2019

Signature Page to Master Cost Recovery Agreement No. _____



EXHIBIT A

STATEWIDE COMPENSATION SCHEDULE

As compensation for services rendered by the Authority under the Master Agreement, the Customer will pay the Authority Program Fee as set forth below.

A. CAPITAL PROJECTS

I. AUTHORITY PROGRAM FEE

For Capital Projects, the Authority Program Fee is calculated as a percentage of the cumulative sum of all costs related to a Project, including, but not limited to all Material Costs; Labor Costs; Service Provider Fees; the amount of the Project Contingency applied as a Project cost; and other Project-related costs and expenses. The Authority Program Fee is in addition to all such costs related to a Project. The Authority Program Fee percentage will be fixed upon execution of the CPC for the installation phase.

1. Authority Program Fee when Service Provider performs Work

The following table sets forth the Authority Program Fee where the Authority delivers a Project using one or more Service Providers to perform audit, design, construction management and/or installation.

Project Size (in millions)	Authority Program Fee
\$0 - \$3M	12.5%
\$3M - \$6M	12.0%
\$6M - \$12.5M	11.5%
\$12.5M - \$40M	11.0%
\$40M - \$60M	10.5%
> \$60M	10.0%

2. Authority Program Fee when Authority and Service Provider perform Work

The following table sets forth the Authority Program Fee where the Authority will be performing design and construction management with its own forces using one or more Service Providers to perform installation. If the Authority procures material directly in lieu of using one of its Service Providers, there will be an additional Material Handling Fee of 1.5% charged on the Material Cost of the Project.

Project Size (in millions)	Authority Program Fee
\$0 - \$3M	27.5%
\$3M - \$6M	27.0%
\$6M - \$12.5M	26.5%
\$12.5M - \$40M	26.0%

\$40M - \$60M	25.5%
> \$60M	25.0%

3. Authority Program Fee when Authority provides Audit Services Only

The Authority Program fee for providing Audit services not contemplated as part of a full project (i.e. design, construction management and/or installation) is calculated as twenty-five percent (25%) of the costs related to the Audit.

II. MILESTONE PAYMENTS

To the extent applicable, the Authority Program Fee will be paid on milestones as detailed in the CPC or as otherwise mutually agreed upon.

III. AUTHORITY FEE IN THE EVENT OF PROJECT TERMINATION

1. Termination at or after Audit Phase

If a Project is terminated at or after the audit phase, but prior to moving forward with any design or implementation, the Authority’s Program Fee is calculated as twenty-five percent (25%) of the actual costs associated with such audit.

2. Termination during Design, Procurement or Installation Phase

If a Project is terminated in whole or part during the design, procurement or installation phase, the Authority’s Program Fee for the Project will be the cumulative percentage value at the current milestone (as if it had been achieved) and calculated based on the estimated Project costs, including, but not limited to all Material Costs; Labor Costs; Service Provider Fees; the amount of the Project Contingency applied as a Project cost; and other Project-related costs and expenses up through the current milestone (as if it had been achieved). For the purposes of calculating the Authority’s Program Fee, the then current milestone is assumed complete once the Project is canceled.

The following table sets forth the Authority Program Fee percentage segmented by milestone.

Milestone	% of Authority’s Program Fee	Cumulative Authority Program Fee Percentage
30% Design	10%	10% + (audit cost)
90% Design	15%	25% + (audit cost)
100% Design & Bidding	15%	40% + (audit cost)
Construction CPC Preparation	10%	50% + (audit cost)
Construction (25% completion)	10%	60% + (audit cost)
Construction (50% completion)	15%	75% + (audit cost)

Construction (75% completion)	15%	90% + (audit cost)
Construction (100% completion)	10%	100% + (audit cost)

B. ADVISORY SERVICES PROJECTS

I. AUTHORITY PROGRAM FEE

The Authority Program Fee for the Advisory Services will be calculated according to one of the following methods as set forth in the CPC for the Project:

Time and Materials: The Authority’s Program Fee maybe based on actual time and cost of material incurred by Authority or its Service Providers in connection with a Project based on rates defined in the Project CPC.

Lump Sum: The Authority’s Program Fee may be based on the percentage complete of a lump sum or milestones defined in the Project CPC.

Unit Price: The Authority’s Program Fee maybe based on the unit prices defined in the Project CPC.

Percent of Materials and Labor: The Authority’s Program Fee maybe based on a percentage of Service Provider Material Costs and Labor Costs as defined in the Project CPC.

Other Mechanisms: The Authority’s Program Fee may be based on an evolving cost recovery mechanisms not defined in this Master Agreement. If other mechanisms are selected, the Authority’s Program Fee will be based on mutual Authority and Customer agreement and will be defined in the Project CPC.

II. PROJECT TERMINATION

If a Project is terminated in whole or part prior to completion of a Project, the Authority’s Program Fee will be based on the Project costs incurred by Authority up until the date of termination. For the purposes of calculating the Authority’s Program Fee, as applicable, the then current milestone is assumed complete once the Project is canceled.



EXHIBIT B

CAPITAL PROJECT TERMS AND CONDITIONS

1. Application. In addition to the terms and conditions set forth in the main body of this Master Agreement, these Capital Project Terms and Conditions shall apply to all Capital Projects provided by Authority or Service Provider to Customer under the Master Agreement.

2. Capital Project Services. Capital Projects are generally delivered through the services of qualified installation Service Providers or Subproviders under contract with the Authority. Capital Project services may include any or all of the following services (as more fully described below): audit, design, construction management, equipment procurement, installation, commissioning, disposal of Waste, financing and other Project related services required to install a Project.

3. Audit.

(a) Scope. After Customer has identified potential Projects for Authority's and Customer's consideration, Customer may request that Authority perform an audit of the Facility. The audit will help identify opportunities for implementing ESP measures and will be scheduled by Customer's Authorized Representative and/or the appropriate Facility manager. The scope of the audit will be set forth in a CPC which shall be executed by an authorized officer or designee of Authority and Customer prior to commencement of any audit Work. In some instances, the audit will involve a complete inventory of the systems which are currently used in normal operation, while in others a more targeted approach will be taken. The audit may also include an analysis of whether hazardous materials and Waste related to those systems are likely to be present or generated as a result of installing a Project.

(b) Audit Report. Based upon the results of the audit, a written report will be furnished to Customer. The report will include an estimate of the Total Reimbursement Costs as well as estimates of the potential Total Annual Energy Savings and environmental or sustainability benefits, as applicable, that Customer can reasonably expect through implementation of the recommendations made in the report. If, after analysis of the report by Authority and Customer, Authority, in its sole discretion, determines that the Project either (1) does not meet Authority's eligibility criteria, or (2) is not appropriate at such Facility, activity there will cease.

(c) Deferment of Total Reimbursement Costs for Audit Work. Upon completion of the audit Work, if Customer and Authority decide to proceed to the next phase, Customer and Authority will execute a CPC reflecting the scope of such next Project phase. By executing the CPC, Customer acknowledges its concurrence with the audit results. Subject to Authority's approval, Customer may request that payment of the Total Reimbursement Costs for the audit Work, be deferred and included in the Total Reimbursement Costs of the CPC for the next Project phase.

4. Project Design.

(a) General. If agreed upon by the Parties in a CPC, Authority shall prepare a Project design. Customer will be asked to review all aspects of the design and specifications. Where deemed appropriate by Authority and Customer, the Service Provider will arrange for geotechnical surveys (i.e., soil tests, borings, and related evaluations), surveys of the site (i.e., to determine physical characteristics of the site, such as utility locations), and/or demonstration installations (i.e., the installation of sample lighting fixtures or other equipment) of selected measures in Customer's Facility, all at Customer's sole risk.

(b) Milestones and Milestone Completion Reports. Authority will submit the Project design documents to the Customer at 30%, 60%, 90% and "final" design milestones, or according to the milestone schedule set forth in the respective CPC. Upon completion of each design milestone, Customer and Authority (or their duly authorized representatives) shall promptly review the design Work, or applicable portions thereof and Customer and Authority shall jointly sign a Milestone Completion Report. It shall be Customer's responsibility to determine that the proposed design meets Customer's needs.

(c) Deferment of Total Reimbursement Costs for Design Work. Unless otherwise set forth in the CPC for a Project, Authority may invoice the Customer for the Total Reimbursement Costs for the performed design Work through the milestone(s), if any, set forth in the CPC (plus any Total Reimbursement Costs incurred during the audit, if such costs were deferred and rolled over). Customer may request payment deferral if Customer approves Authority to proceed to the next milestone or the next Project phase. With Authority's approval, Customer's Short-Term Repayment Obligation will be deferred and rolled into the next milestone invoice, or at design completion, become part of the Total Reimbursement Costs of the CPC for the next Project phase.

(d) Ownership of Design Work Upon Early Termination. If Customer terminates the design Project prior to its completion, upon receipt of Customer's final payment, Authority will deliver to Customer all design plans and documents completed through the date of termination. Customer's use of such design plans and documents will be subject to any copyrights of the Authority and/or the designer. By using any incomplete or unfinished design plans and/or documents that have not been sealed with the licensed design professional's stamp upon delivery to Customer, Customer accepts full and complete responsibility for such design and further agrees to hold Authority harmless from its use of such incomplete or unfinished design plans and/or documents.

5. Procurement. After Authority and Customer agree on the Project's design and technical specifications, Authority or the Service Provider will competitively solicit, using the Authority's procurement guidelines, bids for the Work as set forth in the design documents. The resulting final design, specifications and bid price shall be incorporated into a CPC for the Project. Authority's contracts with its Service Providers will require compliance with the Authority's guidelines regarding the competitive solicitation of the services of Subproviders for Customer's Facilities, including the selection of minority and women-owned business enterprises. The services of Subproviders and equipment procurement will be obtained through a competitive bid process conducted by the Service Provider with Authority oversight. In the event Customer

decides not to proceed with the installation Project, Customer shall reimburse Authority for the costs of any Work undertaken by Authority and/or its Service Provider in connection with the procurement process and the associated cost and expense of same.

6. Installation.

(a) General. After Authority and Customer have entered into a CPC for installation Work, the Service Provider and/or its Subproviders will perform the Work pursuant to the design and technical specifications set forth in such CPC.

(b) Substantial Completion and Operation Transfer Report. After Customer has inspected, tested and accepted the Project equipment, or portion thereof, installed by the Service Provider, the Parties will execute a Substantial Completion and Operation Transfer Report for the completed portion of the Work signifying (i) that Customer accepts responsibility for operation and maintenance of the installed equipment, (ii) that the Project, or specified portion thereof, is substantially complete, and (iii) the commencement of any warranty period.

(c) Final Inspection Report. Upon completion of the Work, Customer and Authority (or their duly authorized representatives) shall promptly inspect the entire Facility, or applicable portions thereof. Authority or its Service Providers will confirm that the Work has been satisfactorily completed according to the provisions of this Master Agreement and the applicable CPC. Authority and Customer shall jointly sign a Final Inspection Report.

7. Maintenance and Post-Installation Audit. Authority will provide Customer with information regarding the maintenance of Project installations and recommendations for appropriate replacement equipment to be used in those installations to facilitate proper usage and, if applicable, energy savings at Customer's Facilities. After the Project installations are completed, Customer shall use reasonable efforts to see that such maintenance and materials instructions are followed at its Facilities. While any portion of the Customer's Short-Term Repayment Obligation remains outstanding, Authority may, upon reasonable notice to Customer, audit installations in Customer's Facilities to evaluate compliance with such maintenance and materials instructions.

8. Project Closeout for Capital Projects. Notwithstanding the terms set forth in the CPC or Final CPC, the Customer shall, within the time specified in the Final CPC, (a) repay the Short-Term Repayment Obligation or (b) convert the Short-Term Repayment Obligation to a Long-Term Repayment Obligation and enter long term repayment consistent with the Authority's policies and procedures. The Customer shall make payment of that portion of the Short-Term Repayment Obligation that is not converted to the Long-Term Repayment Obligation upon receipt of the Authority's invoice and in accordance with the terms of this Master Agreement. The Short Term Repayment Obligation, as set forth in the Final CPC, shall include the Authority's estimate of Short-Term Interest to be accrued between the issuance of the Final CPC and conversion to long term repayment.

9. Authority Obligations. In addition to the obligations otherwise set forth herein and the respective CPC, Authority shall require the Service Provider to adhere to the Project's design

and technical specifications as set forth in the CPC and minimize any interference with the normal operations at Customer's Facility.

10. Customer Obligations. In addition to the obligations otherwise set forth herein and the respective CPC, Customer shall promptly review all completed installations. Customer shall review and approve, as may be required, any corrective or restoration Work resulting from improper work by the Service Provider.

11. Customer-Supplied Equipment and/or Work. Customer and Authority may agree in the CPC for the provision of Customer materials and/or completion of Customer work in connection with a Project, independent of Authority. If so, then Customer shall be responsible for any changes to the Project schedule, scope of Work or any increase in the Total Reimbursement Costs caused by Customer due to non-delivery of Customer materials or non- or late performance of Customer work and Authority shall issue any necessary Contingency Work Order or Change Order, as applicable. Authority may suspend its Work on the Project until Customer approves such Change Order. Furthermore, if the Customer does not meet the Project schedule with respect to Customer materials and/or Customer work, Authority has the right to terminate the Project if the delay is not cured within fifteen (15) days of written notice thereof by Authority to Customer and turn it over to Customer for completion without any liability on the part of Authority.

* * * * *



EXHIBIT C

ADVISORY SERVICES TERMS AND CONDITIONS

1. Application. In addition to the terms and conditions set forth in the main body of this Master Agreement, these Advisory Services Terms and Conditions shall apply to all Advisory Services Projects provided by Authority or Service Provider to Customer pursuant to the Master Agreement.

2. Advisory Services. Upon Customer's request, Authority may provide any or all of the Advisory Services described below. Advisory Services may be provided by Authority employees and/or Service Providers with expertise in the area as determined by Authority. Authority and Customer will cooperate in good faith during the performance of such Advisory Services.

3. Description of Services

(a) Review. Review of information provided by the Customer regarding, among other things, Customer's site conditions, future plans for modifications to facilities, operations and/or usage, historical utility data, any relevant strategic plans or initiatives, and other relevant requirements that are specific to Customer.

(b) Meetings. Participate in meetings and conference calls as mutually agreed upon by the parties as being in the best interests of the Project or as otherwise detailed in the Customer Project Commitment.

(c) Site Observations. Observe Customer's facilities, physically or remotely via electronic means as determined by the Authority to assess the condition of existing equipment and physical site conditions.

(d) Analysis. Analyze data presented by Customer and/or collected by or on behalf of the Authority. Outreach to appropriate third parties as necessary to coordinate and/or collect additional data.

(e) Advice and Guidance. Deliver oral or written advice, guidance and other recommendations communicated via in person meetings, telephone conversations, or correspondence.

(f) Deliverables and Reports. Prepare reports, memorandums, and other documents that memorialize the advice, guidance and recommendations delivered to the Customer and support the Customer's underlying project, where applicable.

The foregoing descriptions are given by way of example and not by way of exclusion. Advisory Services may include services that have not yet been developed or approved by Authority

to date, provided such services are described in a CPC signed by both Parties to this Master Agreement.

4. Further Assistance; Information. In addition to the obligations set forth herein and the respective CPC, Customer shall provide Authority and/or Service Providers with such assistance as may be required to perform the Advisory Services. This may include, but is not limited to, providing access to the Customer's Facility(ies), information such as historical utility data, maintenance logs, existing feasibility studies, reports, equipment drawings or any other information or services reasonably requested by Authority and/or Service Providers.

* * * * *

Signature: MERVIN R. LIVSEY
mERVIN R. LIVSEY (Jul 23, 2019)

Email: blivsey@highlands-ny.gov

Title: Town of Highland Supervisor

Company: Town of Highlands

Signature: John Canale
John Canale (Jul 23, 2019)

Email: john.canale@nypa.gov

Title: VPS strategicSupply Management

Company: New York Power Authority

FILED: ORANGE COUNTY CLERK 10/02/2020 07:17 PM

NYSCEF DOC. NO. 87

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 10/02/2020

Exhibit D



NY Power Authority

ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

April 5, 2019

Supervisor Bob Livsey
Town of Highlands
254 Main Street
Highland Falls NY 10928

RE: Energy Services Program
Authorization to Proceed with turn-key street light project
Town of Highlands- LED Street Lighting

Dear Supervisor Livsey,

The New York Power Authority (NYPA) is excited to support the Town of Highlands in identifying and implementing a comprehensive street lighting upgrade. Improving the existing street lights is a widely used and effective strategy to achieve the goal of reducing energy consumption, lowering utility costs, and improving light quality throughout the community.

Consistent with the Master Cost Recovery Agreement, NYPA provides a turn-key solution to upgrade the Town of Highlands's existing street lights to energy efficient LED technology. NYPA is pleased to offer these services to replace approximately 167 existing street light fixtures with new high efficient LED technology.

By signing below, the Town of Highlands authorizes NYPA to proceed with the full turn-key solution of the LED street lighting project, which includes the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project. When the design and bidding is completed, you will receive an Initial Customer Installation Commitment (ICIC) for your review and signature. At this point, if you choose to proceed to project implementation all development costs will be rolled into the overall project. Conversely, should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase. NYPA will be fully transparent through this process and provide complete documentation as to how it determined all project costs.

By signing below, affirm that you agree to these conditions:



NY Power Authority

ANDREW M. CUOMO
Governor

JOHN R. KOELMEL
Chairman

GIL C. QUINIONES
President and Chief Executive Officer

PAGE 2
AUTHORIZATION TO PROCEED – Town of Highlands

Joseph Rende
(Name, printed)

MERVIN R. LIVSEY
(Name, printed)

Senior Director, Customer Business Development
(Title)

Town SUPERVISOR
(Title)

Joseph Rende
(Signature)
10/3/19
(Date)

Mervin R. Livsey
(Signature)
9-24-19
(Date)

Exhibit E

Guth De Conzo letter in response to Project Assignment Request February 6, 2020
(1052-1054)

FILED: ORANGE COUNTY CLERK 10/02/2020 07:17 PM

NYSCEF DOC. NO. 88

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 10/02/2020

Exhibit E



February 6, 2020

Donna Keough
New York Power Authority
123 Main Street
White Plains, New York 10601

Re: PROJECT ASSIGNMENT REQUEST
Town of Highlands LED Street Lighting Replacement Project
NYPAs Energy Efficiency Program

Dear Ms. Keough:

Guth DeConzo Consulting Engineers is pleased to provide you with our proposal for the Town of Highlands LED Street Lighting Replacement Project. Guth DeConzo understands that NYPAs customer, the Town of Highlands, is interested in expedited replacement of their existing street lighting system. The work will be performed within the Town of Highlands.

Guth DeConzo Consulting Engineers will perform turnkey services in accordance with NYPAs Guth DeConzo Consulting Engineers contract # 4600003807.

Guth DeConzo Consulting Engineers estimated fee cost for this project will be a total of \$14,267.14, which is in accordance with the Compensation Schedule in NYPAs Guth DeConzo Consulting Engineers contract # 4600002882. The fee (18% of M&L per fee schedule) is based on a preliminary construction cost estimate of \$79,261.90.

Invoicing will also follow the milestones outlined in the Compensation Schedule. Since this is a new project, the estimated costs would be applied as follows:

Table with 4 columns: Category, Existing PO Amount, Amount Requested for this Proposal, New PO Amount After this Request. Rows include IC Fee(s), Material and Labor (Mock-Up), Performance Bond, Asbestos Abatement, {Others as necessary}, and Total.



Guth Deconzo will be assigning Matt Christian as the Construction Manager. He can be reached at 518-266-9600 ext.117 and mchristian@guthdeconzo.com.

The estimated duration of the design phase is 3 months. Should NYPA accept this proposal, a detailed schedule will be developed within one week of the execution of the purchase order.

If you have any questions, please feel free to contact me at 518-266-9600 ext. 101.

Very truly yours,

Guth ♦ DeConzo Consulting Engineers, P.C.

A handwritten signature in black ink that reads 'J. P. McDonald' with a horizontal line underneath the name.

Jeremy McDonald
Principal

Exhibit F NYPA's Agreement with Phillips Lightin North America
(1055-1069)

FILED: ORANGE COUNTY CLERK 10/02/2020 07:17 PM

NYSCEF DOC. NO. 89

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 10/02/2020

Exhibit F



PHILIPS LIGHTING NORTH AMERICA CORP
200 FRANKLIN SQUARE DR
SOMERSET NJ 08873-4186
ATTN: CINDY MALINCHAK

Your Vendor No. with us: 32887

CHANGE TO VALUE CONTRACT
DO NOT DELIVER WITHOUT SEPARATE P.O. RELEASE
Contract number : 4600003452 Date : 02/22/2018
Contact Person : KEVIN KING
Telephone : 718-626-8288 Fax : 914-681-6783
E-Mail Address : Kevin.King@nypa.gov
Our Reference : Q17-6330KK

Valid From	03/01/2018
Valid To	03/20/2018

Deliv. terms: DDP DEST. FRGHT INCL IN PRICE

Payt. terms: NET DUE WITHIN 30 DAYS

Currency: USD

Target Value \$ 6,500,000

Change Order #3, effective March 23, 2018 is issued to increase the dollar value of this contract.

Change Order #2, effective March 6, 2018 is issued to add additional language to include Lead Time, Additional Warranty Language and Software Service

Change Order #1, effective February 27, 2018 is issued to add line items 00014 & 00015. This is a zero dollar change order.

This Value Contract serves as notification to your firm that Philips Lighting North America's proposal dated December 7, 2017, in response to Request for Proposal No. Q17-6330KK, has been found acceptable by the Power Authority of the State of New York (hereinafter "Authority") for the Furnishing & Delivering of Street lighting materials for the Authority's Energy Efficiency Group.

Work for this Contract shall proceed only upon written authorization(s) by the Authority in the form of a "Purchase Order Release Against Contract" ("POR"). Such POR's are purchase orders whose numbers are prefixed by "4500XXXXX", issued to commence work in the specific area(s). There will be no liability of any kind by the Authority to the Contractor, other than the amount(s) authorized in the POR's. The Authority makes no representation as to the amount of work that may be performed



PHILIPS LIGHTING NORTH AMERICA CORP
 200 FRANKLIN SQUARE DR
 SOMERSET NJ 08873-4186

Contract number/date
 4600003452 / 02/22/2018

in this Contract. Each POR will specify the relevant work area(s) schedule. Your subsequent invoices must refer to each relevant POR and not to the 460000 Contract Number above.

Mr. Eric Alemany, Program Manager, Energy Efficiency Tel: 914-390-8223.
 E-mail: eric.alemany@nypa.gov, will be your primary contact for this Contract.

CONTRACTOR'S ELECTRONIC SIGNATURE AUTHORIZATION VIA ECHOSIGN BELOW WILL CONSTITUTE ACCEPTANCE OF THIS CONTRACT AWARD.
 New York Power Authority
 123 Main St. - 5th Floor
 White Plains, NY 10601
 Attn: Kevin King, Director, Transactional Procurement

THE AUTHORITY RESERVES THE RIGHT TO CANCEL THE AWARDED CONTRACT UPON TEN (10) DAYS WRITTEN NOTICE TO PHILIPS LIGHTING NORTH AMERICA CORPORATION

CONTRACTOR IS INSTRUCTED TO PRINT AND RETAIN A COPY FOR YOUR FILE.

FAILURE TO RETURN THE SIGNED ACKNOWLEDGEMENTS OF THIS CONTRACT MAY DELAY PAYMENT OF INVOICES.

VALUE ADDED COMPONENTS:

At no cost to the Authority, Philips Lighting agrees to provide the following:

Free Samples and Pilots for testing and evaluation in reasonable quantities (as determined by Philips)

Reasonable Community Outreach support in further educating NYPA employees, IC's and clients about project initiative and Philips' technologies

Product Training Demonstrations and Communication (as reasonably determined by Philips)

Engineering & Technical Support (as reasonably determined by Philips; for greater clarity, any technical or engineering services beyond or in addition to those expressly identified as being provided at no cost in Philips RFP Response could be provided at Philips standard hourly professional service rates).

Pilot Program for the CityTouch Connector Node (CTCN) lighting asset management system to the end users (as reasonably determined by Philips)



NY Power Authority

PHILIPS LIGHTING NORTH AMERICA CORP
200 FRANKLIN SQUARE DR
SOMERSET NJ 08873-4186

Contract number/date
4600003452 / 02/22/2018

Service Tag feature for Roadfocus fixtures in support of other's street lighting installation and maintenance efforts

Luminaire Photometric Data (full site photometrics are an additional negotiated cost)

LEAD TIME:

Lead Times have a 2 week adder to allow for order cancellation

The standard lead times for manufacturing and delivering product is as follows: (a) RoadFocus luminaires, 8 to 10 weeks; (b) CityTouch nodes, 10 to 14 weeks, and (c) photocells, 10 weeks.

Philips will use its best efforts to supply and deliver in the event products are requested for delivery sooner than the designated lead times or in the event that unusual volumes of product are ordered, but shall have no liability to any Implementing Contractor or NYPA for any inability or failure to deliver product which does not accord with these lead-times, or is otherwise ordered in unusual volumes. NYPA agrees to work with its Implementation Contractors to provide rolling, updated forecasts representing its best estimations of its needs for Philips products. All forecasts are provided as an estimate only.

SOFTWARE SERVICE:

The end-user or municipality will contract directly with Philips for the provision of CityTouch Software Service. CityTouch Software Services will be provided to the end-user or municipality exclusively pursuant to the standard terms and conditions of Philips' CityTouch Software Service Agreement. No rights, authorization to use or access, or warranties respecting the CityTouch Software Service will be provided to anyone other than the end-user or municipality.

PRICING:

Pricing is to remain firm for the duration of the contract (two years) with an option for a third (3rd) year. Should NYPA elect to extend the term of this contract, pricing adjustments (up or down) may be made based on the U.S. Prime rate. In year three (3), Philips Lighting proposes to adjust pricing based on actual shipments and internal forward price calculation over the contract period.

Pricing includes delivery from the factory direct
One time virtual training of two (2) hours is included for the City Touch software



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Pricing in this contract shall be extended to the Authority's Implementation Contractors (IC's) for the Authority's sponsored and the Authority's approved Street Lighting Projects. Philips shall invoice the IC's directly for these order requests per the payment terms that Philips negotiates with the individual IC.

The Authority is not responsible for default or non-payments by the IC's on orders placed by the responsible IC.

Since NYPA is not responsible for default or non-payments by the Implementing Contractors, Philips is not required to supply or continue supplying any product to any Implementing Contractor who Philips determines is not creditworthy, does not remain in good financial standing with Philips, or has otherwise defaulted on its payment or other obligations to Philips.

In no event will either NYPA or Philips be liable to the other for any lost profits, lost revenue, lost savings, business interruption, loss of goodwill, damages for delay, cost of procurement of substitute goods, or any other indirect, incidental, punitive, special, or consequential damages, howsoever caused, arising out of or relating to this Agreement, regardless of whether such damages were foreseeable or such party was advised of such damages, and notwithstanding the legal theory upon which the claim is based, or the failure of any agreed upon or other remedy of its essential purpose.

The terms and conditions of this letter addendum are deemed made a part of, and hereby incorporated into the Award Letter. This letter addendum, together with the Award Letter and Philips Bid Response (the "Contract"), sets forth the entire agreement and understanding of the parties, and supersedes and merges all agreements, arrangements, and understandings, written or oral, express or implied, made prior to or contemporaneously with these agreements. The Contract may not be amended except in a writing specifically referencing this Contract which is signed by duly authorized representatives of each party.

CANCELLATION:

Notwithstanding anything to the contrary under the RFP documents, the Award Letter or any documents or pre-printed terms attached to or identified therein: (a) all products, hardware, software, and services are warranted exclusively pursuant to the terms and conditions of the applicable Philips Standard Warranty, which NYPA acknowledges receiving copies of as part of the Philips Bid Response (collectively, "Philips Standard Warranties"); (b) the parties acknowledge and agree that Philips will for a period of fourteen (14) calendar days following NYPA's release of a purchase order hereunder (authorizing an Implementing Contractor to procure Philips product) hold submitting for manufacture all quantities of product identified under



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such purchase order. This period commences as of (and includes) the date that Philips actually receives the purchase order from NYPA, expires as of the fourteenth day thereafter, and includes both weekends and holidays. During this period, NYPA may cancel a purchase order (or portion thereof) at no charge to NYPA, provided such order is submitted in writing and actually received by Philips prior to the expiration of this period. No purchase order, or part thereof, may be cancelled following the expiration of this period. By way of example, an order submitted on July 1st may be cancelled provided the cancellation notification is received by Philips by no later than 11:59pm on July 14th; as of July 15th, the order may not be cancelled. In the event that NYPA or any Implementing Contractor under a purchase order requests and Philips agrees to provide delivery sooner than the stated standard lead and delivery times (as noted above), then notwithstanding the foregoing, such order will be considered non-cancellable.

WARRANTY:

Philips Lighting will provide a 10 year limited warranty for the materials identified in this contract.

The following warranty periods apply with respect to the following products or services: (a) for the Philips Lighting RoadFocus product, a ten (10) year warranty period applies; (b) for Philips CityTouch hardware, a five (5) year warranty period applies; (c) for Philips CityTouch Software-as-a-Service, the standard warranty period identified under the CityTouch Software Service Agreement applies; (d) for any other Philips manufactured product or hardware, software, or other service provided by Philips Lighting, the warranty period will be as identified under the applicable standard Philips Lighting Warranty.

The applicable Philips Standard Warranties will be assignable to, and ultimately only enforceable by, the original end-user or municipality. Other than the applicable Philips Standard Warranties, no other warranty of any kind, express or implied, is provided to any party (including the end-user or Implementing Contractor) or accepted by Philips.

During the warranty period, the End User or Municipality will be required to maintain a log of the defective luminaire or control node by serial number, value, and apparent reason for defect. The Authority will be required to ship defective unit (s) with appropriate documentation to a Philips Lighting designated site for



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analysis. If defective is determined to be an installation related issue, Philips Lighting will inform the Authority to determine if a credit is warranted. When the defective value exceeds 3% of the contract value, a return authorization is required. NYPA is required to first seek a return authorization from Philips (prior to making a warranty claim) if the value of the reportedly defective product exceeds 3% of the product value for an applicable project. This provision imposes no obligation on Philips' to grant a return authorization or to otherwise accept return of any quantity of product.

RETURN POLICY:

Subject to the following terms and conditions, at the end of each of the first two contract years during the term of the Contract, NYPA may return to Philips up to an aggregated maximum of five percent (5%) of the value of all "Eligible Product" purchased under this Contract during that contract year ("Return Cap"). The first two percent (2%) of Eligible Product returned during such contract year shall not be subject to a restocking fee; thereafter, Philips will charge a fifteen percent (15%) restocking fee on any Eligible Product returned. "Eligible Product" is limited to standard (i.e., non-custom, and non made-to-order) Philips-manufactured (i) fixture and (ii) control node products which have been purchased by or on behalf of NYPA (through the Implementing Contractors) under this Contract during the covered return period. Additionally, in order to be eligible for return, such product must be in-warranty, in its original packaging, undamaged, and in good and merchantable condition. Contract year means the period starting as of the date the Board approves this contract, and each subsequent anniversary thereafter (e.g., 3/20/18 - 3/19/19, 3/20/19 - 3/19/20). This right of return vests only with and for the benefit of NYPA. For purposes of return administration, Product will be valued at the price actually paid by NYPA or its Implementing Contractors for such product, less any and all cash or other discounts or credits. Other than product validly returned pursuant to a Philips Standard Warranty, Philips is under no obligation to accept any return of product beyond the Return Cap, and this right of return is in lieu of any right offered under Philips Bid Response.

*** **



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Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00001	00041535	0	EACH	77	0
LIGHT, STREET MFG: PHILIPS P/N: RFS25W16LED4K-G2-R2M-UNV-DMG-API-RCD-GY3 COBRA HEAD.. *** Text changed ***					

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00002	00041536	0	EACH	77	0
LIGHT, STREET MFG: PHILIPS P/N: RFS30W16LED4K-G2-R2M-UNV-DMG-API-RCD-GY3 COBRA HEAD.. *** Text changed ***					

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00003	00041537	0	EACH	77	0
LIGHT, STREET MFG: PHILIPS P/N: RFS35W16LED4K-G2-R2M-UNV-DMG-API-RCD-GY3 COBRA HEAD.. *** Text changed ***					

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00004	00041538	0	EACH	86	0
LIGHT, STREET MFG: PHILIPS P/N: RFS45W16LED4K-G2-R2M-UNV-DMG-API-RCD-GY3 COBRA HEAD.. *** Text changed ***					

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00005	00041539	0	EACH	86	0



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LIGHT, STREET
 MFG: PHILIPS
 P/N: RFS54W16LED4K-G2-R2M-UNV-DMG-API-RCD-GY3
 COBRA HEAD..

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00006	00041540	0	EACH	120	0

LIGHT, STREET
 MFG: PHILIPS
 P/N: RFM72W32LED4K-G2-R2M-UNV-DMG-API-RCD-GY3
 COBRA HEAD..

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00007	00041561	0	EACH	128	0

LIGHT, STREET
 MFG: PHILIPS
 P/N: RFM80W48LED4K-G2-R2M-UNV-DMG-API-RCD-GY3
 COBRA HEAD..

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00008	00041562	0	EACH	145	0

LIGHT, STREET.
 MFG: PHILIPS
 P/N: RFM108W32LED4K-G2-R2M-UNV-DMG-API-RCD-GY3
 COBRA HEAD.

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00009	00041563	0	EACH	155	0

LIGHT, STREET.
 MFG: PHILIPS



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P/N: RFL160W48LED4K-G2-R2M-UNV-DMG-API-RCD-GY3
COBRA HEAD.

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00010	00041564	0	EACH	230	0
LIGHT, STREET. MFG: PHILIPS P/N: RFL180W80LED4K-G2-R3M-UNV-DMG-API-RCD-GY3 COBRA HEAD.					

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00011	00041565	0	EACH	264.45	0
LIGHT, STREET. MFG: PHILIPS P/N: RFL190W112LED4K-G2-R3M-UNV-DMG-API-RCD-GY3 COBRA HEAD.					

*** Text changed ***

Item	Material	Target Qty.	Unit	Unit Price	Extended Target Price
00012	00041566	0	EACH	259.22	0
LIGHT, STREET. MFG: PHILIPS P/N: RFL215W96LED4K-G2-R3M-UNV-DMG-API-RCD-GY3 COBRA HEAD.					

*** Text changed ***

Item	Target Qty.	Unit	Unit Price	Extended Target Price
00013	0	EACH	1	0
THIS LINE ITEM IS TO BE USED FOR NEW TECHNOLOGY PRODUCTS FOR THE ENERGY EFFICIENCY GROUP. PRICING IS 15% DISCOUNT FROM LIST PRICE. INVOICE TO REFLECT DISCOUNT AND LIST PRICE...				



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*** Text changed ***

Table with 6 columns: Item, Material, Target Qty., Unit, Unit Price, Extended Target Price. Row 1: 00014, 00041553, 0, EACH, 110.12, 0. Includes sub-headers and item details like NODE, CITY IQ, MFG: PHILIPS, P/N: LLC7260.

*** New Item ***

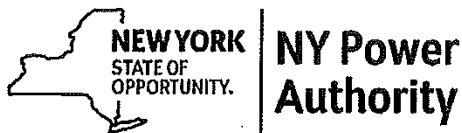
Table with 6 columns: Item, Material, Target Qty., Unit, Unit Price, Extended Target Price. Row 1: 00015, 00041556, 0, EACH, 25, 0. Includes sub-headers and item details like NODE, CITY IQ, MFG: PHILIPS, P/N: PHXL.

*** New Item ***

Total Value Contract Amount USD 0.00

Value of current Contract..... \$ 500,000.00
Change Order #3, effective 3/23/18..... \$6,000,000.00
Revised Contract Value \$6,500,000.00

Value of revised Contract..... \$ 500,000.00
Change Order #2, effective 3/6/18..... \$ 0.00
Revised Contract Value..... \$ 500,000.00



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Value of original Contract.....	\$ 500,000.00
Change Order #1, effective 2/27/18.....	\$ 0.00
Revised Contract Value.....	\$ 500,000.00

Philips Lighting North America Corporation agrees to the following appendices:

APPENDIX "A" - Additional requirements shall be completed and returned to the Authority.

APPENDIX "B" - is hereby incorporated into the Contract.

APPENDIX "E" - Omnibus Procurement Act of 1992 Requirements are hereby incorporated into the Contract and the Geographic Origin Form (Attachment 1) and other appropriate forms shall be completed and returned to the Authority.

APPENDIX "G" - Equal Employment Opportunities Requirements are hereby incorporated into the Contract. Your EOO Policy Statement, Staffing Plan and Total Work Force information shall be furnished to the Authority.

APPENDIX "H" - Tax Law Requirements are hereby incorporated into the Contract and the appropriate form(s) shall be completed and returned to the Authority.

APPENDIX "J" - Bidder / Contractor Compliance with State Finance Law Subsections 139-J and 139-K Providing for Certain Procurement Disclosures is hereby incorporated into the Contract. Included Forms J-1, J-2 and J-3 shall be completed and returned to the Authority.

APPENDIX "N" - NYS Iran Divestment Act of 2012, is hereby incorporated into the Contract. Contractor Certification of Compliance shall be completed and returned to the Authority.

*** Text changed ***



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The changes of the Contract price or time of performance specified herein, if any, shall be the complete and exclusive changes of such on account of the foregoing changes in the work/services.

Except as specifically modified herein, all terms and conditions of the original contract and any previously approved change orders apply.

THIS CHANGE ORDER IS BEING SENT FOR YOUR E-SIGNATURE THROUGH ECHOSIGN AND WILL BE THE ONLY RECORD OF THIS CHANGE ORDER. FAILURE TO COUNTER SIGN THROUGH ECHOSIGN WITHIN FIVE (5) BUSINESS DAYS MAY DELAY THE PAYMENT OF YOUR INVOICES.

Signature: John Canale
John Canale (Mar 27, 2018)

Email: john.canale@nypa.gov

Title: VP Strategic Supply Management

Company: New York Power Authority

Signature: Michael L. Manning
Michael L. Manning (Apr 3, 2018)

Email: michael.l.manning@lighting.com

Title: VP General Counsel

Company: Philips Lighting North America Corporation

THE FOLLOWING INSTRUCTIONS AND CONDITIONS SHALL APPLY TO ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT

INSTRUCTIONS

1. **ACKNOWLEDGEMENT** copy properly filed in and with written signature must be returned at once to the address specified on the face hereof for correspondence. If the purchase order is not accepted exactly as written, return at once with explanation. **FUTURE COMMUNICATIONS** relative to this purchase order, including advanced notice of shipment and routing, invoices and copy of shipping documents, should also be addressed as specified on the face hereof for correspondence. All communications, invoices, shipping papers and all packages must bear the purchase order number shown on the face of this order.

2. **MAIL INVOICES IN DUPLICATE.** Separate for each shipment and order number, itemize, showing terms, discounts and date of shipment.

3. **SHIPMENT DOCUMENTS** for each consignment showing the order number, car number, routing, and other data must be forwarded as soon as possible together with the Bill of Lading or express receipt and packing list to consignee. Demurrage charges resulting from failure to comply with this request will be deducted from Vendor's invoice. Merchandise must not be shipped C.O.D.

4. **PARTIAL SHIPMENTS** must be identified as such on the shipping memoranda and on invoices, Mark "Partial" for the preliminary consignment and "Final" for the completing shipment.

CONDITIONS

1. **TERMS AND CONDITIONS.** All terms and conditions of this order are set forth on this and any attached sheet or sheets, and include all the provisions on each side thereof; no terms, conditions or provisions other than those so set forth or specifically incorporated in this order by reference on this or an attached sheet shall be binding upon the Authority unless subsequently accepted by it in writing. The words "Vendor" and "Contractor" as used in this Purchase Order shall refer to the party or parties entering into this Purchase Order with the Authority.

2. **WORKERS COMPENSATION LAW.** The Vendor specifically agrees, as required by the New York State Finance Law, Section 142, that: (a) He will secure workers compensation and keep insured during the life of this order for the benefit of such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers Compensation Law, and (b) This order shall be void and of no effect unless the Contractor complies with this provision.

3. **NEW YORK STATE LABOR LAW.** Vendor specifically agrees that in performing the work under this Purchase Order he will comply with all applicable provisions of the New York State Labor Law, including but not limited to those as to hours of and rate of pay for employment.

4. **WARRANTY.** Acceptance by the Vendor of this order shall constitute an express warranty by Vendor that all articles covered hereby are fit for the purpose intended, of first class quality, and in every respect according to description or sample. Any defects in materials or workmanship or other failure to meet requirements of the specifications which are disclosed prior to final payment, or prior to acceptance by the Authority, whichever occurs at the later date, shall, if so directed by the Engineer, be corrected entirely at the expense of the Vendor. Any latent defects not disclosed before date of final payment or date of acceptance, whichever is the later date, but disclosed within one year after the articles, materials or supplies shall have been placed in use, shall be corrected promptly by and at the expense of the Vendor, or at the Authority's option by the Authority at the expense of the Vendor, except that the cost of installing replacement parts will be borne by the Authority; provided that the total period during which the Vendor is liable for replacement due to latent defects shall not exceed 24 months after date of complete delivery of the materials or equipment. Acceptance or use of articles by the Authority shall not constitute a waiver of any claim under this warranty.

5. **ASSIGNMENT.** The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this order or of his right, title or interest therein, or his power to execute this order to any other person, company or corporation without the previous written consent of the Authority.

6. **INSOLVENCY.** If Vendor shall become insolvent or shall make an assignment for the benefit of creditors, or if a receiver or trustee shall be appointed for any of Vendor's property or business, this order may forthwith be cancelled by the Authority without liability.

7. **INSPECTION AND EXPEDITING.** For purposes of inspection and expediting of the materials, equipment and apparatus covered by this order, or work thereon, the Vendor shall give the Authority's representative free access to his works and provide for such access to the works of his subvendors, but any approval by such representative shall not relieve the Vendor from his obligation to comply with the requirements of this order in every respect.

8. **CANCELLATION.** At any time the Authority may cancel this order, in which event the Authority shall pay the Vendor the proportionate part of the agreed upon price representing the material and/or equipment previously delivered together with the amount of actual cost incurred in connection with the undelivered portion of the order. However the Authority shall not be liable for any claims for anticipated profits on the uncompleted portion of the materials and/or equipment or consequential damages.

9. **RESPONSIBILITY FOR ARTICLES.** Except as otherwise provided in this order, (i) the Vendor shall be responsible for the articles covered by this order until they are delivered at the designated delivery point, regardless of the point of inspection; and (ii) the Vendor shall bear all risks as to rejected articles after the notice of rejection.

10. **EQUAL EMPLOYMENT OPPORTUNITIES AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION GOAL REQUIREMENT.** During the performance of this contract, the Contractor agrees as follows:

Refer to the attachments entitled "Appendix C - Minority and Women Business (M/WBE) Participation Goal Requirement" and/or "Appendix G - Equal Employment Opportunities".

11. SAFETY REQUIREMENTS AND PERFORMANCE DATA

a) All Contractors supplying their personnel, or sub-contracted personnel, to Authority facilities, are responsible for reporting any injuries or illnesses arising at these facilities to the Authority.

b) Each employer who is subject to the recordkeeping requirements of the Occupational Safety and Health Act (OSHA) 1970 must maintain a log of all recordable occupational injuries and illnesses. OSHA form "OSHA No. 300" may be used to log and summarize occupational injuries and illnesses.

c) On a monthly basis, each contractor shall submit a copy of its OSHA No. 300 log (or if accepted by the Authority, a substitute report) to the Authority's relevant facility safety representative or designee, as follows:

WPO - Vice President of Environmental Health and Safety

NIA - Safety, Health & Fire Protection Administrator

Clark - Safety, Health & Fire Protection Administrator

BG - Environmental Health and Safety Scientist

ST.L./FDR - Safety, Health & Fire Protection Administrator

POL - Environmental & Safety Engineer

FLYNN - Maintenance Superintendent

IN-CITY - Environmental & Safety Engineer

500 MW - Environmental & Safety Engineer

CANAL - Vice President of Environmental Health and Safety

d) To prevent personal injury or damage to property, all test, rental or other equipment of any kind, furnished by the Contractor or Vendor must be in good working order and condition; properly tested, grounded, fit or otherwise suitable for its intended purpose or use; and free of defect.

e) In addition to the above, all Contractors supplying their personnel, or sub-contracted personnel, to Authority facilities, are responsible for reporting on a monthly basis the number(s) of personnel working at the facility, and person-hours worked by each.

f) In addition, all Contractors supplying their personnel or sub-contracted personnel shall ensure that those personnel have the training and certifications that are required by industry standard, state and federal law and provide documentation of training and certifications when requested.

12. MATERIAL SAFETY DATA SHEET

Vendor shall provide current Material Safety Data Sheets, "MSDS", for items on or before delivery is received at the Authority.

Vendor shall provide shelf life data including Cure Date and Expiration Date. Material shall possess at least 80% of its shelf life when received at the Authority.

In accordance with Appendix B - Prompt Payment Policy, Vendors' failure to comply with the above requirements may result in the delay of payment until the receipt of all proper documentation.

13. **NEW YORK STATE SALES AND COMPENSATING USE TAX ACT.** Under the provisions of the New York State Sales and Compensating Use Tax Act, the Authority is exempt from the payment of such taxes on sales to the Authority of tangible property of services. The Authority is not required to furnish exemption certificates, and the Authority's contract may be accepted in lieu of an exemption certificated with the Contractor's copy as proof that the sales are exempt.

14. **MEN AND MEANS.** Contractor will not employ or allow to be employed in connection with, or related or incidental to, any of contractor's activities or operations under this Contract, or in the vicinity of the premises in which such activities or operations occur, personnel, methods or means which, in the opinion of the Authority, may cause or tend to cause work stoppages, strikes, picketing or other cause for the delay of or interference with any work by or on behalf of the Authority in connection with the Authority's reference project.

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

-----X
In the Matter of the Application of Deborah Kopald,

Petitioner,

For a Judgment pursuant to CPLR Article 78

**AFFIRMATION OF
EILEEN P. FLYNN**

Index No. EF004088-2020

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc., and
The New York Power Authority,

Return Date: November 3, 2020

Respondents.

Hon. Maria S. Vazquez-Doles

-----X

Eileen P. Flynn, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am associated with Justin E. Driscoll Esq., Executive Vice President and General Counsel for Respondent New York Power Authority (“NYPA”), and I am fully familiar with the facts and circumstances of this case.

2. I submit this affirmation in opposition to the preliminary injunction motion made by plaintiff through an order to show cause and in support of NYPA’s verified answer to the petition.

3. After a review of NYPA’s records, a true and accurate copy of the contract NYPA entered into with Phillips Lighting North America, now known as Signify North American Corporation (NYPA Value Contract number 4600003452), is attached as Exhibit F.

WHEREFORE, it is respectfully submitted that this Court issue an Order and Judgment denying the petitioner's request for preliminary injunction and further dismissing the petition and granting such other and further relief as the Court deems just and proper.



EILEEN P. FLYNN

Dated: White Plains, New York
October 2, 2020

Affidavit of Charles Hermann in Opposition to Motion #1 October 2, 2020
(1072-1075)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

-----X
In the Matter of the Application of Deborah Kopald,

Petitioner,

For a Judgment pursuant to CPLR Article 78

**AFFIDAVIT OF
CHARLES W. HERMANN**

Index No. EF004088-2020

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc., and
The New York Power Authority,

Return Date: November 3, 2020

Respondents.

Hon. Maria S. Vazquez-Doles

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

CHARLES HERMANN, being duly sworn, deposes and says:

1. I am currently employed as a Lead Project Engineer I for Respondent New York Power Authority (“NYPA”). I have been an employee of NYPA for 16 years.

2. I received a Master of Business Administration (MBA) from New York University, a Bachelor of Science in Electrical Engineering and a Bachelor of Science in Engineering & Management from Clarkson University, and an Associate in Science Degree in Engineering Science from SUNY Morrisville.

3. One of my responsibilities as a NYPA Lead Project Engineer I is to oversee and manage NYPA’s individual projects under its Smart Street Lighting Program, including managing on NYPA’s behalf the Town of Highlands Street Light Replacement Project (“Project”). As such, I am familiar with the Project, to the extent described below, which is the subject of this proceeding.

4. I submit this affidavit in opposition to the relief sought by petitioner in this Article 78 proceeding, including her request for a preliminary injunction. Specifically, petitioner, a resident of the Town of Highlands, seeks to stop the replacement of pre-existing streetlights with energy efficient LED lights, claiming that NYPA somehow acted outside of its authority or violated the State Environmental Quality Review Act. For the reasons stated below and in the accompanying papers, including a Memorandum of Law, her claims simply lack merit and should be dismissed.

Town of Highlands Replacement Street Lighting Project

5. After it was determined that the Town of Highlands was interested in moving forward with the design and installation of LED streetlights, I was assigned to oversee NYPA’s involvement in the Project, which was some months after NYPA and the Town executed the Master Cost Recovery Agreement.

6. In furtherance of that Authorization to Proceed, NYPA conducted a kickoff meeting for the Project on December 9, 2019 and assigned this Project to one of its Implementation Contractors, Guth DeGonzo Consulting Engineers, in February 2020. See Exhibit E attached to the Verified Petition. Guth DeGonzo Consulting Engineers were selected after a competitive bidding process, and as such, was assigned projects such as the Town of Highlands Street Light Replacement Project.

7. Since February 2020, Guth DeGonzo Consulting Services completed a draft 90% design of the Project, which has been reviewed by NYPA.

Town of Highlands Street Light Replacement Project

8. Town of Highlands Street Light Replacement Project seeks to replace the existing light fixtures with energy efficient LED lights. While the design contains an allowance for a

\$20,000 NYPA Smart City Grant, which would allow for the installation of other technologies (e.g., cameras, Wi-Fi hotspots, weather sensors), the Town, as of September 15, 2020, has not applied for this grant, and the contemplated work would not include these installations.

9. The replacement of light fixtures is classified as a Type II action, and SEQR is satisfied with no further action.

10. Upon information and belief, this treatment is thoroughly consistent with NYPA's thirty-year history in its involvement in the replacement of inefficient light fixtures, first with fluorescent lights and now as the technology has evolved, with LED lights. NYPA has replaced inefficient streetlights under this Program with LED lights throughout New York State. There have been no deleterious health effects with these installations.

Effects of Temporary Restraining Order and Proposed Preliminary Injunction

11. On August 24, 2020, Petitioner obtained a temporary restraining order which halted all work on the Project. For example, NYPA has not forwarded the draft 90% design to the Town for its approval.

12. The continuation of any injunctive relief will negatively impact the Project's cost. After December 31, 2020, the streetlights that will be installed will be subject to an estimated 20% increase in costs since NYPA's contract with Signify North American Corporation guaranteed a fixed price for the first two years of the contract. That increase in material costs will affect both NYPA's fee and Guth DeGonzo Consulting Engineers' fee, since both fees are calculated as a percentage of the total Project material and labor costs. Increases in Project costs will also negatively impact the amount of potential savings to the Town.

13. Lastly, delays in implementation of this street lighting replacement project deprives the Town of the benefit of this Project, namely decreased electricity bills and maintenance costs.

WHEREFORE, it is respectfully submitted that this Court issue an Order and Judgment denying the motion for a preliminary injunction and dismissing the petition and granting such other and further relief as the Court deems just and proper.


CHARLES W. HERMANN

Sworn to before me this
2nd day of October 2020


NOTARY PUBLIC

EILEEN P. FLYNN
Notary Public, State Of New York
Qualified In Westchester County
No. 02FL6016923
Commission Expires November 30, 2022

Affidavit of Jeffrey Laino in Opposition to Motion #1 October 1, 2020
(1076-1080)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

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In the Matter of the Application of Deborah Kopald,

Petitioner,

For a Judgment pursuant to CPLR Article 78

**AFFIDAVIT OF
JEFFREY LAINO**

Index No. EF004088-2020

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc., and
The New York Power Authority,

Return Date: November 3, 2020

Respondents.

Hon. Maria S. Vazquez-Doles

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

JEFFREY LAINO, being duly sworn, deposes and says:

1. I am currently employed as a Senior Key Account Executive for Respondent New York Power Authority (“NYPA”). I have been an employee of NYPA for 2 years and 9 months.
2. I received a Bachelor’s Degree in Economics from the State University of Stony Brook in 1984.
3. One of my responsibilities as a NYPA Senior Key Account Executive is to engage with municipalities under NYPA’s Smart Street Lighting Program (“Program”), including the Town of Highlands Street Lighting Replacement Project. As such, I am thoroughly familiar with the facts underlying this proceeding.
4. I submit this affidavit in opposition to the relief sought by petitioner in this Article 78 proceeding, including her request for a preliminary injunction. Specifically, petitioner, a

resident of the Town of Highlands, seeks to stop the replacement of pre-existing streetlights with energy efficient LED lights, claiming that NYPA somehow acted outside of its authority or violated the State Environmental Quality Review Act. For the reasons stated below and in the accompanying papers, including a Memorandum of Law, her claims simply lack merit and should be dismissed.

NYPA

5. NYPA is a corporate municipal instrumentality and political subdivision of the State of New York. It was created pursuant to Public Authorities Law §§ 1000-1017.

6. NYPA generates, transmits, and sells electric power and energy, principally at wholesale to industries, municipalities, and electric cooperatives, and to utilities for resale to their customers throughout New York.

7. NYPA is one of New York State’s leading suppliers of electricity, operating 16 generating facilities and more than 1,400 circuit miles of transmission lines.

8. NYPA finances its operations through the sale of bonds and revenues earned largely through the sale of electricity. NYPA does not use New York State tax money or state credit.

9. Since 1994, NYPA provided energy efficiency programs to county and municipal governments, including governmental customers in Orange County. NYPA’s programs provide energy-efficiency improvements, with no up-front costs, to government facilities and public schools. From start to finish, NYPA works with its customers to identify, design, and install new lighting and motors, as well as other energy efficiency projects such as upgrades to heating, ventilation, and air-conditioning systems.

NYPA's Smart Street Lighting Program

10. Announced by Governor Cuomo in his 2018 State of the State address, NYPA's Smart Street Lighting Program seeks to replace at least 500,000 streetlights with energy-efficient LED technology by 2025.

11. Through this Program, NYPA seeks to contract with local municipalities throughout New York State to offer a turnkey proposal to upgrade the municipalities' existing streetlight system to energy efficient LED streetlights. The upgrade to the LED streetlights offers the individual municipalities significant costs savings in both energy and maintenance costs. In addition, NYPA initially finances each Project, so the individual communities do not incur upfront out of pocket costs to implement the Project.

12. Two years into this Program, NYPA has commitments to replace 300,000 streetlights in New York State and has successfully installed 100,000 streetlights under this Program.

Town of Highlands Street Lighting Replacement Project

13. In December 2018, after being approached by a representative of the Town of Highlands, I drafted a detailed proposal to present to the Town of Highlands Board on the benefits of its participation in NYPA's Program.

14. On April 8, 2019, I presented that proposal to the Highlands Town Board at a public forum. See Exhibits A and B attached to the Verified Answer.

15. Specifically, the proposal estimated, among other things, yearly electricity costs savings of \$25,545 and reduced maintenance costs since the LED lights have a life expectancy of 15 years or more. NYPA's proposal contemplated that the entire cost of the replacement of the current inefficient streetlights, including the purchase of the current streetlights by the Town

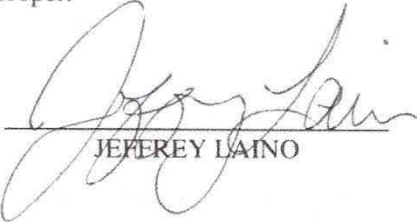
of Highlands from Respondent Orange & Rockland Utilities, Inc. (“O&R”), would cost the Town \$169,784, and that entire amount could be financed through NYPA’s project financing package.

16. In July 2019, NYPA and the Town of Highlands entered into a Master Cost Recovery Agreement (“MCRA”), effective July 23, 2019. See Exhibit C attached to the Verified Answer. This Agreement sets out the general framework for the responsibilities of NYPA and the Town in terms of any particular project specific Energy Services Program. Since this document does not specifically contemplate any specific energy services project, including the replacement of the Town of Highlands streetlights, this Agreement is classified as a Type II action and SEQR is satisfied with no further action.

17. In addition, the Town signed on September 24, 2019 an Authorization to Proceed with the Project. See Exhibit D attached to the Verified Answer. The Town of Highlands authorized NYPA to replace light fixtures for 167 pre-existing streetlights. Specifically, the Town authorized NYPA to proceed with “the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project.”

18. Once the Town of Highlands signed both the MCRA agreement and the Authorization to Proceed, my involvement with the Project, on behalf of NYPA, ended, and to my knowledge, Charles Hermann is the lead project engineer assigned to the Project, who will oversee the Project on NYPA’s behalf.

WHEREFORE, it is respectfully submitted that this Court issue an Order and Judgment denying the motion for a preliminary injunction and dismissing the petition and granting such other and further relief as the Court deems just and proper.


JEFFEREY LAINO

Sworn to before me this
1st day of October 2020


NOTARY PUBLIC

ALLISON RENSTROM SHEA
Notary Public, State of New York
No. 02RE6026915
Qualified in Putnam County
Commission Expires June 21, 2023

Notarization is made pursuant to Executive Order 202.7, as extended.
The affiant is in Suffolk County, and the notary is in Putnam County.

Reply Affidavit of Deborah Kopald in Further Support
of Order to Show Cause (Motion #1)
(1081-1109)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

Index No: EF004088-2020

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In the Matter of the Application of Deborah Kopald,
Petitioner

For a Judgment pursuant to CPLR Article 78

REPLY in FURTHER SUPPORT
of ORDER TO SHOW CAUSE

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc.,
The New York Power Authority

Respondents

-----X

State of New York)
) SS:
County of Orange)

I, Deborah Kopald, being duly sworn deposes and states:

I. OVERVIEW OF THE ISSUES IN REPLY

1. I am the Petitioner in the within special proceeding and submit this reply in further support of my motion for preliminary injunction.

2. NYPA’s predetermination of the purchase of LED lights with regard to its own internal purchasing in matters to which the Town of Highlands was not a party does not subsequently bind the Town of Highlands. There is no *res judicata* that applies to a contract between the Town of Highlands, NYPA and O&R. The Town of Highlands had no business relationship with NYPA when NYPA made an internal determination that purchasing LED lights was a Type II action and was not an involved agency with any jurisdiction to challenge same at the time.

3. Furthermore, a pre-determination by NYPA that the internal purchase of lights between NYPA and Phillips that predated NYPA’s involvement with the Town was not a Type II action and has nothing to do with the installation of these lights in any site specific context (and

certainly not any future site specific context that had not yet been contracted). (Here the specific context is the use of these lights in an environmentally sensitive area nestled in a state park).

4. The Town was the de facto lead agency herein, as it was principally responsible for approving the project; as such, they must conduct their *own* environmental review, and not outsource decision-making to another entity. By failing to do so, their decision must be nullified.

5. The replacement of lights as demonstrated in my Petition and exhibits is not something that involves mere maintenance and repair with no substantial changes to an existing structure of facility. Nothing is being maintained and repaired; the old lights, which did not have environmental effects are to be completely replaced, not fixed, not maintained. There is no literal reading of the words “maintain” and “repair” that would support such an interpretation.

6. It was not until April 27, 2020 that the Town of Highlands opted to replace all Streetlights in one fell swoop. With regard to the replacement contract with O&R; there is a big difference between having a slow-drip replacement-if-and-when-lights fail contract and a permanent replacement of all of the old lights which would have the cumulative effect of lighting up the whole town like a runway overnight. Unless the Town of Highlands would have the Highway Department shoot all of the old sodium and mercury vapor lights, there would have been no imminent retiring of the yellow and orange streetlights absent the 4/27/20 contract.

7. The Town of Highlands (“the Town”) misrepresents that I have no standing due to lack of unique injuries significantly different in kind or degree to the public at large: I explained that I was also in the habit of walking at night in the neighborhood, which is not something that everybody or even most or many people do. (That’s why I do it, because it is quiet and peaceful as others do their walking during daylight hours). This is enough to establish standing pursuant to *Brummel v. Town of North Hempstead Town Bd.*, 145 A.D.3d 880, 43 N.Y.S.3d 495 (2nd Dep’t 2016) since I use a resource more often than other people. Furthermore, I alleged that I have

electromagnetic sensitivity. The U.S. Department of Labor (“DOL”) has a number of pages suggesting accommodations for people who allege same. DOL stated that electromagnetically sensitive people also have photosensitivity, and one page suggests LED light filters as a fix. (See section VII below). This allegation of another injury, not suffered by the public at large, which the U.S. government suggests is exacerbated by artificial lighting, which is what LED lighting is, is another reason I meet the tests for standing in this case, which the Town cannot escape.

8. The Town suggests that the mere *purchase* of the lights is a Type Two exemption and ignores the site-specific context of the *installation* of the lights in an environmentally sensitive area. It is arbitrary and capricious to install certain things in sensitive areas pursuant to *Town of Bedford v. White*, 204 A.D.2d 557, 611 N.Y.S.2d 920 (2nd Dep’t: 1994) even if the item installed itself is deemed to be benign (here- the common traffic light, which doesn’t have the type of brightness and reach of an LED light). 6 NYCRR § 617.5(c)(2)¹ provides no comfort to the Town. As I previously stated:

Replacement of lights are not replacement of structures: they are replacements of lights. The lampposts themselves are the structures. In any event the lights exceed the thresholds in 6 NYCRR § 617.4. The lighting from LED lights encompasses a wider area than the sodium and mercury vapor lights; the total illuminated area would exceed 10 acres for a Type 1 action; unlisted actions only need to meet 25% of that threshold and apply when parkland is adjacent, which is the case all over Fort Montgomery (See: 6 NYCRR § 617.4(b)(9)(10)....

Petitioner Memorandum of Law @ ¶2, Emphasis Added

Likewise the Town cannot rely upon 6 NYCRR § 617.5(c)(31)²; the purchase or sale of supplies is merely a purchase; here we are talking about *installation* of the lights in one fell swoop and transfer of ownership of the lighting fixtures and appurtenances (but not the

¹ 6 NYCRR § 617.5(c)(2):
(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

² 6 NYCRR § 617.5(c)(31):
(31) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials

lampposts) from O&R to the Town with immediate replacement of every light on every lamppost in a Census Designated Place (“CDE”) nestled in a State Park instead of on as-needed ad hoc basis for the occasional broken lights. The lights and their fixtures do not meet the definition of furnishing, equipment and supplies. The contract with O&R involves the takeover by the Town of light fixtures and involves a purchase to replace all of the old lights; in context it is not just a purchase and sale, but the full illumination of the Town is contemplated by same.

9. Critically, the Town tries to misrepresent to the Honorable Court that the agreement with NYPA that the Town agreed to make in September 2019 *was anything other than an agreement to investigate options*. Town Attorney M. Justin Rider correctly represented to me that the contract never bound the Town to any specific purchase or any specific light scheme or to purchase at all. (Exhibit 6a) It also did not prevent investigation of other options on its own, such as the ones the citizenry asked in a Petition for them to investigate (orange LED lights).

10. This Petition was timely made pursuant to *Nielsen v. Planning Board of Town of East Hampton: 110 A.D.2d 767* (2nd Dep’t: 1985) and *Sutton v. Yates County, 193 A.D.2d 1126* (4th Dep’t 1993). There was no contract to purchase lights until the Town voted for it on April 27, 2020 along with the SEQR designation, which has a 4 months statute of limitations. The courts were closed for filing new actions and proceedings pursuant to Executive Order EO 202.8 and Administrative Order AO-78-20 until May 25, 2020 pursuant to AO 114/220, and the Statute of Limitations was tolled pursuant to Executive Orders including EO 202.6 and EO 202.8.

11. NYPA’s claims that the lights have no deleterious effects is belied by the evidence I have presented; in any event, the legal standard is not whether they haven’t been proven dangerous, but whether there is evidence of potential environmental effect pursuant to the Precautionary Principle and case law invoking same.

12. Town Board member Richard Sullivan’s own statement via email regarding his employment on a NYPA project has not been definitively contradicted by Respondents; as such the question of conflict of interest remains.

II. THE 2019 AGREEMENTS BETWEEN THE TOWN AND NYPA WERE NOT CONTRACTS MANDATING PURCHASE OF A LIGHTING SCHEME; AND THUS HAVE NO BEARING ON THE STATUTE OF LIMITATIONS TO CHALLENGE THE APRIL 27, 2020 VOTE TO CONTRACT WITH O&R AND VOTE TO DESIGNATE THE O&R CONTRACT AS TYPE II

13. Since the time of the O&R replacement contract, the Town pursued an analysis of more Permanent options with NYPA. The Authorization to Proceed (“ATP”) referred to by NYPA did not represent some type of contract to buy the lights (see point 32 of NYPA’s answer); please note Exhibit 12d, which is what I was provided by the Town of Highlands in response to a Freedom of Information (“FOIL”) for the ATP, which was signed by the Town Supervisor on 9-24-19. (It was not signed by the counterparty until October 3, 2019 as indicated by NYPA’s version in its Exhibit D, which is otherwise the same as my Exhibit 12d). It **specifically states**,

By signing below, the Town of Highlands authorizes NYPA to proceed with the full turn-key solution of the LED street lighting project, which includes the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project. When the design and bidding is completed, you will receive an initial Customer Installation Commitment (ICIC) for your review and signature. At this point, if you choose to proceed to project implementation, all development costs will be rolled into the overall project. *Conversely, should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase.*

(Emphasis added)

Pursuant to the plain language of the ATP, no final contractual commitment was made on any individual lighting scheme. The ATP was not any kind of permanent contract or commitment to selecting any light scheme (specific or generally) permanently. I have not sought to overturn the

ATP, which involved the use of tax dollars to investigate a menu of options for various lighting schemes.

14. In point 31 of NYPA’s answer), NYPA refers to the MSCRA dated July 23, 2019 (Exhibit 11 and NYPA Exhibit C) which required the ATP to be signed to act upon:

Since this document does not specifically contemplate any specific energy services project, including the replacement of the Town of Highlands streetlights, this Agreement is classified as a Type II action and SEQR is satisfied with no further action.

(Emphasis added)

In fact, the Town Attorney, who employs the Town Litigation attorney at Rider, Weiner, Frankel, P.C. has the same understanding as NYPA and I. See his email in Exhibit 6a:

Deborah, attached is the Master Agreement. It does not contain the particulars for moving forward on LED M. Justin Rider, Esq.

15. Incredibly, the Town’s litigation attorney is now trying to pretend as if these agreements bound the Town into the contract that was signed on April 27, 2020. To reiterate, I have not sought to overturn the MSCRA or the ATP from 2019. NYPA and I agree that these agreements do not contemplate “any specific energy services project”. What I have sought to overturn was the approval by the Town Board of the O&R replacement light scheme and Type II SEQR determination voted on on April 27, 2020. Inasmuch as it appeared NYPA was financing this option, it was appropriate for them to be brought in as a party in this case. However, while the MSCRA and ATP were not contracts subject to SEQR review, NYPA is incorrect in its answer points 36 and 37. The *actual* replacement of the fixtures themselves which was not voted on until April 27, 2020 is not a Type II action for the reasons articulated in my Memorandum of Law and Motion for Preliminary Injunction. (See affidavit point 8 above).

16. Mr. Matsler is simply misleading this Court when he states in his affirmation point 8 (affirmation in opposition to motion), that the Town made a decision to convert to a specific type

of LED light scheme or to even convert to LED lights; they simply decided to allow NYPA to provide them options for lighting. They agreed to proceed with the NYPA agreement; they did not then commit to converting to any specific LED light scheme, did not commit to converting to LED lights generally and certainly did not commit to converting to blue-white LED lights as opposed to orange or any other type of LED lights, such as the one I and others requested via my circulated petition (Exhibit 3).

17. What is particularly deceptive, is that whereas the Town before would have O&R replace Only broken lights, this contract with O&R to replace ALL of the sodium vapor/mercury vapor Orange and Yellow LED lights represents a choice to convert to all of the LED lights, notwithstanding Mr. Matsler's attempt to paint this as a mere purchase of supplies. There would have been no reason whatsoever to buy in bulk, unless the Town planned to immediately replace these lights. Again immediate and total replacement and the financial commitment thereto is NOT the same as replacing the lights when one occasionally breaks, which is what the previous arrangement with O&R was. Mr. Matsler thus makes a misrepresentation in his affidavit point 9 that the purchase in bulk of lights from O&R is a frequently occurring purchasing activity. It is not; the whole point was that in the past O&R would replace a light if it broke; the Town did not maintain a supply of lights, let alone set about purchasing enough to replace ALL of the lights. The whole point of what occurred on April 27th, 2020, was to institute a permanent and final replacement of the lights. Mr. Matsler's misrepresentation to this court in his affirmation point 8 that there was a decision made a year earlier to commit to this LED lighting scheme is simply false. Obviously, as I have oft-stated, Board member Richard Sullivan was hell bent on doing same, but at no point did the Town vote to replace the Sodium Vapor and Mercury Vapor lights or to commit to their replacement or to commit to LED lights specifically. They voted to have NYPA conduct a review of non-binding lighting options. To state otherwise is sanctionable.

The agreements from 2019 do not support Mr. Matsler’s insinuation. (Again, note his colleague at Rider Weiner, is the Town Attorney, Justin Rider, and his emails confirms what the agreements with NYPA actually memorialize- See again Exhibit 6a). Again, I did not try to overturn the NYPA MSCRA and ATP which were to investigate various options in a matter that did not bind the Town to purchase of anything (other than consultant reimbursement costs), and Mr. Matsler is wrong that those agreements constituted a vote or endorsement to have LED lights or any specific lighting scheme.

18. The meeting minutes that Mr. Matsler proffers from Exhibits B and C are misleading. One has to look at the contracts in question from September and October which again, DO NOT BIND the Town to a specific lighting scheme. They ONLY constitute an agreement to investigate lights. The only thing Exhibit B says is that

Council Member Sullivan made a motion seconded by Council Member Gunza to move forward with a proposal and contract from Jeffrey Laino, New York Power Authority.

The contract is ONLY to investigate various lighting options and their cost effect to the Town. Note too in these minutes it states

Council Member Sullivan reported on LED lighting and he stated that someone has a petition against LED lighting

Council Member Sullivan said he would like to move forward with the LED lighting but expects some adversity from some of the public.

Context is everything, and the contract to move forward was to investigate options. It is telling that Sullivan is still acknowledging that he expects (in the future) “some adversity from the public.” With regard to his Exhibit C, Mr. Matsler again takes something out of context and hopes the Court will believe that the “document” referred to therein was a binding commitment to proceed with LED lights, something that the Town NEVER had approved at that time. Note what is written:

Supervisor Livsey reads a document from NY Power Authority asking permission to sign the document regarding comprehensive Street Light Upgrade.

Council Member Sullivan made a motion seconded by Council Member King to allow Supervisor Livsey to sign the document from NY Power Authority to start work on a comprehensive street lighting upgrade.

Mr. Matsler doesn't show a contract different from what I showed I received from the Town via FOIL or what NYPA showed in its Exhibits C and D (and again, NYPA admits that the contract was to investigate and was non-binding)- something that Town Attorney Rider (who works in the same office as Mr. Matsler) took pains to keep re-emphasizing. Exhibit 6a:

Deborah, attached is the Master Agreement. It does not contain the particulars for moving forward on LED M. Justin Rider, Esq.

No vote was taken to approve LED lighting- a vote was taken to have NYPA investigate non-binding options.

19. Furthermore, the June 15, 2020 agreement with O&R that Mr. Matsler shows is not quite the straight lights "purchase" that he would have this Court believe it is. I refer the Court to page 4, Sections 2.1 and 2.2 of this agreement. It isn't just the purchase of lights- it is the transfer of the fixtures, which O&R had previously maintained:

Section 2.1 Transfer of Street Lighting Facilities. Upon the terms and subject to the conditions contained in this Purchase Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase, assume, acquire and receive from Seller, all of Seller's right, title and interest in and to the Street Lighting Facilities.

Section 2.2 Demarcation of Ownership. From and after the Closing, Buyer shall own all portions of each of the Street Lighting Facilities from the point in change (transition) from the Seller's secondary conductor to the street light and including the luminaires, lamps, mast arms, their associated wiring, electrical connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to that point in change; provided that with respect to Street Lighting Facilities for which Buyer has caused an In-Line Fused Disconnect (as defined in the Operating Agreement) to be installed following the Closing, from and after the Closing, Buyer shall own all portions of such Street Lighting Facilities from and including the In-Line Fused Disconnect to the to the street light and including the luminaires, lamps, mast arms, their associated wiring, electrical

connections, and appurtenances, with Seller retaining ownership of the electric distribution system up to the In-Line Fused Disconnect.

As I indicated, the Town had an arrangement with O&R previously that it would replace a light if it broke; on information and belief they kept no lights in inventory (to say nothing of buying enough to replace every light in Fort Montgomery). I alluded to same in paragraph 12 of my petition where I recounted how someone told me who had an O&R replacement light outside of their home indicated it was too bright:

“I have one of the O&R replacement lights outside my window and it is horrible”

What this June 15, 2020 contract provides is not just the sale of lights, but the wholesale transfer of ownership of the “wiring, electrical connections, and appurtenances”. (O&R just gets to supply the electricity to them). The point of doing this was in support of a permanent switch over to LED lights.

20. While NYPA’s affirmant is transparent and honest as to what these documents state, which is consistent with Town Attorney Justin Rider’s characterization of same in Exhibit 6a, elsewhere, they try to mislead the Court such as in Jeffrey Laino’s affidavit in which he wholly mischaracterizes the ATP in totality in his affidavit point 17 where he says:

The Town of Highlands authorized NYPA to replace light fixtures for 167 pre-existing streetlights.

The ATP does no such thing- what the ATP actually says on page 1, end of paragraph 3 (Exhibit D in NYPA’s response):

...should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase³. NYPA will be fully transparent through this process and provide complete documentation as to how it determined all project costs.

³ It should be noted that no project was then contemplated and no specific costs itemized in this contract.

Mr. Laino, of course is not a lawyer, so NYPA presumably thinks it's harmless for him to mischaracterize the ATP and the MSCRA as long as their lawyers are honest and show candor before the Court; however I assert this misrepresentation is deliberate and made to reinforce the Town Affirmant Mr. Matslers' misrepresentations on same. See again my affidavit point 14 above for NYPA's own characterization of the plain text of the ATP.

21. The use of non-lawyers to convey something that is absolutely false is part and parcel of Respondents' strategy. Besides Mr. Laino's characterization of the ATP which is diametrically opposed to NYPA's characterization of same as well as its plain text (and when read with the MSCRA), another non-lawyer's affidavit, Supervisor Livsey should be wholly disregarded. The agreements are not binding contracts- they are agreements to investigate options, and the minutes reflect moving ahead with the agreements; they were not approvals for any specific purchase (which the agreements do not provide). His is an ex post facto attempt to characterize what all Respondents would like the Court to believe was intended in order to escape any review of the April 27, 2020 resolution to go ahead with the O&R contract and deem it Type II. If I had gone to court in the fall on the ATP and an MSCRA, a judge would have had to tell me that the Town did not make any permanent decision on LED lights and an agreement to vet options would not fall under SEQRA's ambit and would have dismissed the case.

III. NYPA's PREVIOUS DESIGNATION OF THEIR OWN INTERNAL PURCHASE OF THE LIGHTS AS A TYPE II ACTION HAS TO DO WITH PURCHASE, NOT INSTALLATION IN A SITE-SPECIFIC CONTEXT AND DOES NOT CREATE RES JUDICATA; THE TOWN MUST MAKE ITS OWN SEQR DETERMINATION AND IN THE CONTEXT OF INSTALLATION

22. Having admitted that the Town of Highlands had NO OBLIGATION to buy a light package by signing the MSCRA and the ATP, NYPA's general counsel, Justin Driscoll, *who himself does not submit an affidavit* misleads the Honorable Court on page 5 of his Memorandum of Law on page 5, ¶:

Through this proceeding, petitioner challenges NYPA's procurement process to obtain a manufacturer of LED streetlights to support its Smart Street Lighting Program and the Project itself as somehow violating the State Environmental Quality Review Act. However, petitioner is simply too late to challenge NYPA's procurement of the streetlights themselves; since that contract was awarded in 2018, petitioner's time to challenge was within four months of NYPA's contract award.

It is completely irrelevant that NYPA procured streetlights on a contract with another party in 2017. **The Town was not a party to a previous finding by NYPA.** The Town did not decide to do business with NYPA until after NYPA had already decided independently that the lights were a Type 2 action. There is no res judicata that would attach. Exhibit F is a bunch of smoke and mirrors; NYPA deciding that its internal purchase of lights from Phillips is between it and Phillips and predates its involvement with the Town. The Town isn't even buying lights directly from NYPA, they are buying lights from O&R.

23. The Town cannot defer to a previous judgment of NYPA to which it was not a party and in which it was not an “involved party”. It could not have had input as it did not have a pending LED lights contract. In any event, NYPA did not address the issue of the use of lights in the context of a community nestled in a state Park, which again, is an issue of *installation in site-specific context*, not merely *purchase*, which is what their Type II designation refers to. NYPA has no headquarters in Fort Montgomery or elsewhere in the Town of Highlands; thus it could not serve as lead agency in this matter, having no familiarity with the environs of Fort Montgomery, or its unique location on the Hudson River and adjacent to various tranches of the Palisades Interstate Park Commission (“PIPC”). In that regard *Price v. Common Council of City of Buffalo*, 3 Misc. 3d 625, 773 N.Y.S.2d 224 (Sup. Ct. 2004) is relevant to the instant case:

SEQRA does not change the existing jurisdiction of agencies nor jurisdiction among local agencies (6 NYCRR 617.3[b]). Respondents' contention that the Planning Board had the most direct authority to approve the permit for the helipad is mistaken. Only the Common Council had that power (Code § 63-3[E]). Planning Board review of site and design plans focuses primarily on new construction, development improvements and off-site impacts (Code article XXVIII §§ 511-137, 511-145, 511-146). The limited role of the

Planning Board in reviewing the site plan and design for a rooftop helipad to be located above an existing hospital building did not qualify it as the agency with “principal responsibility for carrying out or approving” the helipad (ECL 8–0111[6]; *see River Ctr. v. Dormitory Auth. of State of N.Y.*, 275 A.D.2d 683, 684, 713 N.Y.S.2d 527, lv. denied 96 N.Y.2d 703, 722 N.Y.S.2d 795, 745 N.E.2d 1017). To the extent it is claimed that the Common Council and the Planning Board conducted a coordinated environmental review, the failure of the Common Council to act as lead agency and conduct a public hearing to address environmental issues requires that its approval of the helipad be nullified.

(Emphasis added)

Id. 3 Misc.3d at 630.

Here the Town of Highlands should have been lead agency for this determination, not NYPA, due to the Town’s familiarity with its own jurisdiction where these lights would be erected. The idea that the Town cannot delegate its own responsibilities to state agencies, quasi-state agencies or instrumentalities of the State, as NYPA is, is reinforced in *Brander v. Town of Warren Town Bd.*, 18 Misc. 3d 477, 847 N.Y.S.2d 450 (Sup. Ct. 2007):

The plaintiffs further contend that the Town of Warren Board, as lead agency, unlawfully delegated its SEQRA obligations to other agencies, such as the Public Service Commission (PSC) and the OPRHP with respect to future analysis and mitigation after the conclusion of the SEQRA process. Although a lead agency without environmental expertise to evaluate a project may rely on outside sources and the advice of others in performing its function, it must exercise its critical judgment; the final determination on SEQRA issues must remain with the lead agency principally responsible for approving the project. See, Coca Cola Bottling Co. v. Board of Estimate, 72 N.Y.2d 674, 536 N.Y.S.2d 33, 532 N.E.2d 1261 (1998); see also, Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Board, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4th Dept.1999). It is clear from § 3.1.1(e) of the special use permits cited above that the Town of Warren delegated its duties to the PSC and OPRHP for resolution with respect to historic site mitigation, as is set forth in the discussion concerning proposed alternatives concerning cultural and historic resources. By so delegating, the planning board failed to take the requisite hard look at an area of environmental concern and the board's actions are annulled. See, Penfield, supra, citing Matter of Tonery v. Planning Board of Town of Hamlin, 256 A.D.2d 1097, 682 N.Y.S.2d 776 (4th Dept.1998).

Inasmuch as the Town of Warren Board, as lead agency, failed to properly evaluate and analyze sufficient and acceptable alternatives to the project, improperly relied upon plans for future mitigation and improperly delegated its SEQRA duties to other agencies, the board failed to take the requisite hard look at potential environmental impacts. Consequently, this Court finds that their adoption of the FEIS and subsequent issuance of the special use permit was arbitrary, capricious

and an abuse of discretion. *See, Dunk, supra.* As such, the determinations made are annulled and vacated. *See, Pyramid, supra; see also, Penfield, supra.*

(Emphasis added)

Id. 847 N.Y.S. 2d at 485

See also *Coca-Cola Bottling Co. of New York v. Bd. of Estimate of City of New York*, 72 N.Y.2d 674, 532 N.E.2d 1261 (Court of Appeals: 1988). In this case, New York’s highest court upheld the lower two courts’ assertion that the SEQR decision-making was improperly made by the incorrect agency.

Record supported determination of trial court that final decision to issue conditional negative declaration regarding effect on environment emanating from amendment of urban renewal plan to allow recycling activities on certain site was made by City Department of Environmental Protection, rather than by Board of Estimate, which was “lead agency” required by State Environmental Quality Review Act to assess significance of environmental impact of project.

...The City's implementation of the statute here allowed the Board of Estimate—the governmental entity responsible for the final policy decision to proceed with a project—to be insulated from consideration of environmental factors. This violated a fundamental policy of SEORA.

Respondents contend, however, that in this particular case there was no SEQRA violation, because there were no environmental factors for the Board of Estimate to consider. They reason that because DEP concluded that the project would not significantly affect the environment, if certain precautions were taken by Con-Agg, Board of Estimate review was redundant and unnecessary. Respondents, therefore, assert that the SEQRA policy of having the ultimate decision maker assess environmental effects was not affected here.

To be sure, the lead agency under SEQRA is likely to be nonexpert in environmental matters, and will often need to draw on others...**Nevertheless, the final determination on this issue must remain with the lead agency principally responsible for approving the project.**

(Emphasis added)

Id. 72 N.Y.2d 681-683

Here the Town of Highlands is the lead agency principally responsible for approving the project which they did on April 27, 2020. To defer environmental decision-making to NYPA in a matter

to which the Town of Highlands was not a party, is not legal under SEQR, is *ipso facto* arbitrary and capricious pursuant to case law and thus subject to nullification regardless of whether there were reasons to declare the widespread installation of LED lights a Type II (there is no justification for same). Pursuant to 6 NYCRR 617.3 (b), all involved agencies have authority to conduct a SEQR review:

(b) SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies. *SEQR provides all involved agencies with the authority, following the filing of a final EIS and written findings statement*, or pursuant to section 617.7(d) of this Part to impose substantive conditions upon an action to ensure that the requirements of this Part have been satisfied.

(Emphasis added)

The Town of Highlands has to have its own SEQR determination, and cannot rely on one made by NYPA with regard to a decision (to purchase certain lights) that the Town of Highlands was not even a party to. The general principle of environmental review is to take a hard look at the environmental effects, and the Town avoided doing so by mis-typing the action (improperly categorizing as Type II). See e.g. *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y.2d 359, 502 N.E.2d 176 (Court of Appeals: 1986).

24. It is also putting the “cart before the horse” to vote for a contract on the lights, which was not publicly voted on for approval until April 27, 2020 until a SEQR review had been made. I also need to point out to the Court, that I had no idea what NYPA’s relationship was with regard to the ultimate contract with O&R, so I had to attach NYPA as a party to this case. Even if the Court were to find that NYPA had no obligation to continue to put out lights to competitive bid for each subsequent municipality it dealt with (and could rely on decisions previously made with regard to other municipalities), NYPA’s SEQR determination cannot bind the Town. That said, I continue to maintain that NYPA has a responsibility to continue to review the LED light market and not rely on competitive bidding made years earlier when it offers options to the Town. As

demonstrated by Exhibit E, NYPA did not even assign anyone to the Town of Highlands light project until February 6, 2020. On page 2 of Exhibit E, the contractor, Guth DeConzo consulting engineers states:

Should NYPA accept this proposal, a detailed schedule will be developed within one week of the execution of the purchase order.

It is not clear what this \$14,267.14 proposal entails, when NYPA agreed to it, or who else it sought to provide options to the Town. It’s also note-able that NYPA never furnishes the Court what its final work product was to the Town under the MSCRA/ ATP agreements from 2019. It is not clear what options were offered; all that we know is that by April 27, 2020, suddenly, the Town was contracting with O&R, not NYPA, for its total light replacement scheme. (It’s not clear that the O&R contract was something offered by NYPA in its review to the Town- regardless there was no obligation to contract with NYPA under the 2019 agreements.

IV. THE TOWN’S RELIANCE ON 6 NYCRR § 617.5(c)(2),(31) IS MISPLACED; THESE EXEMPTIONS DON’T APPLY TO THE LED LIGHTS

25. I refer the Court to affidavit point 8 above: the *Town of Bedford v. White*, supra, is on point to the instant situation. That case has to do with the installation of traffic lights in a historic district. Obviously traffic lights are all over the place and if they were automatically considered environmental hazards, our Towns would be full of so-called libertarian intersections where there is a big free for all and everyone hopes that they won’t crash when someone else decides to enter the intersection at 90 degrees to another vehicle. In this Second Department case, the court rejected the categorization of the traffic lights as a Type II action writing:

Contrary to the DOT’s assertion, the proposed action does not fit “squarely” within the criteria listed in 17 NYCRR 15.14(e)(37)(ii) as a Type II action. This statute specifically requires that the installation of traffic control devices must “not violate any of the criteria contained in subdivision (d) of this section”, and those criteria in subdivision (d) include the criterion that there be “no effect on any district, site * * * that is listed, or may be eligible for listing, on the National Register of Historic Places” (17 NYCRR 15.14[d][6]; see, 17 NYCRR 15.14[e][37]). The criteria for what constitutes a Type II

action cannot be considered in a vacuum. Given the circumstances of this case, consideration should have been given to environmental concerns associated with the proposed action. Accordingly, the DOT's failure to identify and discuss environmental concerns was correctly viewed by the Supreme Court as improper. Thus, we agree that the DOT's classification of the proposed action as a Type II action was arbitrary and capricious (cf., Matter of McKelvey v. White, 150 Misc.2d 39, 565 N.Y.S.2d 428; Matter of Anderberg v. New York State Dept. of Env'tl. Conservation, 141 Misc.2d 594)

(Emphasis added)

Id. 204 A.D.2d at 559

With the LED light scheme, as I indicated in affidavit point 8, the lights are not a replacement of a *structure or facility*; at best the lampposts themselves could be construed as a structure; to construe the swap out of an environmentally benign emitter for something that creates environmental effects or even just the likelihood of substantial environmental effects would violate the second half of 6 NYCRR § 617.5(c)(2):

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

As I explained in my moving papers (See again Petitioner’s Memorandum of Law pages 3 and 4), the thresholds of 617.4(b)(9)(10) are implicated (the criteria for Type I and unlisted actions). The Town has not purchased the lampposts, though the contract with O&R would have them purchase part of the light fixtures. The transfer of ownership of the appurtenances does not constitute “replacement of a structure” even if the fixtures themselves are deemed a structure. The fixtures aren’t being replaced; only transfer of ownership is occurring.

26. 6 NYCRR § 617.5(c)(31) does not apply either because the lights are not furnishings, equipment or supplies by any direct reading of those words:

(31) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials

Supplies have the connotation of objects that are mobile like notepads and pens, extra printer cartridges in an office, gasoline to power municipal vehicles and the like. Indeed Black’s Law Dictionary defines supplies as “means of provision or relief; stores available for distribution”. (See: SUPPLIES, Black's Law Dictionary (11th ed. 2019). This has the connotation of something that is used up and replenished, not something that is permanently installed in a fixed location. Equipment also connotes mobile artifacts such as vehicles or hand-held devices to measure things. The LawDictionary.com⁴ sees it similarly:

Tools, be they devices, machines, or vehicles. Assist a person in achieving an action beyond the normal capabilities of a human. Tangible property that is not land or buildings, but facilitates business operations.

Furnishings also have a connotation of something that can be used in a home or office that can be moved around like a desks, chairs or similar chattels pursuant to *Endicott v. Endicott*, 41 N. J. Eq. 96, 3 Atl. 157.

27. The point is Respondent Town of Highlands strains the definition of furnishings, equipment or supplies past its logical meaning. By their argument, various fixed entities on people’s property like a permanently running generator or a wind turbine could escape SEQR review because it is “equipment”. (Wind turbines create infrasound and flicker that have been both the subject of legal disputes and *caveat emptor* type environmental documentaries such as *Windfall*⁵ and *Down Wind*⁶ The point is that these items (the LED lights) are being distributed in a permanent fashion in site-specific locations (in a Census Designated Place nestled in the Palisades Park, next to the Hudson River) such that their emanations blanket the whole neighborhood. The thing in question doesn’t stop at its contours like a desk or lamp; the light emanates and creates a permanent effect on the environment. It is also “on” all evening and

⁴ Definition of Equipment: <https://thelawdictionary.org/equipment/>

⁵ Windfall, Trailer: <https://www.youtube.com/watch?v=d3b2DtIT0lk>

⁶ Down Wind, Full Documentary: <https://www.youtube.com/watch?v=55-jBCjtJ88>,

affects not just the neighborhood but also the flora and fauna as described in Exhibit 2. This can be distinguished from a Town’s occasional use of noisy leaf sucking equipment that is rarely used and only on for a relative short period of time.

V. **NYPA’s CLAIMS ABOUT LACK OF DELETERIOUS HEALTH EFFECTS IS BELIED BY EVIDENCE I PRESENTED AND FAILS TO MEET THE TESTS OF THE PRECAUTIONARY PRINCIPLE, WHICH HAS BEEN EMBRACED UNDER SEQOR AND OTHER NEW YORK STATE ENVIRONMENTAL CASE LAW**

28. NYPA’s comment in answer point, 37, that “there have been no deleterious health effects with these installations” is simply conclusory and inapposite. The scientific studies referenced in my briefing book are clear that cumulativity is an issue; also, NYPA has shown no evidence that it has tracked people’s complaints of sensitization to the bright lights or correlated sleep problems, breast cancer increases or vision problems with exposure to the lights. NYPA does not state how long the LED lights have been in use; they mention they have worked on lighting for 30 years, with LED being a more recent addition:

This treatment is thoroughly consistent with NYPA's thirty-year history in its involvement in the replacement of inefficient light fixtures, first with fluorescent lights and now as the technology has evolved, with LED lights.

NYPA Memorandum of Law ¶2

Fluorescent lighting itself has been the subject of concern for some time as explained in a 2014 article by Dr. Victoria Dunckley in *Psychology Today*, “Why CFL’s Aren’t Such a Bright Idea: are energy efficient bulbs getting on your nerves?” The article discusses neurological effects including effects on cognition and sleep and cites to 11 studies, claiming that CFL’s (compact fluorescent lighting) and LED lighting are the least healthy of all lighting options. (Exhibit 18). So, when NYPA cites to experience with fluorescents, they can’t claim that the lighting they have used has been non-controversial. With the LED lights, the concept they offer is shoot now, ask questions later. The appropriate approach should be the use of the Precautionary Principle

used by governments around the world and as espoused in the 1992 Rio Declaration on

Environment and Development, Principle 15:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Rio Declaration on Environment and Development, Principle 15
Report of the United Nations Conference on Environment and
Development (June 3-14, 1992) See Exhibit 19)

I have shown ample evidence in Exhibit 2 of the scientific evidence that this lighting has negative effects on humans and the environment as well as subsequent emails to the Town (see especially my Exhibits 7, 8, 9 10. New York State Environmental Conservation Law refers to the precautionary principle as a bedrock principle in environmental planning. See esp:

McKinney's commentary on ECL § 27-0707:

As the court noted, the village properly found these “violations posed a threat to the safety of the community and the environment,” and the village “did not need to wait for actual harm to occur” -- a fundamental precautionary principle underlying environmental protection. See, e.g., *Ethyl Corp. v. EPA*, 541 F.2d 1 (D.C. Cir.), cert. denied, *sub nom. E.I. Dupont De Nemours and Co.*, 426 U.S. 941, 96 S.Ct. 2662, 49 L.Ed.2d 394 (1976), upholding the EPA's ban on lead in gasoline: “the statutes, and common sense, demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.”

(Emphasis added)

See also: *Joint Petition of Williams Field Servs. Co., LLC, Williams Partners, L.P., Dmp New York, Inc., & the Williams Companies, Inc., for A Declaratory Ruling Regarding Application of Section 70 of the New York Pub. Law., No. 18-G-0330*, 2018 WL 3817927 (July 17, 2018)

According to CROW, the Compendium demonstrates that natural gas production and transportation activities present health and safety risks, and these risks justify increasing the regulatory scrutiny applied to WFS and DMP. Finally, CROW notes that the Wingspread Consensus Statement on the Precautionary Principle (Wingspread Statement) provides that precautionary measures should be adopted when an activity might present a risk of harm to human health or the environment, whether or not a causal link between activity and impact has been conclusively established. CROW asserts that

residents near the Dunbar Station have been subject to noise, odors, and increased health and safety risks due to the operation of this facility. According to CROW, these impacts warrant increasing the regulatory burden imposed on WFS and DMP.

(Emphasis added)

The Wingspread Conference on the Precautionary Principle referred to by *Joint Petition of Williams Field Servs. Co., LLC*, supra ⁷ reads:

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.

In this context the proponent of an activity, rather than the public, should bear the burden of proof.

(Exhibits 20 and 21)

The point here is that besides that besides the mis-typing (incorrect SEQR categorization as Type II), a proper hard look would result in the conclusion that the LED lights violate the Precautionary Principle, which is referred to in State SEQR and other environmental case law. In any event, the Town never performed this necessary analysis.

VI. THE GOVERNMENT LAWYER’S ARGUMENT ABOUT MY PRO SE STATUS IS NOT A DEFENSE TO MY CLAIMS; THE GOVERNMENT LAWYER’S CLAIM THAT A TOWN BOARD MEMBER DOES NOT HAVE A BUSINESS RELATIONSHIP WITH NYPA IS FRIVOLOUS AND THE CONFLICT OF INTEREST ISSUE SHOULD INVALIDATE THE APRIL 27, 2020 VOTE FOR LED LIGHTS CONTRACT

29. With regard to the Town’s Affirmant Mr. Matsler’s self-serving characterization of me as

⁷ The Wingspread Conference on the Precautionary Principle was convened by the Science and Environmental Health Network, an organization that links science with the public interest, and by the Johnson Foundation, the Science and Environmental Health Network and the C.S. Fund and the Lowell Center for Sustainable Production at the University of Massachusetts-Lowell. <https://www.sehn.org/sehn/wingspread-conference-on-the-precautionary-principle> (last viewed 10/9/20) (Exhibit 20) See also Wikipedia page on the Wingspread Conference: https://en.wikipedia.org/wiki/Wingspread_Conference_on_the_Precautionary_Principle (Exhibit 21)

a serial pro se litigant, it is of no legal moment and does not support his argument in this case. However, since Mr. Matsler’s continued argument in litigation is that my non attorney pro se status should be an automatic defense to any argument I make, I feel the need to call it out as Orwellian and inapposite⁸ especially in light of his reliance on his status of a member of the bar when he makes gross misrepresentations about contracts and votes to this Honorable Court. If the Town were truly confident enough in its argument in defense of the lighting scheme, it should have had no need to attempt this frivolous argument. It would be as if I said to this Court, please ignore the Town’s legal argument its officers repeatedly break the law⁹. While it is open

⁸ What the cases I have against the Town of Highlands have in common are that they involve environmental degradation of my immediate surroundings.

I work on a lot of cutting-edge environmental issues as a consultant professionally and taught myself the law to support my defense of same. I have applied this knowledge to my legal cases against the Town of Highlands.

I was also invited to co-teach a CLE course on one of these topics by the State Bar Association.

(I come from a long line of lawyers, including my late father, who read the law without going to law school after studying for a PhD in economics; I am similarly self-taught after earning an MBA from MIT.)

I also was successful in getting three publicly traded companies with a team of seasoned lawyers to settle with me for a lot of money in a defective products case that I litigated pro se.

Largely, this “argument” of Mr. Matsler’s is a kind of defense to my claims that his client has been operating with impunity and frequently at my personal expense.

⁹ In terms of his attempt to paint me as an outlier- with regard to the noise issue he is bringing up, every lawyer in Orange County I have consulted agrees with me that the Town’s ordinance is illegal and was passed in retaliation for my suing the Town for an illegal construction project. (It absurdly allows construction to go at nighttime in residential areas 7 days a week and constituted a taking of my property since I was forced out of my home from morning until late at night for an extended period of time).

The Town illegally charged me thousands of dollars and fees to get a Zoning Board of Appeals case heard. When the Town tried to extract more illegal monies out of me to get my zoning appeal decided, my ZBA attorney wrote to them to tell them that they weren’t even following their own law (I had previously written to say that the law itself was illegal based on a Court of Appeals case from the 1970’s).

The issue isn’t that I have had to sue the Town more than once, it is that that the Town refuses to follow the law and does whatever it wants and will continue to do so on each and every one of these matters absent court intervention.

I am not the only person asserting lawlessness; the town is fending off a RICO lawsuit in federal court. (*Cornetta v. Town of Highlands et al.* SDNY).

and notorious that I have asserted that multiple facts support my characterization of this municipality, it is not an argument in support of whether they acted in violation of law in this particular instance; the Town is entitled to its due process as am I.

30. An issue which should invalidate this scheme entirely is that its main champion is Mr. Sullivan, who by his own statement, works for NYPA (which begs the question of why NYPA is “unaware” of same) and why the Town pleads ignorance. They ignore the obvious, something stated by Mr. Sullivan himself, to duck the obvious disqualifying ethical violation. I will move before this Court to request a deposition of Mr. Sullivan; with or without such a deposition, this Court could come to its own conclusions based upon Mr. Sullivan’s email to NYPA. The Town also is straining credulity to act as if Mr. Sullivan were not the main point person on this project; the email trail with NYPA (Exhibit 11) as well as the articles in the *News of the Highlands* (Exhibit 5) make it clear that Mr. Sullivan was shepherding this project, that it was his “baby” so to speak. The parties have provided no defense that the contract should be invalidated due to conflict of interest. It is relevant that general counsel for NYPA, Justin Driscoll, fails to submit an affidavit definitively contradicting my claims that Town Board member Sullivan is not employed to work on NYPA projects, when he himself stated same in an email to Jeffrey Laino.

VII. I HAVE STANDING TO BRING THIS CASE OWING TO MY ALLEGATIONS OF HAVING MORE EXPOSURE TO THESE LIGHTS THAN OTHER CITIZENS DUE TO MY BEING IN THE HABIT OF WALKING AT NIGHT, WHICH WILL BE PERMANENTLY STYMIED BY THE ROLLOUT OF THESE LIGHTS AND BECAUSE OF MY ALLEGATIONS OF A PARTICULAR ENVIRONMENTAL SENSITIVTY THAT THE UNITED STATES DEPARTMENT OF LABOR RECOGNIZES AS OFTEN OCCURING WITH LIGHT SENSITIVITY

31. As discussed in affidavit point 7 above, I am one if the few (and generally I would say the only person in my immediate neighborhood) who has been in the regular habit of walking at

night. I do that because it is peaceful and quiet and I can avoid running into people and chatting when I want to be alone with my thoughts. I stated same in my Affidavit in Support of this motion:

With regard to the lights themselves, I used to walk in the neighborhood at night before the Pandemic) and don't need the whole neighborhood to be lit up to the point where it is so bright, it is too irritating to walk.

Petitioner's Affidavit in Support of Request for Preliminary Injunction, affidavit point 17:

Brummel v. Town of North Hempstead Town Bd., supra speaks to the instant situation:

“[I]n land-use and environmental cases, ‘a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing ... to challenge government actions that threaten that resource’” (*Matter of Long Is. Pine Barrens Socy., Inc. v. Central Pine Barrens Joint Planning & Policy Commn.*, 113 A.D.3d 853, 856, 980 N.Y.S.2d 468, quoting *Matter of Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 N.Y.3d 297, 301, 890 N.Y.S.2d 405, 918 N.E.2d 917).

(*Emphasis added*)

Id. 145 A.D.3d at 882

My penchant for taking exercise at night applies squarely to this test. Because I walk at night, the injury to me is unique and not suffered by the public at large.

32. Furthermore, in my Petition, I discussed the fact that I have environmental sensitivities and specifically, that I have electromagnetic hypersensitivity. In paragraph 2, footnote 2 of my Petition, (the “Parties” section), I discussed what specific environmental sensitivity I have (in the context of discussing my troubles with the Town and being forced out of my home in the middle of a pandemic due to construction noise that was going on while I was supposed to be under stay at home orders):

Furthermore, given some personal environmental sensitivities, I can't work in most indoor environments, was dependent upon my home and had nowhere to go work.....

....It is open and notorious to at least two of the parties, the Town of Highlands and O&R that I allege electromagnetic sensitivities- so the implications of being forced out of my

home/office for upwards of 14 hours a day was a particular problem because I could not find another place to work during the day that did not have Wi-Fi, something I must avoid due to this electromagnetic sensitivity. The noise problem is ongoing.

Petition @ ¶ 2, Footnote 2

33. Exhibit 22 are the recommendations put out by the United States Department of Labor (“USDOL”) in 2016 for people alleging electromagnetic sensitivities. They state:

There are people who report a sensitivity to electromagnetic fields. Although it has been difficult for the environmental health and medical communities to define, individuals with electromagnetic sensitivity report various symptoms including but not limited to fatigue, weakness, neurological issues, immunological issues, gastrointestinal issues, increased irritability, lack of ability to think clearly and quickly, sleep disturbance, overall malaise, and anxiety.

Despite the medical community's difficulty in defining electromagnetic sensitivity, individuals with the condition may benefit from job accommodations. The following is a quick overview of some of the accommodations that might be useful. To discuss an accommodation situation with a consultant, contact JAN directly.

Accommodation ideas for individuals with electromagnetic sensitivity:

- Allow communication via typewriter or handwritten notes rather than via computer or cover the computer with Plexiglas or other shielding material
- Provide headset/handset extenders or alternate headsets to lengthen the distance between devices that trigger symptoms and the employee's body
- Change the employee's shift to allow for less exposure to others' devices
- Relocate workplace away from areas where symptoms are triggered. This may include limiting certain types of devices in the vicinity of the employee's workstation
- Allow telework (Note: regarding work at home, unless the employee wants to work at home, other options should be explored first to keep the employee in the workplace)
- Allow the employee to meet with others in areas where triggers are minimized or allow remote access to meetings or activities that must take place in areas that trigger symptoms.
- Provide wired telephones and network connections
- Provide building-wide and/or workspace shielding of equipment and devices, for example add filters to fluorescent lights and tape electrical cords
- **Individuals with electrical sensitivity may also experience limitations from fragrance sensitivity and/or photosensitivity**

(Emphasis added)

Light is an electromagnetic field. One issue with regard to electromagnetic sensitivity, when one is sensitive to one frequency, one eventually gets sensitized to other frequencies over time.

Exhibit 22b shows recommendations for light sensitivity which include filtering the light.

Streetlights cannot be filtered.

34. Similarly, Exhibits 23 and 24 are USDOL updated pages on the same topic from 2018.

Exhibit 23 discusses electrical sensitivity further stating:

About Electrical Sensitivity

There are people who report a sensitivity to electromagnetic fields. Although it has been difficult for the environmental health and medical communities to define, individuals with electromagnetic sensitivity report various symptoms including but not limited to fatigue, weakness, neurological issues, immunological issues, gastrointestinal issues, increased irritability, lack of ability to think clearly and quickly, sleep disturbance, overall malaise, and anxiety. Despite the medical community's difficulty in defining electromagnetic sensitivity, individuals with the condition may benefit from job accommodations.

Key Accommodations:

- Allow communication via typewriter or handwritten notes rather than via computer or cover the computer with Plexiglas or other shielding material
- Provide headset/handset extenders or alternate headsets to lengthen the distance between devices that trigger symptoms and the employee's body
- Change the employee's shift to allow for less exposure to others' devices
- Relocate workplace away from areas where symptoms are triggered. This may include limiting certain types of devices in the vicinity of the employee's workstation
- Allow telework
- Allow the employee to meet with others in areas where triggers are minimized or allow remote access to meetings or activities that must take place in areas that trigger symptoms.
- Provide wired telephones and network connections
- **Provide building-wide and/or workspace shielding of equipment and devices, for example add filters to fluorescent lights and tape electrical cords**

(Emphasis added)

Pages 5 and 6 of this document refers to providing LED and other light filters:

Alternative Lighting
Anti-Glare Filters for Fluorescent Lights

- Flexible Schedule
- Fluorescent Light Tube Covers
- Full Spectrum or Natural Lighting Products
- LED Light Filters
- LED Lighting
- Lighting Gel Filters
- Modified Lighting
- Non-Fluorescent Lighting
- Personal Visors
- Telework, Work from Home, Working Remotely

There is, in other words, already a presumption that people who are electrically sensitive should shield themselves from light. Exhibit 24 is the USDOL page called “When New Technologies Hurt” recommends:

- Providing alternative lighting, or ultraviolet (UV) filtering for compact fluorescent lamp (CFL) or halogen lights; and
- Providing computer screen and phone screen UV filters.

35. Ultimately, this New York State’s highest court has ruled that standing should not be such a restrictive test to insulate a municipality from review. See *Sierra Club v. Village of Painted Post*, 26 N.Y.3d 301 (Court of Appeals: 2015):

...."This Court recognize[s] ... that standing rules should not be 'heavy-handed,' and [has] declared that we are 'reluctant to apply [standing] principles in an overly restrictive manner where the result would be to completely shield a particular action from judicial review. * * That result would effectively insulate the [municipality's] actions from any review and thereby run afoul of our pronouncement that the standing rule should not be so restrictive as to avoid judicial review."

Thus, [Petitioner's] allegation about train noise caused by the increased train traffic keeping him awake at night, even without any express differentiation between the train noise running along the tracks and the noise from the transloading facility, would be sufficient to confer standing....

Id. 26 N.Y.3d at 311.

Here the Town of Highlands would like to similarly escape judicial review of its improper determination. I meet standing thresholds due to my allegations of enjoying the outdoors at

night, when I generally take my exercise, unlike most people, and due to my allegations of environmental sensitivities.

CONCLUSION

36. The Purchase of Lights and Installation of Lights in a site specific context are two different things and the latter is subject to SEQR review. NYPA did not perform a SEQR review in a site-specific context; they only performed a review on the *purchase* of lights; even if this were merely a “purchase of lights”, the Town of Highlands would not be bound by any NYPA previous determination; no *res judicata* or estoppel attaches. The Town is also legally obligated to conduct its *own* SEQR review and not rely upon NYPA.

37. The contract that was voted on on April 27, 2020 is between the Town and O&R; its purpose is to replace all LED lights across the Town as intended (Supervisor Livsey’s affidavit makes it clear that his ultimate intended goal (never memorialized in a vote, which was only a vote to have NYPA investigate options) was removal of vapor lights and LED illumination of the whole Town, which occurred by vote on 4/27/20). It doesn’t get Type II exemption because it isn’t replacement of a structure or a repair or the purchase of furnishings/ equipment/ supplies.

38. The September 2019 agreements between the Town and NYPA were solely to investigate options and did not bind the Town. There was no vote by the Town to purchase LED lights and swap them out until April 27, 2020; the 2019 agreements were to have NYPA suggest options. No specific lighting scheme was contemplated. The text is clear, so too is NYPA’s attorney herein as well as the Town of Highlands Attorney, M. Justin Rider. The attempt to misrepresent these facts is an attempt to escape judicial review of the Town’s vote April 27, 2020 to put specific LED lights throughout the Town and sign a contract that would have the Town take over the light fixtures and buy lights from O&R, enacting a permanent final removal of the benign Sodium and Mercury Vapor Lights.



Deborah Kopald,
Petitioner
P.O. Box 998
Fort Montgomery, NY 10922

Sworn to before me this
23rd day of October 2020



Notary Public

Notarization was made pursuant to NY Governor's Executive Order 202.7, as extended.

LISA ALVARADO
Notary Public, State of New York
No. 01AL6101150
Qualified in Orange County
Commission Expires November 3, 2023

Michael Matsler, Town
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Victoria L. Dunckley M.D.
Mental Wealth

Why CFL's Aren't Such a Bright Idea

Are energy efficient bulbs getting on your nerves?

Posted Sep 15, 2014



If CFL's are toxic, should we put them to rest?

Source: James Steidl/Fotolia

Environmental culprits that trigger [stress](#) reactions, [nervous system](#) dysregulation, or physical sensitivity reactions are often overlooked and underestimated. Compact fluorescent light bulbs (“CFLs”) have become increasingly ubiquitous, as mental health-friendly incandescent bulbs are slowly being phased out in the U.S., Canada, and Europe. While proponents argue that they save energy costs,* if energy efficient bulbs increase mental and physical disease burden—even if by a small amount—the collective cost to public health to use them may be enormous.

[Attention](#) regarding potentially harmful effects of CFLs is typically focused on the presence of neurotoxic mercury inside the bulb, the various forms of radiation emitted, “dirty electricity”, or the relatively high amounts of blue light causing sleep disturbance via melatonin suppression.¹ But there appear to be other aspects that are concerning as well.

What About “Flicker”?

Any fluorescent bulb (tubes or CFLs) will emit a “flicker,” which can trigger nervous system events like migraines, tics, or seizures in sensitive individuals. Manufacturers now claim that any flicker present in newer bulbs is imperceptible to the human eye, and thus are considered flicker-free. But how do we know that the brain doesn’t get irritated by a flicker the eye can’t “see”? I myself am sensitive to overhead fluorescent lights as they bother my eyes and make me feel drained. And since I see patients with autism, tics, and seizure disorders, I have made a point to only use incandescent light in whichever office I’m working in, especially since several of my more sensitive patients have complained or asked me to turn them off on the days I’ve been forced to use them. [Traumatic brain injury](#) patients may also report intolerance to fluorescent light.

CFLs, on the other hand, feel even worse to me than overhead fluorescents—I can barely stand to be in a room with one. They make me feel jittery, fragmented, and irritable. I realize they bother me more than most people, but nevertheless the experience has convinced me that the light produced by CFLs directly affects the nervous system. I felt that there had to be something about the light quality itself –not just the radiation or melatonin suppression—that irritate neurons (brain cells), either by electrical excitability (causing chaotic signaling in the brain) or by a general physiological stress (fight or flight) response—or both.

Fluorescent Light Induces a Stress Response

US

circadian pathways.

Although the stress reaction from CFLs is likely caused by several factors, here are two separate mechanisms to consider.

ARTICLE CONTINUES AFTER ADVERTISEMENT

1. The high color (colder/bluer) temperature of fluorescent light stimulates the non-visual pathways from the eye to various parts of the brain that involve biorhythms (e.g. “the body clock”), stress hormones, emotions, arousal levels, and muscle tension.

According to a research summary of CFLs’ effect on stress reactions, the spectral composition from CFL bulbs does not just suppress melatonin, but directly triggers a fight or flight response via hormones, biorhythm disruption, and stimulation of the brain’s arousal center.**² Research consistently demonstrates fluorescent lights raise stress markers, such as reduced heart rate variability, raised blood pressure, increased skin conductance, stronger startle response, reduced drop in body temperature during sleep, increased cortisol, and reduced slow wave (stage 4, the deepest stage) compared to full spectrum incandescent lighting.^{3 4 5} Since there is evidence that radiation and dirty electricity also induce stress reactions, the stress effect of CFLs is troublesome.

The emerging field of “physiological anthropology” focuses on the impact of technological environmental factors, such as the biological effects of artificial light so that we can make appropriate adjustments and improve quality-of-life. For example, one study found that dynamic light in a first grade classroom that changed depending on the students’ needs throughout the day improved oral reading fluency.⁶ Another study demonstrated increases in prosocial behavior in adults when exposed to warmer light, as measured by preference to resolve conflict with collaboration rather than avoidance, and by increased time spent doing unpaid volunteer work.⁷

Although full spectrum fluorescent lighting (FSFL) has been proposed as a solution to more closely mimic natural daylight, studies regarding its effects on mood and cognition are inconsistent; one theory about the inconsistent effects are that FSFL may produce more flicker both in brightness (luminosity) and color (chromatic).⁸

2. Pupillary “flutter” caused by the spiked spectral pattern emitted by fluorescent light triggers aberrant signaling. This mechanism is more speculative, and if proven true may have a more pronounced effect in those individuals with autism or other neurological sensitivities/dysfunction. Because fluorescent light by nature emits spectral peaks (e.g. blue and red “bursts”) as the phosphorous fluoresces vs. the smooth and continuous full spectrum output of incandescent light,^{***} fluorescent light is more difficult for the eyes and brain to process. Thus, one hypothesis is that the spiked nature causes erratic pupil constriction, alternating between constriction with blue spectral spikes or bursts and relative dilation from red light bursts, which then agitates the brain.⁹

Support for this effect is the finding that autistic individuals have a slower pupillary response to light,¹⁰ and this is one of the populations that are thought to be extra sensitive to fluorescents. Perhaps this slower pupil

US

Do Fluorescent Lights Trigger Disruptive Behavior?

Though the research on this subject is sparse, there have been a handful of studies that indicate increased repetitive behaviors (in autism)^{11 12} or hyperactivity¹³ when subjects are exposed to fluorescent vs. incandescent light. Message boards for parents of children with tics/Tourette's often mention fluorescent lights—especially intense ones—triggering tics. It's important to note that these studies looked at immediate or near-term effects; I suspect the long term effects, like those that occur from [overstimulating screen-time](#), would be more pronounced as the dysfunction accumulates.

Let the Precautionary Principle Be Your Guide

The **precautionary principle** or precautionary approach states if an action or policy is associated with a suspected risk of causing harm to the public or to [the environment](#), that action can and should be taken to prevent such harm, even if the harm is not yet scientifically proven. Particularly with children, we should proceed with extreme caution, since children have unique vulnerabilities (for example to UV radiation), are still developing, and may not bear the full brunt of toxic exposures for decades. Furthermore, in light of rising rates of autism and other mental health issues in children, any and all environmental changes in recent decades should be looked at very closely.

The jury may be out regarding CFLs causing or exacerbating specific neurological or [psychiatric](#) disorders or behaviors. But the evidence seems pretty solid that CFLs and other fluorescent lights induce a stress response and negatively impact sleep, which we know impacts [emotional regulation](#), [memory](#), appropriate immune responses, hormonal balance, and repair mechanisms.

The healthiest light is sunlight or candlelight, followed by incandescent, then halogen, then LEDs, then CFLs. I recommend that parents of children with psychiatric, neurological, learning, or chronic medical conditions switch out all CFLs in the home for incandescent or halogen bulbs. This is particularly important to do in and near your child's bedroom. And since it's likely your child's classroom has overhead fluorescents—adding hours daily of exposure—ask that your child be allowed to sit next to a window, and if some of the overhead lights nearest the window can be turned off. Lastly, you can also help synchronize your child's circadian rhythms by exposing him or her to bright natural light first thing in the mornings, which will not only improve sleep but will help buffer against any ill effects from artificial light.

ARTICLE CONTINUES AFTER ADVERTISEMENT

For more about how light from electronic screen devices can cause nervous system dysregulation, visit www.drduckley.com/videogames and check out [Reset Your Child's Brain: A Four Week Plan to End Meltdowns, Raise Grades and Boost Social Skills by Reversing The Effects of Electronic Screen-Time](#).

*Why not simply reduce air conditioning use instead? How many of us take a sweater to the office even in the summer because it's freezing??

US

goes to the PVN which projects to both endocrine (hormones, including cortisol) and autonomic nervous system (fight-or-flight vs rest-and-digest balance) pathways. From the PVN, signals travel to the MFB, which is concerned with emotion and reward seeking, and the RF, which is the arousal center that projects "up" to the brain and "down" to the spinal cord, triggering muscle tension in the limbs.

*** Incandescent light is emitted in a smooth, symmetrical, sinusoidal wave, while CFLs create perturbances in the electricity via backflow as they transform energy to make it "efficient".

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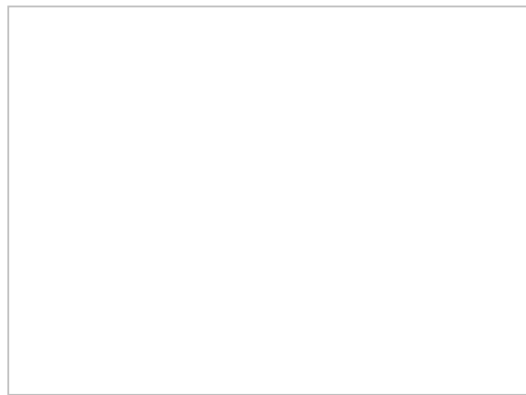
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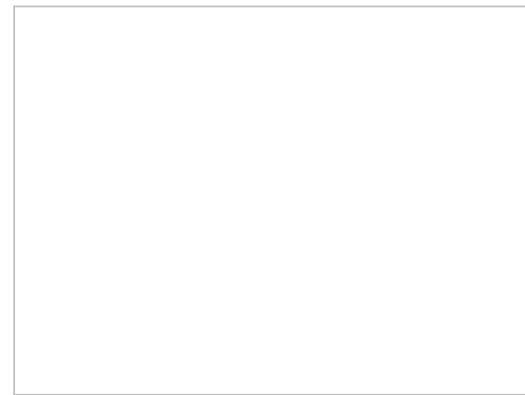


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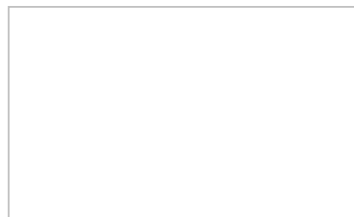
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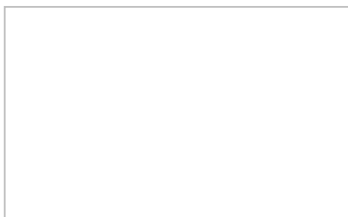
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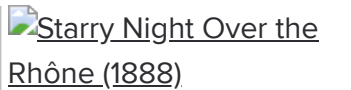
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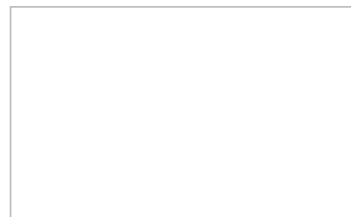
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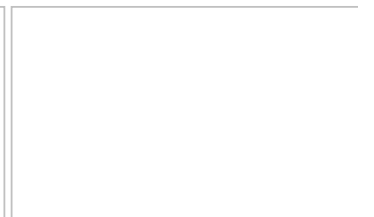
[10 Ways to Protect the Brain from Daily Screen Time](#)



[Starry Night Over the Rhône \(1888\)](#)

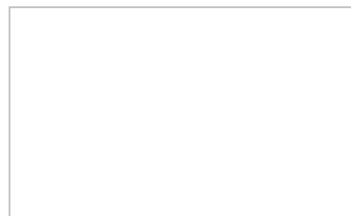


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Exhibit 19 Rio Declaration on Environment and Development - 1992
(1116-1120)

12 August 1992

CONF.151/26 (Vol. I) REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRON

United Nations

A/CONF.151/26 (Vol. I)



General Assembly

Distr. GENERAL

12 August 1992

ORIGINAL: ENGLISH

REPORT OF THE UNITED NATIONS CONFERENCE ON
ENVIRONMENT AND DEVELOPMENT*

(Rio de Janeiro, 3-14 June 1992)

Annex I

RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, a/ and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and

encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

* * * * *

a/ Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.

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Exhibit 20 Wingspread Conference on the Precautionary Principle –
Science and Environmental Health Network
(1121-1123)



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Wingspread Conference on the Precautionary Principle

AUGUST 5, 2013

January 26, 1998 Last weekend at an historic gathering at Wingspread, headquarters of the Johnson Foundation, scientists, philosophers, lawyers and environmental activists, reached agreement on the necessity of the Precautionary Principle in public health and environmental decision-making. The key element of the principle is that it incites us to take anticipatory action in the absence of scientific certainty.

At the conclusion of the three-day conference, the diverse group issued a statement calling for government, corporations, communities and scientists to implement the "precautionary principle" in making decisions.

The 32 conference participants included treaty negotiators, activists, scholars and scientists from the United States, Canada and Europe. The conference was called to define and discuss implementing the precautionary principle, which has been used as the basis for a growing number of international agreements. The idea of precaution underpins some U.S. policy, such as the requirement for environmental impact statements before major projects are launched using federal funds. But most existing laws and regulations focus on cleaning up and controlling damage rather than preventing it. The group concluded that these policies do not sufficiently protect people and the natural world.

Participants noted that current policies such as risk assessment and cost-benefit analysis give the benefit of the doubt to new products and technologies, which may later prove harmful. And when damage occurs, victims and their advocates have the difficult task of proving that a product or activity was responsible. The precautionary principle shifts the burden of proof, insisting that those responsible for an activity must vouch for its harmlessness and be held responsible if damage occurs. The issues of scientific uncertainty, economics, environmental and public health protection which are embedded in the principle make this extremely complex. We invite your thought and conversation on these topics.

The Wingspread Consensus Statement on the Precautionary Principle The release and use of toxic substances, the exploitation of resources, and physical alterations of the environment have had substantial unintended consequences affecting human health and the environment. Some of these concerns are high rates of learning deficiencies, asthma, cancer, birth defects and species extinctions; along with global climate change, stratospheric ozone depletion and worldwide contamination with toxic substances and nuclear materials.

We believe existing environmental regulations and other decisions, particularly those based on risk assessment, have failed to protect adequately human health and the environment - the larger system of which humans are but a part.

We believe there is compelling evidence that damage to humans and the worldwide environment is of such magnitude and seriousness that new principles for conducting human activities are necessary.

While we realize that human activities may involve hazards, people must proceed more carefully than has been the case in recent history. Corporations, government entities, organizations, communities, scientists and other individuals must adopt a precautionary approach to all human endeavors.

Therefore, it is necessary to implement the Precautionary Principle: When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.






In this context the proponent of an activity, rather than the public, should bear the burden of proof.

The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.

Conference Partners The Wingspread Conference on the Precautionary Principle was convened by the Science and Environmental Health Network, an organization that links science with the public interest, and by the **Johnson Foundation** (<http://www.johnsonfdn.org/>), the **SEHN** (<http://static1.squarespace.com/static/5ad8bb3336099bd6ed7b022a/5b563fd4124f1c89fba029fe/5b564110124f1c89fba0614a/1532379408219/wing.html?format=original>), the C.S. Fund and the Lowell Center for Sustainable Production at the University of Massachusetts-Lowell.

Wingspread Participants:

Dr. Nicholas Ashford M.I.T. Katherine Barrett Univ. of British Columbia Anita Bernstein Chicago-Kent College of Law Dr. Robert Costanza Univ. of Maryland Pat Costner Greenpeace Dr. Carl Cranor Univ. of California, Riverside Dr. Peter deFur Virginia Commonwealth Univ. Gordon Durnil Attorney Dr. Kenneth Geiser Toxics Use Reduction Inst., Univ. of Mass., Lowell Dr. Andrew Jordan Centre for Social and Economic Research on the Global Environment, Univ. Of East Anglia Andrew King United Steelworkers of America, Canadian Office Dr. Frederick Kirschenmann Farmer Stephen Lester Center for Health, Environment and Justice Sue Maret Union Inst. Dr. Michael M'Gonigle Univ. of Victoria, British Columbia Dr. Peter Montague Environmental Research Foundation Dr. John Peterson Myers W. Alton Jones Foundation Dr. Mary O'Brien Environmental Consultant Dr. David Ozonoff Boston Univ. Carolyn Raffensperger Science and Environmental Health Network Dr. Philip Regal Univ. of Minnesota Hon. Pamela Resor Massachusetts House of Representatives Florence Robinson Louisiana Environmental Network Dr. Ted Schettler Physicians for Social Responsibility Ted Smith Silicon Valley Toxics Coalition Dr. Klaus-Richard Sperling Alfred-Wegener- Institut, Hamburg Dr. Sandra Steingraber Author Diane Takvorian Environmental Health Coalition Joel Tickner Univ. of Mass., Lowell Dr. Konrad von Moltke Dartmouth College Dr. Bo Wahlstrom KEMI (National Chemical Inspectorate), Sweden Jackie Warledo Indigenous Environmental Network

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-  (<https://www.linkedin.com/sharearticle?mini=true&source=the+science+and+environmental+health+network&summary=last+weekend+at+an+historic+gathering+at+winn>)
-  (<https://www.reddit.com/submit?url=https%3A%2F%2Fwww.sehn.org%2Fsehn%2Fwingspread-conference-on-the-precautionary-principle>)
-  (<https://www.tumblr.com/share/link?url=https%3A%2F%2Fwww.sehn.org%2Fsehn%2Fwingspread-conference-on-the-precautionary-principle>)



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WIKIPEDIA

Wingspread Conference on the Precautionary Principle

The **Wingspread Conference on the Precautionary Principle** was a three-day academic conference where the precautionary principle was defined. The January 1998 meeting took place at Wingspread, headquarters of the Johnson Foundation in Racine, Wisconsin, and involved 35 scientists, lawyers, policy makers and environmentalists from the United States, Canada and Europe.^{[1][2]}

Contents

Background

Final statement

Follow up committees

References

Background

The formal concept evolved out of the German socio-legal tradition in the 1930s, centering on the concept of good household management.^[3] In German the concept is *Vorsorgeprinzip*, which translates into English as *precaution principle*.

Many of the concepts underpinning the precautionary principle pre-date the term's inception. For example, the essence of the principle is captured in a number of cautionary aphorisms such as "an ounce of prevention is worth a pound of cure", "better safe than sorry", and "look before you leap".^[4] The precautionary principle may also be interpreted as the evolution of the ancient medical principle of "first, do no harm" to apply to institutions and institutional decision-making processes rather than individuals.

Final statement

In the final text of the agreement, it was agreed that the precautionary principle could be summarized as

cv

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.^[5]

The members also concluded that current environmental policies do not do enough to prevent environmental disasters instead of controlling damage after an incident.

Follow up committees

The February 2, 2000 European Commission Communication on the Precautionary Principle notes: "The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU".^[6]

The January 29, 2000 Cartagena Protocol on Biosafety says: "Lack of scientific certainty due to insufficient relevant scientific information ... shall not prevent the Party of import, in order to avoid or minimize such potential adverse effects, from taking a decision, as appropriate, with regard to the import of the living modified organism in question."

References

1. "The Precautionary Principle" (<http://www.mindfully.org/Precaution/Precautionary-Principle-Common-Sense.htm>). The Science and Environmental Health Network. January 2000. Retrieved October 25, 2008.
 2. Detwyler, Thomas (3 March 2001). "The Precautionary Principle" (<https://web.archive.org/web/20041108043113/http://www.uwsp.edu/geo/courses/geog100/TowardSolns-PP.htm>). Archived from the original (<http://www.uwsp.edu/geo/courses/geog100/TowardSolns-PP.htm>) on November 8, 2004. Retrieved October 25, 2008.
 3. <http://www.agobservatory.org/library.cfm?refID=30236>
 4. <http://rachel.org/?q=en/node/3850>
 5. "Wingspread Conference on the Precautionary Principle" (<http://www.sehn.org/wing.html>). The Science and Environmental Health Network. January 26, 1998. Retrieved October 25, 2008.
 6. <http://www.progressiveregulation.org/perspectives/precaution.cfm>
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Home | Electromagnetic Sensitivity

Accommodation Ideas for Electromagnetic Sensitivity

There are people who report a sensitivity to electromagnetic fields. Although it has been difficult for the environmental health and medical communities to define, individuals with electromagnetic sensitivity report various symptoms including but not limited to fatigue, weakness, neurological issues, immunological issues, gastrointestinal issues, increased irritability, lack of ability to think clearly and quickly, sleep disturbance, overall malaise, and anxiety.

Despite the medical community's difficulty in defining electromagnetic sensitivity, individuals with the condition may benefit from job accommodations. The following is a quick overview of some of the accommodations that might be useful. To discuss an accommodation situation with a consultant, contact JAN directly.

Accommodation ideas for individuals with electromagnetic sensitivity:

- Allow communication via typewriter or handwritten notes rather than via computer or cover the computer with Plexiglas or other shielding material
- Provide headset/handset extenders or alternate headsets to lengthen the distance between devices that trigger symptoms and the employee's body
- Change the employee's shift to allow for less exposure to others' devices
- Relocate workplace away from areas where symptoms are triggered. This may include limiting certain types of devices in the vicinity of the employee's workstation
- Allow telework (Note: regarding work at home, unless the employee wants to work at home, other options should be explored first to keep the employee in the workplace)
- Allow the employee to meet with others in areas where triggers are minimized or allow remote access to meetings or activities that must take place in areas that trigger symptoms.
- Provide wired telephones and network connections
- Provide building-wide and/or workspace shielding of equipment and devices, for example add filters to fluorescent lights and tape electrical cords
- Individuals with electrical sensitivity may also experience limitations from [fragrance sensitivity](#) and/or photosensitivity

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Exhibit 22b US Dep't of Labor Photosensitivity Recommendations (1127-1128)

Photosensitivity

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Home | Photosensitivity

Accommodation Ideas for Photosensitivity

There are many individuals who are sensitive to light, commonly referred to as photosensitivity. There are many different medical conditions or medications that can trigger photosensitivity, and problematic types of lighting may differ depending on the individual and their medical condition.




Regardless of the cause of the reaction, individuals who experience photosensitivity may need accommodations to maintain or increase their productivity at work. The following is a quick overview of some of the job accommodations that might be useful. To discuss an accommodation situation with a consultant, contact JAN directly.

Accommodation ideas for individuals with photosensitivity:

- Performing Outdoor Tasks: When individuals who are photosensitive need to perform essential functions outdoors, accommodations that employers may consider include: providing flexible schedules to avoid peak sun hours; providing [UV protection clothing/accessories](#); allowing frequent rest breaks indoors or in shaded areas; combining tasks to limit exposures; limiting exposure to water, ice, and other highly reflective surfaces; and allowing flexible leave around low-ozone and sun-flare events.
- Performing Driving Tasks: Whether an individual spends the entire work day in a vehicle or just part of the day, this UV exposure can prove problematic for individuals with photosensitivity. To address this issue, an employer may consider providing the following accommodations: allowing telework or flexible work schedules to avoid peak sun exposure, providing window tinting and shades on work vehicles, allowing frequent breaks indoors, and modifying dress code policies to allow [UV protection clothing/accessories](#).
- Performing Indoor Tasks: While it may seem like individuals who are photosensitive would be able to easily work indoors, there are many hidden UV light sources that may need to be eliminated or avoided. Examples of accommodations that may help include: providing [alternate lighting](#), [UV light filters](#), sheltered work spaces, [UV protection clothing/accessories](#), and UV filtered computer screens; allowing telework or flexible work schedules to avoid peak sun exposure; and avoiding water, ice, and highly reflective surfaces around unavoidable UV sources.
- In an office setting:
 - Consider allowing telework for some or all of the week so that the employee may work in a setting where he or she can more easily control lighting.
 - Consider use of floor to ceiling cubicle walls so that fluorescent light is blocked from reaching the employee's work station. Other options to block out overhead lighting include an office with a door, a [cubicle roof](#) or even a patio umbrella installed over one's desk.
 - Consider installing [filters in fluorescent light fixtures](#) to reduce the negative effects of fluorescent lights. Turning off overhead lights and using lamps may allow more control over lighting especially for employees who need to work in dim light.
 - Consider use of [full spectrum lighting](#) to supplement natural light near employee's workstation if the individual does better with natural or full spectrum light. If the individual is sensitive to full spectrum, natural light, or UV, consider other options.
 - For individuals who are sensitive to flickering, consider use of [alternative lighting](#) such as incandescent or LED lighting.

<http://askjan.org/soar/other/photosensitivity.html>

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to music through headphones while working.

- If the person does better with natural light, try to place them near a window.
- If the person needs more control over the light in their workspace or is sensitive to UV, windows can be problematic. Consider moving the person away from windows or installing appropriate window coverings.

Resources for Photosensitivity:

- [sun1 Support Group for Sun and Light Sensitive People](#)
- sunallergy.org

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ELECTRICAL SENSITIVITY


Accommodation and Compliance: Electrical Sensitivity

About Electrical Sensitivity

There are people who report a sensitivity to electromagnetic fields. Although it has been difficult for the environmental health and medical communities to define, individuals with electromagnetic sensitivity report various symptoms including but not limited to fatigue, weakness, neurological issues, immunological issues, gastrointestinal issues, increased irritability, lack of ability to think clearly and quickly, sleep disturbance, overall malaise, and anxiety. Despite the medical community's difficulty in defining electromagnetic sensitivity, individuals with the condition may benefit from job accommodations.

Electrical Sensitivity and the Americans with Disabilities Act


The ADA does not contain a list of medical conditions that constitute disabilities. Instead, the ADA has a general definition of disability that each person must meet. A person has a disability if he/she has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having an impairment. For more information about how to determine whether a person has a disability under the ADA, see [How to Determine Whether a Person Has a Disability under the Americans with Disabilities Act Amendments Act \(ADAAA\)](#).

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Accommodating Employees with Electrical Sensitivity

People with electrical/electromagnetic sensitivity may develop some of the limitations discussed below, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people with electrical/electromagnetic sensitivity will need accommodations to perform their jobs and many others may only need a few accommodations. The following is only a sample of the possibilities available. Numerous other accommodation solutions may exist. 

Questions to Consider:

1. What limitations is the employee experiencing?
2. How do these limitations affect the employee and the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
5. Has the employee been consulted regarding possible accommodations?
6. Once accommodations are in place, would it be useful to meet with the employee to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
7. Do supervisory personnel and employees need training?

Key Accommodations:

- Allow communication via typewriter or handwritten notes rather than via computer or cover the computer with Plexiglas or other shielding material
- Provide headset/handset extenders or alternate headsets to lengthen the distance between devices that trigger symptoms and the employee's body
- Change the employee's shift to allow for less exposure to others' devices
- Relocate workplace away from areas where symptoms are triggered. This may include limiting certain types of devices in the vicinity of the employee's workstation
- Allow telework
- Allow the employee to meet with others in areas where triggers are minimized or allow remote access to meetings or activities that must take place in areas that trigger symptoms.
- Provide wired telephones and network connections
- Provide building-wide and/or workspace shielding of equipment and devices, for example add filters to fluorescent lights and tape electrical cords

Accommodation Ideas:


By Limitation

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By Limitation

➤ **Attentiveness/Concentration**

- Alerting Devices
- Alternative Lighting
- Applications (apps)
- Apps for Memory
- Behavior Modification Techniques



- Cubicle Doors, Shields, and Shades
- Electronic Organizers
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Flexible Schedule
- Full Spectrum or Natural Lighting Products
- Job Coaches
- Job Restructuring
- Marginal Functions
- Modified Break Schedule
- Noise Canceling Headsets
- Personal On-Site Paging Devices
- Professional Organizers
- Sound Absorption and Sound Proof Panels
- Task Separation
- Telework, Work from Home, Working Remotely
- Timers and Watches
- Uninterrupted "Off" Work Time
- Verbal Cues
- Wall Calendars and Planners
- Worksite Redesign / Modified Workspace
- Written Instructions

› **Executive Functioning Deficits**

- Apps for Concentration
- Apps for Memory
- Checklists
- Color Coded System
- Cubicle Doors, Shields, and Shades
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Extra Time
- Flexible Schedule
- Form Generating Software
- Full Spectrum or Natural Lighting Products

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- Job Restructuring
- Marginal Functions
- Memory Software
- Modified Break Schedule
- Noise Canceling Earbuds
- Noise Canceling Headsets
- On-site Mentoring
- Recorded Directives, Messages, Materials
- Reminders
- Sound Absorption and Sound Proof Panels






- Speech Recognition Software
- Sun Boxes and Lights
- Sun Simulating Desk Lamps
- Timers and Watches
- Wall Calendars and Planners
- Written Instructions

➤ **Memory Loss**

- Additional Training Time / Training Refreshers
- Apps for Memory
- Electronic Organizers
- Job Coaches
- Memory Software
- Professional Organizers
- Recorded Directives, Messages, Materials
- Reminders
- Social Skill Builders
- Support Person
- Verbal Cues
- Wall Calendars and Planners
- Written Instructions

➤ **Photosensitivity**

- Alternative Lighting
- Anti-Glare Filters for Fluorescent Lights
- Cubicle Doors, Shields, and Shades
- Fluorescent Light Tube Covers
- Full Spectrum or Natural Lighting Products
- LED Light Filters
- Lighting Gel Filters
- Sun/UV Protective Clothing

Live Chat  Vehicle Window Tinting and Shades  Show Reader 

➤ **Respiratory Distress/Breathing Problem**

- Air Cleaners & Purifiers
- Air Cleaners - Chemical/Odor Removal
- Air Cleaning Systems
- Air Purifiers for Multiple Chemical Sensitivity
- Alternative Cleaning Supplies



- Augmentative and Alternative Communication (AAC) Device
- Carpet Alternatives, Sealants, and Sustainable Flooring
- Escape Hoods
- Flexible Schedule
- Floor Cleaning/Stripping Products - Chemical Sensitivity
- Low/No Odor Paints and Stains
- Masks - Respirator
- Masks - General/Chemical/Allergen
- Odor Control
- Outgoing Voice Amplification - Telephone
- Personal Air Cleaner (Neckworn)
- Personal On-Site Paging Devices
- Powered Air Purifying Respirator (PAPR)
- Telework, Work from Home, Working Remotely
- Voice Amplification

➤ **Stress Intolerance**

- Apps for Anxiety and Stress
- Behavior Modification Techniques
- Counseling/Therapy
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Flexible Schedule
- Job Restructuring
- Marginal Functions
- Modified Break Schedule
- Supervisory Methods
- Support Animal
- Support Person

By Work-Related Function Show Reader

By Work Related Function

➤ **Light**

- Alternative Lighting
- Anti-Glare Filters for Fluorescent Lights
- Flexible Schedule
- Fluorescent Light Tube Covers



- Full Spectrum or Natural Lighting Products
- LED Light Filters
- LED Lighting
- Lighting Gel Filters
- Modified Lighting
- Non-Fluorescent Lighting
- Personal Visors
- Telework, Work from Home, Working Remotely

➤ Policies

- Additional Training Time / Training Refreshers
- Aide/Assistant/Attendant
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Flexible Schedule
- Marginal Functions
- Modified Break Schedule
- Periodic Rest Breaks
- Physical/Social Distancing Signage
- Policy Modification
- Reassignment
- Service Animal
- Sleep Alerting Devices
- Strobe Lights
- Supervisory Methods
- Support Animal
- Telework, Work from Home, Working Remotely
- Touchless Faucets

Situations and Solutions:

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A company policy allowing anyone to work from home changed following a merger.

Read more

A new hire with electrical sensitivity requested alternative means of communication because the wireless phones triggered symptoms.

Read more

After moving to a new office with electrical sensitivity exposure to devices in the office was triggering:

Read more

JAN Publications & Articles Regarding Electrical Sensitivity

Publications

Accommodation and Compliance Series

Accommodation and Compliance Series: Employees with Electrical Sensitivity



Consultants' Corner Articles

Confidentiality of Medical Information under the ADA

Hidden Disabilities: Confidentiality and Travel

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Related Disabilities

Fragrance Sensitivity

Respiratory Impairments

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Articles

When New Technologies Hurt



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Blog Posts

"But you don't look sick..."

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Events Regarding Electrical Sensitivity

Upcoming Events

No Upcoming Events for Electrical Sensitivity.

[View All Upcoming Events](#)

Past Recorded Module

No Past Recorded Modules for Electrical Sensitivity.

[View All Recordings](#)

Past In-person Training

**DEAM - A Disability Inclusion Intervention: What DE
Members Need to Know to Move the Inclusion Needle
Forward**

APRIL 26, 2018

Presenters:

- Louis E. Orslene, JAN Co-Director



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DMEC - ADA Basics: Competence Builds Confidence

APRIL 30, 2018

This DMEC session will enable you to build your ADA competence and confidence by learning the basic requirements of the ADA and receiving practical tips for compliance. A representative from the Job Accommodation Network (JAN) will share information about the financial and legal benefits of ADA compliance and offer best practices for promoting an inclusive workplace.

Presenters:

- Tracie DeFreitas , Lead Consultant – ADA Specialist

DMEC - Who Wants to Be an ADA Guru?

MAY 1, 2018

When an employee approaches you for an accommodation, it can feel like you're on a game show where your response could result in risk or reward. Answer correctly, and you have a motivated, loyal employee. Answer incorrectly, and you could face penalties, lawsuits, and months of headaches. In this session, participants will be our Accommodation Game Show contestants using cell phone polling technology. We will ask what you would do in response to various ADA accommodation scenarios and provide best practice tips and strategies for how employers should respond. Sufficient time will be left at the end of the session for employers to pose their own "what if" questions.

Presenters:

- Linda Carter Batiste , Principal Consultant/Legislative Specialist

ADA Symposium - Unpacking the Reasonable Accommodation Conversation: Achieving Win/Win Outcomes

JUNE 20, 2018

Best in class companies have an actionable and well communicated accommodation policy and robust practices to support their policy. Deb Dagit, former Chief Diversity Officer for Merck, and the Co-Directors of the Job Accommodation Network moderated a number of conversations/focus groups with companies known for their success in recruiting and retaining individuals with disabilities and their associated RA processes. The conversations culminated into the Workplace Accommodation Toolkit of best and emerging accommodation practices. The Toolkit also provides a number of video-based training modules depicting situations that are frequently experienced between people managers and employees with disabilities during various phases of the employee's life cycle. Each scenario culminates in a solution to the situation posed. These videos will be featured during this interactive session. In addition, Lou will provide an overview of the Toolkit contents focusing on the most pragmatic and important practices that can be replicated in any size company.

Presenters:

- Louis E. Orslene, JAN Co-Director

[View All In-Person Trainings](#)

Past Exhibit Booths

DMEC - FMLA/ADA Employer Compliance Conference

APRIL 30, 2018

The Disability Management Employer Coalition (DMEC) is committed to providing focused education for absence management professionals. From face-to-face conferences to helpful tools and resources, we give you what you need to reduce costs, minimize lost work time, and increase staff productivity.

Presenters:

- Louis E. Orslene, JAN Co-Director

DMEC - FMLA/ADA Employer Compliance Conference

MAY 1, 2018

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Presenters:

- Louis E. Orslene, JAN Co-Director

DMEC - FMLA/ADA Employer Compliance Conference

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MAY 1, 2018

The Disability Management Employer Coalition (DMEC) is committed to providing focused education for absence management professionals. From face-to-face conferences to helpful tools and resources, we give you what you need to reduce costs, minimize lost work time, and increase staff productivity.

Presenters:

- Louis E. Orslene, JAN Co-Director



APSE Employment First, Employment for All National Conference

JUNE 26, 2018

The National APSE Conference is the only national conference focused solely on the advancement of Employment First. The Association of People Supporting Employment First (APSE) National Conference brings together more than 1,000 community leaders, businesses, and individuals with disabilities from across the country and around the world to network and discuss state-of-the-art strategies to ensure equitable employment for all citizens with disabilities.

APSE Employment First, Employment for All National Conference

JUNE 27, 2018

The National APSE Conference is the only national conference focused solely on the advancement of Employment First. The Association of People Supporting Employment First (APSE) National Conference brings together more than 1,000 community leaders, businesses, and individuals with disabilities from across the country and around the world to network and discuss state-of-the-art strategies to ensure equitable employment for all citizens with disabilities.

 View All Exhibits

Past Remote Monthly Series Training

JAN - Give Us Your Challenging, Your Bewildering, Your Unusual ADA Issues

NOVEMBER 14, 2017

This Webcast will be an open forum to discuss a variety of tough ADA title I employment issues. Participants will have the opportunity to submit ADA questions in advance of the program, to be addressed during the session. The presenter will touch-on several trending ADA topics, including some of the more challenging questions JAN receives about dogs at work, disability-related inquiries, and telework and leave as accommodations.

 Live Chat

 Show Reader

Presenters:

- Tracie DeFreitas , Lead Consultant – ADA Specialist

 Presentations



 Slides - Give Us Your Challenging, Your Bewildering, Your Unusual ADA Issues

↓ Transcripts

📄 Transcript - Give Us Your Challenging, Your Bewildering, Your Unusual ADA Issues

JAN - Ask the JAN Motor Team



DECEMBER 12, 2017

Join the motor team as they take the hour to hash out any motor related accommodation requests or questions you may have! From addressing ergonomic chair requests to creating an emergency evacuation plan to the never ending parking debacle, the motor team consultants are here to answer your burning questions in real time!

Presenters:

- Lisa Mathess , Lead Consultant, Motor Team
- Matthew McCord , Consultant - Mobility Team

↓ Presentations

📄 Slides - Ask the JAN Motor Team

↓ Transcripts

📄 Transcript -

JAN - PAS and the New Section 501 Affirmative Action Requirements



Live Chat 🗨️



Show Reader 🗣️

JANUARY 10, 2018

Join JAN and the Equal Employment Opportunity Commission (EEOC) for a free webcast about Section 501 and the new affirmative action requirements that go into effect in January 2018 regarding the provision of personal assistance services (PAS) for eligible federal employees. The EEOC will also provide information about the elements of reasonable accommodation procedures for federal agencies.


Presenters:




- Linda Carter Batiste , Principal Consultant/Legislative Specialist

- Beth Loy , Principal Consultant/Technical Specialist
- Anupa Iyer, Esq., CLMS, Policy Advisor, Office of Federal Operations (OFO), U.S. Equal Employment Opportunity Commission.

 **Presentations**

 PAS and the New Section 501 Affirmative Action Requirements

 **Transcripts**

 Transcript - PAS and the New Section 501 Affirmative Action Requirements

Additional Notes:

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- Asset note link 3

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JAN - Current Events in Accommodation

FEBRUARY 13, 2018

Tune in and stay up-to-date on current events in job accommodation, including tough accommodation situations, tricky ADA issues, and technology challenges. JAN consultants provided practical tips for handling these and other job accommodation issues.

Presenters:
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- Linda Carter Batiste , Principal Consultant/Legislative Specialist
- Beth Loy , Principal Consultant/Technical Specialist

 **Presentations**

 Slides - Current Events in Accommodation 

↓ Handouts

📄 Handout - 2018 Current Events in Accommodation

JAN - Fostering Deaf Success: Attracting, Engaging and Retaining Deaf and Hard of Hearing Employees



MARCH 13, 2018

Join us as we chat with folks from Communication Service for the Deaf to discuss and explore how to increase workforce diversity by hiring employees who are deaf, hard of hearing and/or speech-disabled.

Presenters:

- Anne E. Hirsh , Co-Director
- Kylie Baker and Robert Siebert of Communication Service for the Deaf (CSD) Neighborhood

↓ Presentations

📄 Fostering Deaf Success: Attracting, Engaging and Retaining Deaf and Hard of Hearing Employees

👁️ View All Trainings

📄 Other Information Regarding Electrical Sensitivity

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External Links

EEOC's Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act [🔗](#)

Electrical Sensitivity & Hypersensitivity [🔗](#)

Electromagnetic Fields and Public Health [🔗](#)

PART 1630—Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act [🔗](#)



Organizations

Job Accommodation Network

Office of Disability Employment Policy

International Institute for Bau-biologie & Ecology

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WHEN NEW TECHNOLOGIES HURT

Learn more about electrical sensitivity

Technology has indisputably opened up doors for many people with disabilities. But, there is a downside to many new technologies; many of the new technologies give off electromagnetic radiation. This radiation may come from ultraviolet emanating from cheap light sources, computer monitors, and plasma TV's; wireless devices giving off radio waves and microwaves, and wired/electronic appliances giving off radio-frequency electromagnetic fields.

For some people who are hypersensitive to these forms of radiation, exposure can mean anything from migraines to gastrointestinal symptoms to lapses in concentration and memory, among other things.

Just as in situations where exposure to fragrances/chemicals can trigger an exacerbation of symptoms, the best accommodation is often to use telework.

When worksite presence is necessary, potential accommodations can include:


- Shielding the building, a particular area of the building, or an office from electromagnetic radiation;
- Shielding electronic equipment and electrical cords;
- Providing a cell phone with a long wire pulling radiation away from the body;
- Providing cell phone shielding for hand use or when stored in a pocket;
- Providing a low electromagnetic field telephone for work;
- Allowing manual communication via written notes or typewriter for work product;
- Providing alternative lighting, or ultraviolet (UV) filtering for compact fluorescent lamp (CFL) or halogen lights; and
- Providing computer screen and phone screen UV filters.

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ORANGE COUNTY

Index No: EF004088-2020

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In the Matter of the Application of Deborah Kopald,
Petitioner
For a Judgment pursuant to CPLR Article 78

NOTICE OF MOTION
OMNIBUS MOTION

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc.,
The New York Power Authority


Return Date: November 3rd 2020

Respondents
-----X

PLEASE TAKE NOTICE upon the annexed Affidavit, sworn to on the 26th day of October, 2020, the Petition and all documents filed to date, an application will be made to the Supreme Court of the State of New York, Orange County, located at 255 Main Street, Goshen NY 12940 at 9:00 in the forenoon or as soon thereafter as counsel can be heard on November 3rd 2020 for an order for oral argument, document discovery, a hearing or depositions in the alternative, costs, and permanent dismissal of certain contracts (or non-segmented SEQR review in the alternative) and if the Court orders a SEQR review, that it order the Town of Highlands to hold a public hearing in the interests of justice and pursuant to NY CPLR §408.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b), Respondents' answer and supporting affidavits, if any, shall be served upon the attorney for the petitioners at least seven (2) days prior to the return date of this matter.

Dated: October 26, 2020
Fort Montgomery, N.Y


Deborah Kopald, Petitioner pro se
Fort Montgomery, NY 10922-0998
(845) 446-9531

Michael Matsler, Town
mmatsler@riderweiner.com
via NYSCEF

Grace Su, O&R
sug@coned.com
via NYSCEF and email

Justin Driscoll., NYPA
michael.mccarthy@nyopa.gov
via NYSCEF

Affidavit of Deborah Kopald in Support of Omnibus Motion (Motion #2) October 26, 2020
(1147-1162)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

Index No: EF004088-2020

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In the Matter of the Application of Deborah Kopald,
Petitioner
For a Judgment pursuant to CPLR Article 78

AFFIDAVIT IN SUPPORT OF
OMNIBUS MOTION
REQUESTING (1) oral argument
in reply; (2) document discovery;
(3) hearing or deposition in the
alternative; (4) costs; (5) permanent
dismissal of LED lights contracts
suggested, organized or otherwise
recommended by NYPA or in the al
alternative that they be subject to
lawful non-segmented SEQR
review; (6) if the Court orders the
Town to conduct SEQR review, that
it orders a public hearing with same.

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc.,
The New York Power Authority

Respondents

-----X
State of New York)
) SS:
County of Orange)

I, Deborah Kopald, being duly sworn deposes and states:

1. I am the Petitioner in the within special proceeding.

I. REQUESTS MADE IN THIS MOTION

2. I make this Omnibus motion for relief including (1) oral argument for the reply, (2) for
Specific Document discovery including

- Any further NYPA contract, signed, partially signed, or unsigned, with the Town of Highlands beyond the MSCRA and ATP including, but not limited to all Customer Project Commitment (“CPC’s”) and Initial Customer Installation Commitments (“ICICs”) signed by NYPA and the Town of Highlands and a contract to maintain the lights and light fixtures that the Town has a contract with O&R to buy
- The Public Private Use Certification (“PPUC”) signed between the Town of Highlands and NYPA
- List of all light specifications (Color Temperature, Intensity, Wattage) that NYPA has offered to other Towns in New York and all such specifications that NYPA currently can make available to offer.
- Full Deliverable by NYPA to the Town pursuant to the MSCRA and ATP.
- Previous Contract Between O&R and the Town to replace broken lights
- NYPA Contracts with All Light Vendors (or at least a list of vendors they have contracts with and a list of lights with specifications (wattage, intensity and color temperature) that they can purchase from each vendor.
- The agreement signed between NYPA and Guth DeConzo Consulting Engineers pertaining to the Town of Highlands

- Any agreement signed, partially signed, or unsigned between NYPA and O&R that relates to the Town’s June 15, 2020 contract with O&R signed since the MSCRA and ATP were signed

which should be produced for the Court ahead of an Evidentiary Hearing and/or Oral Argument.

Whether or not the Court orders Oral Argument and/or a hearing, I request that it order that this

requested information be added to the record of this case. I also I request (3) an evidentiary

hearing (to be conducted by the Court) at which

- Town Board member Richard Sullivan admits or denies under oath what he stated in his email to Jeffrey Laino (NYPA) which indicates he was working on a NYPA project during the time he was engaging in business with NYPA for the Town, admits or denies that he regularly works on NYPA projects (and explains how often he has done so) and admits or denies that he was the person on the Town Board shepherding this project and was relied upon the Town Board for same and answer the question of whether he shepherded the project himself or was appointed to do same, as the Town Board regularly deputizes members to look into certain topics.
- NYPA General Counsel Justin Driscoll admits or denies under oath whether Richard Sullivan is employed on NYPA projects via the Operating Engineer’s Union as Mr. Sullivan indicates in his email to Jeffrey Laino and admits or denies that NYPA has contracts with the Operating Engineer’s Union and explains the relationship between these contracts and any individual employment.
- NYPA General Counsel Justin Driscoll admits or denies under oath that there is a contract that has been circulated and/or discussed for an operation and maintenance agreement between NYPA and the Town that would support the Town with regard to the transfer and sale of the LED light fixtures and lights from O&R to the Town (and/or supports the Town post-sale) and properly characterizes any said agreement or proposed agreement before the Court.
- NYPA General Counsel Justin Driscoll admits or denies under oath that there is a contract that has been circulated and/or discussed between NYPA and O&R that would support the transfer and sale of the LED light fixtures and lights from O&R to the Town and properly characterizes any said agreement or proposed agreement before the Court.
- Town Supervisor Bob Livsey, Town Counsel M. Justin Rider, NYPA General Counsel Driscoll, and an attorney from O&R certify that the aforementioned document demands are true and accurate and have been complied with.

(In the alternative, I request discovery of same by depositions). I request that if I am successful

in this proceeding that the Town (or whichever parties the Court deems appropriate (4) reimburse

me for costs:

- (Court Filing Fees, Printing Costs, Service Costs)

In addition to any subsequent agreement between NYPA and the Town, I request (5) that any LED light scheme that was suggested, organized or otherwise recommended by NYPA and any contract signed between NYPA and the Town from the control date onwards be permanently revoked by this Court such that it cannot be re-instated after any SEQR review due to Richard Sullivan’s Conflict of Interest. (In the alternative I ask that all be subject to SEQR review).

Neither NYPA nor the Town of Highlands have tried to defend my claims that a Conflict of Interest would make contracts disqualifying. Instead the Town of Highlands claims to have no awareness of Mr. Sullivan’s employment by NYPA and while NYPA says that Sullivan is not employed by NYPA, that does not obviate the allegation I have made that Sullivan is employed by the Operating Engineer’s Union, with which NYPA has a contract to work on projects. We also do not know what percentage of Mr. Sullivan’s work with this union is on NYPA projects. NYPA General Counsel Justin Driscoll should answer the question of NYPA’s relationship with the Operating Engineer’s Union question under oath; surely he can definitively state one way or the other if NYPA has a contract with the Operating Engineer’s Union of which Richard Sullivan is a member that provides for Mr. Sullivan’s employment by NYPA. In the alternative, I request that the overall project be subject to SEQR review. (The Town is trying to illegally segment the project to try to obviate a proper SEQR review.) Finally, (6) I request that if the Court agrees that the overall scheme was mis-typed and sends it all back for a proper SEQR review that it order the Town to have a public hearing on same.

II. THE MSCRA AND THE ATP IN CONTEXT: SINCE THE APRIL 27, 2020 RESOLUTION AND SUBSEQUENT JUNE 15, 2020 O&R CONTRACT THAT I SEEK (AS WELL AS ANY CONTRACTS THAT I DO NOT KNOW ABOUT THAT WERE SIGNED IN THE FOUR MONTHS PRIOR TO MY FILING) WERE NOT DELINEATED (NOR SPECIFICALLY CONTEMPLATED BY THE MSCRA AND THE ATP, THE COURT NEEDS TO KNOW WHAT AGREEMENTS WERE SIGNED IF IT AGREES IT SHOULD ISSUE A SPECIFIC ORDER TO INVALIDATE THESE CONTRACTS; THE COURT SHOULD ALSO

FULLY BE ABLE TO APPRECIATE THE TOWN’S ATTEMPT TO ENGAGE IN ILLEGAL SEGMENTATION TO OBTAIN SEQR REVIEW

3. There are two components to the consulting arrangement, one is the MSCRA (Master Cost Recovery Agreement; the other is the ATP (Authorization to Proceed with the MSCRA). In point 31 of NYPA’s answer), NYPA refers to the MSCRA dated July 23, 2019 (Exhibit 11 and NYPA Exhibit C) which required the ATP (NYPA Exhibit D) to be signed in order for the MSCRA to be put into effect:

Since this document does not specifically contemplate any specific energy services project, including the replacement of the Town of Highlands streetlights, this Agreement is classified as a Type II action and SEQR is satisfied with no further action.

(Emphasis added)

In fact, the Town Attorney, who employs the Town Litigation attorney at Rider, Weiner, Frankel, P.C. has the same understanding as NYPA and I. See his email in Exhibit 6a:

Deborah, attached is the Master Agreement. It does not contain the particulars for moving forward on LED M. Justin Rider, Esq.

The MSCRA is a “rules of engagement” for if NYPA and the Town decided to do projects in the future and has the Town pay NYPA for researching specific projects even if the Town does not agree to do those projects in the future. NYPA provides financing, technical assistance and consulting to municipalities in New York with regard to lighting. The MSCRA is not a contract for any specific project with NYPA; it is a consulting arrangement and does not provide for financing or specific project technical. It also doesn’t preclude the Town from investigating other options at the same time on its own (the Town apparently ignored the spec sheets I sent it regarding Orange LED lighting and didn’t follow up on any of that in the meantime).

4. The Definition of “Advisory Services” on page 1 of the MSCRA as signed characterizes this agreement thus:

"Advisory Services" means the consulting services provided by Authority or Service Providers to assist Customer in its efforts to reduce energy consumption and associated operations and maintenance costs, to realize environmental benefits, including but not limited to the reduction of air pollution; to conserve natural resources; and/or facilitate the use of clean energy sources at Customer's Facilities.

Article II of the Agreement speaks to heretofore undefined future Customer Project

Commitments. (See page 8)

2.1 Customer Project Commitment or CPC. For each Project undertaken under this Master Agreement, the parties will enter into one or more CPC(s), each of which will state the specific terms and conditions applicable to such Project, segregating the Project into logical phases to be performed consecutively. Each CPC will include, at a minimum, the phasing plan setting forth how the Project will proceed, the location of Customer's Facility, scope of Work, (including description of milestones, if any), projected Total Reimbursement Costs, and payment terms.

The Authority is not obligated to commence any Work for a particular Project unless or until a CPC is executed by Authority and Customer. Notwithstanding the foregoing, the Parties may agree to expedite the commencement of a portion of the Work associated with a particular Project prior to the execution of a CPC provided that the Parties memorialize such agreement prior to the commencement of such Work in a writing that sets forth the specific items of Work-to.be commenced and the associated cost of such Work. In such event, Customer agrees to bear the costs of any Work undertaken by Authority or its Service Providers for Customer in preparation for or with respect to such Project or potential Project even if no CPC is ultimately executed.

2.2 Final CPC. As soon as practicable following completion of the Work and receipt of all invoices associated with a Project, Authority will generate a Final CPC which will include all Contingency Work Orders, and all agreed-upon Change Orders, if any. The Final CPC will reconcile the Total Reimbursement Costs set forth in the CPC on the basis of Authority's actual costs and will supersede all prior CPCs. The Final CPC shall also describe the Project-specific terms for the Work completed at the Facility or Facilities, Customer's Short-Term Repayment Obligation, and the final repayment terms...

(Emphasis added)

There is no CPC identified by any of the parties that occurred pursuant to this agreement, which is why I am asking for the parties to produce them to the Court. (It is also why I asked for any agreement made in the four months prior to filing to be invalidated). Even if there were a CPC subsequently identified, NYPA acknowledges in its Answer that no specific project was contemplated by the MSCRA signed in 2019.

5. The ATP, or Authorization to Proceed, which makes the MSCRA actionable states and was signed by NYPA on October 3, 2019,

By signing below, the Town of Highlands authorizes NYPA to proceed with the full turn-key solution of the LED street lighting project, which includes the final design report, conducting bids for materials and installation labor, providing construction management, and commissioning the final project. When the design and bidding is completed, you will receive an initial Customer Installation Commitment (ICIC) for your review and signature. At this point, **if you choose to proceed to project implementation**, all development costs will be rolled into the overall project. **Conversely, should you decide not to proceed with the implementation of the project, the Town of Highlands agrees to reimburse NYPA for all costs incurred up to the termination date for the development, design and bidding of the project. The cost of developing the design and for bidding the materials and labor will be determined during the next phase.**

(Emphasis added)

Pursuant to the plain language of the ATP, no final contractual commitment was made on any individual lighting scheme. The ATP was not any kind of permanent contract or commitment to selecting any light scheme (specific or generally). It appears even Richard Sullivan and Supervisor Livsey understood that this did not constitute an agreement for any specific plan. Please see again Exhibit 15, September 20, 2019 email from Richard Sullivan to Supervisor Livsey and Town Attorney M. Justin Rider:

The two page April 5th one is what Jeff Laino is waiting on to allow continuation...Previously we called it MCRA (master cost recovery agreement) , call the two page what you wish.

The Town’s Exhibit C minutes state

Supervisor Livsey reads a document from NY Power Authority asking permission to sign the document regarding comprehensive Street Light Upgrade.

A document *regarding* comprehensive Street Light Upgrade is a document regarding said subject. It is not a document *mandating and approving same*. Presumably Supervisor Livsey was briefed on the content of what he signed (the MSCRA and the ATP) by Mr. Rider and understood what he was requesting permission to sign.

6. Also of note, in Exhibit 11, page 321 of the PDF, Jeff Laino writes to Richard Sullivan and Bob Livsey:

NYPA can finance purchase of the fixtures. That process will be articulated when we kick off the project but we cannot start installs until the Town takes ownership.

These emails are prospective utterances: the consulting arrangement was not “kicked off” until a meeting in December 2019. There was no ownership of the fixtures until June 15, 2020 with O&R after the Town voted on April 27, 2020 to move ahead with a specific contract.

III. QUESTIONS RAISED BY RESPONDENTS’ RESPONSES SUPPORT MY DOCUMENT DEMANDS AND REQUEST FOR HEARING TO ANSWER SPECIFIC QUESTIONS

7. One of my arguments in this special proceeding is that that since the underlying Consulting Agreements from 2019, the so-called ATP and the MSCRA did not bind the Town to any purchase (indeed no specific LED light illuminating scheme was delineated in the agreements as they were investigatory in nature) and were simply consulting arrangements, they did not obviate SEQR review (by the Town) of the subsequent contract between *O&R* and the Town that is dated June 15 2020 and the subject of the April 27, 2020 resolution (“*O&R/Town* June 2020 contract”). The MSCRA and ATP agreements raise questions- when was a CPC (Customer Project Commitment) provided and subsequently signed between NYPA and the Town? Certainly there is no evidence that one was ever approved and voted upon. When was an ICIC (initial Customer Installation Commitment) provided and subsequently signed between NYPA and the Town? Certainly there is no evidence that one was ever approved and voted upon. This is why I have asked for all other agreements signed before this Article 78 was filed. I simply don’t know what they are and ask for them to be overturned if they were signed.

8. The only other documents NYPA has proffered are a letter from a contractor Guth DeConzo dated February 6, 2020 (NYPA Exhibit E) that only states:

Should NYPA accept this proposal, a detailed schedule will be developed within one week of the execution of the purchase order.

It is unclear what services Guth DeConzo actually provided besides offering choices at a December meeting and what light program the Town of Highlands informally decided upon (and even whether NYPA signed a subsequent agreement with Guth DeConzo. (I also asked for NYPA's other lighting specifications that they provided to other Towns, because they offer various lights with various color temperatures intensities and wattages and at no point do any of the documents proffered by the Respondents prior to the April 27, 2020 resolution specify any type of engagement as well as what the Town of Highlands might ultimately specifically choose to use.) Indeed in meeting minutes, (See Exhibit 11, page 101 of the PDF) Guth DeConzo lays out potential options, for color temperature; no specific light is specified. Certainly the MSCRA and the ATP did not contemplate a purchase order. There is a legitimate question as to whether an agreement with Guth DeConzo was ever signed with NYPA and if whatever they were doing should have been put out to competitive bid. (Again, it's not clear what it contemplates since there is no agreement proffered, just a letter about an agreement that NYPA provides no signed copy of).

9. I also asked for O&R's old contract with the Town of Highlands; I indicated in the Petition that they would replace a light when it was broken, but until they signed a contract on June 15, 2020 with the Town of Highlands, O&R and the Town did not have an agreement to buy lights for each lamppost and to transfer the fixtures over to the Town. The Town does not state otherwise. I am requesting this document because it shows a major change in the Town's lighting plans and underscores my request for SEQR review of same.

10. Finally Exhibit F is not a contract between NYPA and Phillips; it does not show that O&R is using a light they got from NYPA (I also believe NYPA could have contracts with other

vendors besides Phillips, but in any case surely have multiple contracts or clauses in a contract for different types of lights from Phillips). This document is a change to a value of some contracts in 2018; there is nothing in this change order about what the lights specifications are and what the specific underlying contracts say (or whether those contracts are the only contracts NYPA has). In any case NYPA and the Town show NO DOCUMENT where the Town is using Phillips lights from NYPA via O&R and even if they were, that the Town was party to any agreements with Phillips (which occurred prior to any involvement between the Town and NYPA). Of further importance is the fact that no agreement exists prior to the April 27, 2020 contract with O&R where the Town agreed to purchase a specific set of lights of any color temperature, intensity and wattage that come from Phillips or any other vendor. NYPA does not provide an actual contract with Phillips or anything else that shows the range of types of lights they offer (they also do not show a deliverable from the MSCRA and ATP that would contemplate any specific project), which is why I have requested same.

IV. THERE IS EVIDENCE THAT ANOTHER CONTRACT BETWEEN NYPA AND THE TOWN IS CONTEMPLATED AS PART OF THIS OVERALL LED LIGHT SCHEME

11. There is a big gaping hole in transparency regarding what happened privately between the time the MSCRA and ATP were signed (what further agreements the Town had with NYPA) and how the Town arrived at the decision to move ahead with O&R. Exhibit 25a is an email from Richie Sullivan to Leslie Peterson, Town of Highlands Deputy Clerk, that suggests that there is an independent agreement with NYPA to fix the lights that are being purchased as a result of a contract with O&R. (Exhibit 25b is my FOIL request leading to same).

----- Forwarded Message -----

From: Lesley Peterson <lpeterson@highlands-ny.gov>
To: Deborah_Kopald@ymail.com <Deborah_Kopald@ymail.com>
Sent: Friday, June 5, 2020, 11:43:27 AM EDT
Subject: FOIL Request 2020-00063 : Completion Letter

Good morning,

To my knowledge so far the supervisor has signed two agreements from New York power Authority, **possibly three honestly I've lost track.** Orange and ROCKLAND was submitted a letter of intent to purchase the lights for \$31000 , their legal team reviewed that letter , responded and we responded back I think we are awaiting finality on that matter.

The newspaper was in error I recall at the meeting discussing it**I recall saying the town employees will not be doing the repairs on the lights we will have a contract with New York power Authority at a cost estimated to be \$20 per light per year, and designated Town authorities will have a portal to know when a light is out and it will be repaired within two weeks by new York power Authority.**

I haven't watched a YouTube video of the May meeting I invite anybody else to do so and you'll see the comments I made related there too.

By the way, some of these Foil questions may need Justin .

I hope this helps.

Richie

Sent from my iPhone

(Emphasis added)

So if there is another agreement between NYPA and the Town regarding maintenance of the lights from the O&R agreement, it should be overturned. If the agreement does not yet exist, the Court should be aware of that too as well as the pattern of the Town of dribbling in various agreements over time (here with the fiction promulgated by the Town's Affirmant Michael Matsler that the O&R contract to have the Town buy lights for all of the lampposts and take over the fixtures are just independent equipment or supply purchases obviating SEQOR review, instead of an arrangement for a whole new lighting system). As explained in my reply to the motion for preliminary injunction, equipment and supplies imply things that are moved around for operational purposes and are used up, respectively; the light scheme doesn't qualify. Again, the MSCRA and the ATP contemplated no specific light scheme, but the April 27, 2020 resolution and the O&R/Town June 2020 agreement does. So too would a further agreement with NYPA for maintenance and repair as part and parcel of this entire arrangement.

Segmentation is forbidden under SEQOR, and I respectfully assert that this is the thing that Town is illegally attempting to do. See: *Teich v Buchheit*, 221 A.D.2d 452 (2nd Dep't: 1995) and

Farrington Close Condo. Bd. of Managers v. Inc. Vill. of Southampton, 205 A.D.2d 623, 613 N.Y.S.2d 257 (2nd Dep’t: 1994) and *Saratoga Springs Preservation Foundation v. Boff*, 110 A.D.3d 1326, 973 N.Y.S.2d 835 (3rd Dep’t: 2013). The first time the Town raised any SEQR issue related to LED lights was at its April 27, 2020 meeting which resulted in the resolution I seek to overturn.

12. I have asked for such contracts whether signed, partially signed or unsigned, because it will show what the Town has intended (again note Sullivan’s email in Exhibit 25a); a complete lights system even if it is not all in one contract but in separate contracts. The Town’s Affirmant, Michael Matsler engages in major misdirection by trying to convince the Court that I am some kind of deviant pro se in his insistence that my request for agreements signed within the last four months is some evidence of my trying an end run around statutes of limitations; again the MSCRA and ATP contemplate no specific LED lights scheme or requirement to commitment to same; no one knows what the TOWN and NYPA have agreed upon since. Meanwhile; Freedom of Information Law (“FOIL”) does not require that contracts that are just for discussion and not about to be signed be turned over; I can only get them from the Court. NYPA engages in misdirection too, by pointing to a meaningless “change to value contract” (without showing the actual contract, which seems to be a purchase order with Phillips) that has nothing to do with any agreements it has or has contemplated with the Town, and certainly has nothing to do with the agreement the Town signed with O&R on 6/15/2020. Clearly, Mr. Sullivan’s email shows that the Town contemplated an arrangement with NYPA to maintain the lights and fixtures it has voted to purchase from O&R. This is part of the overall lights scheme and underscores that any individual agreements are part of a major change; in any event the O&R/Town June 2020 contract is not merely a purchase of equipment, furnishings or supplies pursuant to 6 NYCRR § 617.5(c)(31) or replacement of a structure pursuant to 6 NYCRR § 617.5(c)(2) (the lampposts

could be construed as structures potentially, but not the lights, and replacement implies the same thing that was there before, not something new and different) and thus does not get an express lane to a Type II action (Please see Petitioner’s Reply in Support of Motion for Preliminary Injunction).

13. Of further concern is Richie Sullivan’s mention of a so-called “portal” to know when a light is out. That suggests a wireless communication system, and as these lights are contemplated to be placed throughout the rights of way, the excess blanket of radiation is something that would violate my rights under the Americans with Disabilities Act due to my sensitivity to electromagnetic radiation. (Wireless systems emit pulse modulated microwave radiofrequency electromagnetic radiation or “PM MW RFR” which is the sensitizing irritant and a World Health Organization (“WHO”) designated carcinogen since 2011). How else could the lights communicate with a portal to say one is out if not through a wireless system? This is also why I am requesting that the overall scheme be permanently invalidated for failure to do a proper SEQR review. Also, the Telecommunications Act of 1996 (“TCA”) does not preempt the Americans with Disabilities Act (“ADA”) with regard to PM MW RFR emissions pursuant to *Firstenberg v. City of Santa Fe, N.M.*, 696 F.3d 1018 (10th Cir. 2012). Here I suspect the Town contemplates passing off the NYPA agreement (whether currently signed or contemplated for future signature) as a “maintenance and repair” agreement outside of the context of the overall scheme and try to claim that is a Type II action, thereby constituting improper segmentation in a SEQR review. If the Town cannot operate the lights in the O&R/Town June 2020 agreement without a subsequent agreement with NYPA, the two contracts are inextricably linked and there must be a proper SEQR review of the entire scheme now. In fact, NYPA recognizes that it offered a wireless component to the Town and notes that it hasn’t elected to do that yet. See affidavit of Charles Hermann, point 8:

Town of Highlands Street Light Replacement Project seeks to replace the existing light fixtures with energy efficient LED lights. While the design contains an allowance for a \$20,000 NYPA Smart City Grant, which would allow for the installation of other technologies (e.g., cameras, Wi-Fi hotspots, weather sensors), the Town, as of September 15, 2020, has not applied for this grant, and the contemplated work would not include these installations.

The MSCRA contemplates an endless series of possible projects; there needs to be one SEQR review of the entire contemplated project; not segmentation, so that the Town can illegally get away with claiming that each individual component has some type of exemption.

14. I refer the Court back to Exhibit 11, page 100 of the PDF. There are meeting minutes from December 2019 in a document from Guth DeConzo which states the following:

Maintenance (Current, Ongoing, future): O&R currently maintains the existing system. The town understands they will be responsible for system once bought out from O&R/after project completion. In order to be eligible for NYPA's ongoing maintenance agreement the municipality must have lighting control nodes, not dusk to dawn photocells.

(Emphasis Added)

Inasmuch as Richard Sullivan's email of June 25, 2020 (Exhibit 25a) indicates that an agreement with NYPA on operations is forthcoming and NYPA says it cannot have dusk to down photocells but lighting control nodes, it should be assumed that a wireless system is under contemplation as a follow on the O&R/Town June 2020 contract.

15. I am also asking for a copy of the Public Private Use Partnership form that the Town appears to have signed with NYPA. I requested it under FOIL, but did not get it. Exhibit 26a is an unsigned copy of same. Page 289 of Exhibit 11 is an email from Charles Hermann to Richard Sullivan requesting signature on same. When I made a FOIL request for same from the Town, they gave me an email discussing it but no document (See Exhibit 26b). It's another example of a series of non-binding statements or agreement without the Town ever having publicly voted on a specific proposal prior to April 27, 2020.

16. I have requested that the Court conduct a hearing to confirm Mr. Sullivan's email

to Mr. Laino that indicates he was employed in a NYPA project while shepherding this project before the Town of Highlands. The conflict of interest with Mr. Sullivan’s employment (even if it is via his membership in the Operating Engineer’s Union) is key to invalidating all agreements between the Town and NYPA as well as between the Town and O&R and between O&R and NYPA regarding the Town that should be subject to SEQR review. This is especially true if one of the options offered by NYPA in their consulting engagement to the Town and NYPA has involvement going forward with the maintenance of the scheme (and Mr. Sullivan is employed on NYPA lights maintenance schemes).

CONCLUSION

17. There are questions that remain; namely (a) what is NYPA’s involvement with maintaining the light scheme and (b) what options did NYPA provide the Town resulting in the Town choosing to do business with *O&R* directly. These questions should be answered, and thus I am requesting that NYPA provide the maintenance contract with the Town (and any other contracts that they have discussed with the Town that pertain to the O&R contract). I am asking the court to either hold a hearing that could be held before or during oral argument of this proceeding (which I am also requesting) at which Town Board Member Richard Sullivan and NYPA counsel Justin Driscoll answer questions under oath regarding Sullivan’s admission by email that he was working on a NYPA project during the time that emails were circulating between him and Jeffrey Laino about doing business with the Town. Mr. Driscoll would also answer questions regarding what other contract NYPA has with the Town related to the O&R contract and questions regarding contracts between NYPA and O&R that are related to same. This seems to be the most efficient way to get to the truth; in the alternative, I ask to depose them directly and independently pursuant to NY CPLR §408; however I feel I am likely to get more straightforward answers to questions if this is done in Court directly before Her Honor. The

issue is that if NYPA has ongoing involvement in the Town's LED light rollout and offered the O&R arrangement as a possibility for the Town to consider in the context of its consulting arrangement, the whole scheme should be invalidated due to conflict of interest.

18. Beyond the conflict of interest point, there is the issue of improper segmentation which is forbidden under SEQR. The Town litigation attorney is incorrectly asserting that agreements to move ahead with options for various lighting schemes were actual approvals of any specific lighting schemes (when they were non-binding and contemplated no specific project as NYPA agrees in its answer and as the Town attorney correctly characterized these agreements).

19. Emails from both NYPA and Richard Sullivan indicated that NYPA was going to maintain the lights that are the subject of the June 15, 2020 dated O&R contract. I am requesting agreements between NYPA and the Town memorializing same and the full work product that NYPA produced for the Town regarding various options for LED lighting under its consulting arrangement pursuant to the MSCRA and ATP. It is relevant to see the various options NYPA provided to the Town.

20. I am requesting Oral Argument of this Proceeding to sharpen and clarify all of the aforementioned issues for the Court concomitant with a hearing

21. I am also requesting that the Town reimburse me for court filing fees, service fees, and printing costs if I am successful in the interests of justice.

22. If the Court sends the proceedings back to the Town for SEQR review, I ask that the Court order the Town to hold a public hearing and whatever else the Court deem relevant in the interests of justice and transparency.



Deborah Kopald,
Petitioner
P.O. Box 998
Fort Montgomery, NY 10922

Sworn to before me this
26th day of October 2020


Notary Public

Michael Matsler, Town
mmatsler@riderweiner.com
via NYSCEF

Grace Su, O&R
sug@coned.com
via NYSCEF and email

Justin Driscoll., NYPA
michael.mccarthy@nypa.gov
via NYSCEF

FOIL June 5, 2020

(1163-1164)

(40,122 unread) - deborah_kopald@ymail.com - Yahoo Mail

FOIL Request 2020-00063 : Completion Letter

From: Lesley Peterson (lpeterson@highlands-ny.gov)

To: Deborah_Kopald@ymail.com

Date: Friday, June 5, 2020, 11:43 AM EDT

Good morning,

To my knowledge so far the supervisor has signed two agreements from New York power Authority, possibly three honestly I've lost track.

Orange and ROCKLAND was submitted a letter of intent to purchase the lights for \$31000 , their legal team reviewed that letter , responded and we responded back I think we are awaiting finality on that matter.

The newspaper was in error I recall at the meeting discussing itI recall saying the town employees will not be doing the repairs on the lights we will have a contract with New York power Authority at a cost estimated to be \$20 per light per year, and designated Town authorities will have a portal to know when a light is out and it will be repaired within two weeks by new York power Authority.

I haven't watched a YouTube video of the May meeting I invite anybody else to do so and you'll see the comments I made related there too.

By the way, some of these Foil questions may need Justin .

I hope this helps.

Richie

Sent from my iPhone

On Jun 4, 2020, at 8:42 AM, Lesley Peterson <lpeterson@highlands-ny.gov> wrote:

<Kopald.pdf>



Koplad.PNG
59.1kB



O & R Resolution.pdf
726kB



Kopald.pdf
522.9kB



Untitled
9.8kB



Town of Higlands Inventory with Pole Ownership 2020.xlsx
18.7kB



Highlands- Purchase Agreement .doc
152.5kB



Highlands- Exh C Operating Agreement.doc
146kB



Highlands- Exh B Mutual General Release.doc



46kB



Highlands - Exh A Quit Claim Bill of Sale.doc

39.5kB



CompletionLetter.pdf

57kB

TOWN OF HIGHLANDS
254 MAIN STREET
HIGHLAND FALLS NY 10928

FREEDOM OF INFORMATION LAW REQUEST
ACCESS TO PUBLIC RECORDS

DATE: June 1, 2020

PLEASE PRINT THE FOLLOWING INFORMATION

NAME: Deborah Kopald

ADDRESS: P.O. Box 998

Fort Montgomery, NY 10922

PHONE: (845) 336-9531

E-MAIL: Deborah_Kopald@ymail.com

Under the provision of the New York State Freedom of Information Law, Article 6 of the Public Officer's Law, the above named hereby requests records or portions thereof pertaining to the following departments:

INFORMATION REQUESTED:

All agreements signed with NYPA that have not been delivered to me, including, but not limited to the ones reported in the News of the Highlands in May. Consent agreements from Verizon to place new lights on the utility poles they own and all other consent agreements with Verizon; contracts and all documents related to what was reported in the News of the Highlands as "some equipment obligations that have be completed within two years"; contracts and all documents related to "some training for Highway Department employees" as reported in the News of the Highlands; contracts, correspondence and all documents related to "some matters to be run by the town's insurance company" as reported in the News of the Highlands.

PURPOSE OF REQUEST:

Public transparency _____

SIGNATURE:  _____

RECEIVED

JUN 03 2020

TOWN CLERK'S OFFICE

Exhibit 26a NYPA public private use questionnaire
(1166-1168)



Energy Services Projects
Public/Private Use Questionnaire

File #: 2461

Project Name: *ES-ESN-0862 Town of Highlands - LED Street Lighting*

PART I. PROJECT IDENTIFICATION:

Project Description:

LED Street lighting conversion

1. Does the description above accurately describe the improvements to be done by NYPA? Yes No
If no, please include additional explanation below:

2. Please identify (a) any funds (e.g., grants) that were or are intended to be used in connection with the Project, and (b) all sources of funds and the amounts from each source that will be used to reimburse NYPA.



PART II. USE OF THE FACILITY:

3. Is any portion of any facility in which improvements are to be done by NYPA (the "NYPA Improvements") presently owned, leased, managed, occupied or otherwise used by (a) an entity which is not the State, a city, town, village, county, or a governmental instrumentality of any of the foregoing, for any purpose; or (b) a natural person for a trade or business purpose (each a "Business User")? (Hereinafter, the portion of the facility housing such NYPA Improvements shall be referred to as the "Facility".) Please provide any additional comments below: Yes No

4. Is there any expectation that during the economic life of the NYPA Improvements any portion of the Facility will be owned, leased, managed, occupied or otherwise used by a Business User? Please provide any additional comments below: Yes No

5. If No is checked for both Questions 3 and 4 in Part II, skip to Recipient Certification.

If you checked Yes for either Question 3 or 4 in Part II, complete Schedule A (Facility Square Footage Listing) for each Business User using, managing or operating any Facility pursuant to an arrangement the term of which, including all renewal options, is greater than 50 days.

		<p>Energy Services Projects</p> <p>Public/Private Use Questionnaire</p> <p>File #: 2461</p>
---	---	---

Project Name: ES-ESN-0862 Town of Highlands - LED Street Lighting

RECIPIENT CERTIFICATION

I hereby certify that the above information is true and complete based upon documentation in my office and further certify that I will report in writing any changes in the information contained herein.

RECIPIENT RE-CERTIFICATION

I hereby re-certify that the above information is true and complete and has not changed since the original certification date except as noted above

Recipient Representative (sign name)

Recipient Representative (sign name)

Print or Type Name

Print or Type Name

Title



Title

Phone

Phone

Date

Date

		<h2 style="margin: 0;">Energy Services Projects</h2> <h3 style="margin: 0;">Public/Private Use Questionnaire</h3> <p style="margin: 0;">File #: 2461</p>
---	---	--

Project Name: ES-ESN-0862 Town of Highlands - LED Street Lighting

SCHEDULE A - Facility Square Footage Listing	*
---	---

	Square Footage
A. Estimated Square Footage of areas to be enhanced by NYPA Improvements:	
B. Estimated Square Footage of Common Areas (e.g., hallways and lobbies):	
C. Net Useable Square Feet [A – B]:	
D. Estimated Square Footage of “private business use” (excludes general public use, use by a state or local governmental unit, or use by a natural person not engaged in a business activity) corresponding to C above. List each usage below (add pages if necessary):	
D1.	
D2.	
D3.	
D4.	
...Dn.	
E. Total Private Business Use (Sum of D1 through Dn):	
F. Non-Qualified Use Percentage (E/C):	
G. Qualified Use Percentage (1 – {E/C}):	

** After review of Schedule A, it is possible that additional facility use information may be required. If so, an additional schedule (Schedule B) will be provided.*

General Public Use Definition: Use as a member of the general public generally refers to transient use (rather than use by a lessee) of a Facility which is available to all users on a first-come, first-served basis at the same price, if any, or a price based on a rate schedule which may include volume discounts. (For example, a large meeting room is available to members of the general public if it is available on a first-come, first-served basis at rates such as: 1-5 persons, \$25; 6-25 persons, \$50; 26-50 persons, \$75; over 50 persons, \$100.)

Exhibit 26b D. Kopald FOILs of Public Private Use Certification (1169-1172)

(40,130 unread) - deborah_kopald@ymail.com - Yahoo Mail

APPEAL- PPUC not provided Fw: FOIL Request 2020-00044 : Completion Letter

From: Deborah Kopald (deborah_kopald@ymail.com)

To: blivsey@highlands-ny.gov

Cc: jrider@riderweiner.com; lpeterson@highlands-ny.gov; jpatterson@highlands-ny.gov

Date: Tuesday, June 9, 2020, 02:30 PM EDT

Bob et al.

The PPUC requested was not provided. An email about it was given, but not the PPUC itself- I requested signed and unsigned.

Therefore I am filing an appeal of this FOIL request.

As you know, the Governor tolled Statute of Limitations within the 30 day time frame to appeal.

Very truly yours,

Deborah Kopald

----- Forwarded Message -----

From: Lesley Peterson <lpeterson@highlands-ny.gov>

To: Deborah_Kopald@ymail.com <Deborah_Kopald@ymail.com>

Sent: Friday, March 13, 2020, 12:09:26 PM EDT

Subject: FOIL Request 2020-00044 : Completion Letter



Kopald PPUC.pdf
639.5kB



Street Light Offer 122019.pdf
13.8kB



Highlands Street Light Offer 122019.pdf
461kB



CompletionLetter.pdf
55.5kB

Fw: FOIL PPUC- Public Private Use Certification

From: Deborah Kopald (deborah_kopald@ymail.com)
To: blivsey@highlands-ny.gov; jrider@riderweiner.com
Date: Monday, March 2, 2020, 08:57 AM EST

It was understood that contracts would be provided in a timely manner to the public.
Please provide the PPUC as soon as practical pursuant to my request.

thank you.

----- Forwarded Message -----

From: Deborah Kopald <deborah_kopald@ymail.com>
To: Lesley Peterson <lpeterson@highlands-ny.gov>; June Patterson <jpatterson@highlands-ny.gov>
Sent: Monday, March 2, 2020, 08:56:11 AM EST
Subject: FOIL PPUC- Public Private Use Certification

Lesley and June,

Attached is a FOIL request for the PPUC referenced in the December 9th email of Charles Hermann which I obtained elsewhere.

thanks,
Deborah



FOIL 0302020 PPUC.pdf
748kB

TOWN OF HIGHLANDS
254 MAIN STREET
HIGHLAND FALLS NY 10928

FREEDOM OF INFORMATION LAW REQUEST
ACCESS TO PUBLIC RECORDS

RECEIVED

MAR 02 2020

DATE: March 2, 2020

TOWN CLERK'S OFFICE

PLEASE PRINT THE FOLLOWING INFORMATION

NAME: Deborah Kopald

ADDRESS: PO Box 998
Fort Montgomery, NY 10922

PHONE: (845) 446 9531/(845) 446 3768

E-MAIL: Deborah_Kopald@ymail.com

Under the provision of the New York State Freedom of Information Law, Article 6 of the Public Officer's Law, the above named hereby requests records or portions thereof pertaining to the following departments:

INFORMATION REQUESTED:

 Please provide the "PPUC" referenced in the attached email. Please provide the unsigned copy if it was not signed and the signed copy if it was signed.

PURPOSE OF REQUEST:

Transparency. Mr. Rider indicated he would provide all signed documents. This has not occurred.

SIGNATURE: Deborah Kopald

Arencibia, Stephanie (Molly)

From: Hermann, Charles
Sent: Monday, December 9, 2019 3:26 PM
To: rsullivan@highlands-ny.gov; blivsey@highlands-ny.gov
Subject: Public-Private Use Certification
Attachments: ES-ESN-0862 Town of Highlands - LED Street Lighting Public-Private Use Form 20191205.pdf

Richard, Bob,
Attached is the PPUC we spoke about at the meeting today to certify that the town (will) own the lights we will be replacing.

Please sign and return and let me know if you have any questions.

Chuck

Affirmation Eileen Flynn in Opposition to Omnibus Motion November 2, 2020
(1173-1177)

SUPREME COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

-----X
In the Matter of the Application of Deborah Kopald,

Petitioner,

For a Judgment pursuant to CPLR Article 78

-against-

The Town of Highlands New York,
Orange and Rockland Utilities, Inc., and
The New York Power Authority,

Respondents.
-----X

**AFFIRMATION OF
EILEEN P. FLYNN
IN OPPOSITION TO
OMNIBUS DISCOVERY
MOTION**

Index No. EF004088-2020

Return Date: November 3, 2020

Hon. Maria S. Vazquez-Doles

Eileen P. Flynn, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am associated with Justin E. Driscoll Esq., Executive Vice President and General Counsel for Respondent New York Power Authority (“NYPA”), and I am fully familiar with the facts and circumstances of this case.

2. I submit this affirmation in opposition to petitioner’s omnibus motion for discovery in this Article 78 proceeding. For the reasons stated below and in the opposition papers submitted by Respondent Town of Highlands, the relief sought by petitioner should be denied.

Petitioner’s Specific Demands

3. Specifically, petitioner seeks, among other things, the production of the following documents: any further NYPA contract, signed, partially signed, or unsigned with the Town of Highlands, the Public Private Use Certification signed between the Town of Highlands and

NYPA, list of all light specifications (Color Temperature, Intensity, Wattage) that NYPA has offered to other Towns in New York, and all such specifications that NYPA currently make available to offer, full deliverable to the Town pursuant to the Master Cost Agreement and the Authorization to Proceed, previous contracts between Orange & Rockland and the Town of Highlands to replace lights, NYPA contracts with all light vendors, the signed agreement between NYPA and Guth DeConzo Consulting Engineers pertaining to the Town of Highlands, and any agreement signed, partially signed, or unsigned between NYPA and O&R that relates to the Town's June 15, 2020 contract. Petitioner's Affirmation in Support, filed on October 26, 2020, ¶ 2.

4. In addition, petitioner seeks an evidentiary hearing and calls for the testimony of Town Board member Richard Sullivan and the General Counsel of NYPA. Specifically, petitioner requests that NYPA's Executive Vice President and General Counsel Justin E. Driscoll appear at a hearing to answer under oath "admits or denies under oath whether Richard Sullivan is employed on NYPA's projects via the Operating Engineers Union...and admits or denies that NYPA has contracts with the Operating Engineer's Union and explains the relationship between these contracts and any individual employment," "that there is a contract that has been circulated and/or discussed for an operation and maintenance agreement between NYPA and the Town ... and properly characterizes any said agreement," "that there is a contact that has been circulated and/or discussed between NYPA and O&R that would support the transfer and sale of the LED light fixtures and lights from O&R to the Town and properly characterize any said agreement or proposed agreement." Id. In the alternative, petitioner requests depositions of these two individuals.

5. Petitioner also makes a demand for an oral argument on her petition and the reimbursement of her litigation costs. In addition, she requests that the NYPA Street Lighting Project with the Town of Highlands and any contract between them be “permanently revoked by this Court such that it cannot be re-instated after any SEQR review due to Richard Sullivan’s conflict of interest,” and finally, that if the Court finds that the project is mistyped that the Court order the Town to have a public hearing. Id.

All of Petitioner’s Requests Should Be Denied

6. Discovery is not available in an Article 78 proceeding without leave of the Court. Such relief should be granted if there is a demonstrated need. Town of Pleasant Valley v. New York State Bd. of Real Prop. Servs., 253 A.D.2d 8, 15 (2d Dep’t 1999).

7. In support of her motion seeking certain discovery, petitioner fails to offer any reasonable basis for seeking the discovery sought. As such, her motion should be denied.

8. None of the paper discovery or testimony sought is relevant to the central inquiry of her Article 78 proceeding, namely whether the replacement of street lights in the Town of Highlands is a Type II action, not subject to further environmental review.

9. Petitioner sought and was awarded a temporary restraining order halting all such action on the subject project. Therefore, some of the contracts sought by Petitioner do not exist as a result. Namely, any other contracts with the Town of Highlands and/or any contracts between NYPA and its contractor Guth De Conzo Consulting Engineers relating to the Town of Highlands. In addition, petitioner seeks to obtain wide ranging documents unrelated to NYPA’s Town of Highlands Street Lighting Project. Petitioner requests to obtain a list of all light specifications NYPA has offered any other Town and NYPA’s contracts with all light vendors.

Respectfully, such requests are overly broad and burdensome and are not relevant to the questions raised by this Article 78 proceeding.

10. Next, the proposed evidentiary hearing and/or depositions are unnecessary. First, petitioner's request to specifically call for the production of NYPA's General Counsel is overreaching. There is no suggestion that the General Counsel is personally familiar with this matter, Mr. Sullivan, his employment relationship with any entity, or the contracts, signed or contemplated, for this Project. NYPA's General Counsel should not be ordered to be produced for a hearing or a deposition.

11. Also, there is no showing that the requested testimony of any NYPA employee, let alone NYPA's General Counsel, is necessary or needed for the review of any Respondent's determination in this Article 78 proceeding.

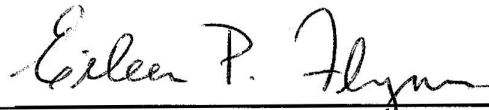
12. Lastly, all of the information, if ordered by the Court, could be responded to by an order to produce any documents, and no actual testimony is needed or warranted. Also, there is no indication that Mr. Sullivan's alleged employer's relationship with NYPA is probative in this matter. In its Verified Answer and Return, NYPA has produced all contracts that exist currently that are relevant to this proceeding. All other actions were halted due to the temporary restraining order.

13. Petitioner filed her Article 78 proceeding on July 31, 2020. Now, three months later, petitioner makes a motion for discovery that she alleges is needed for this proceeding. Such a delay undercuts the claim of need.

14. NYPA disagrees that oral argument is necessary or should be ordered on the Article 78 petition.

15. The remainder of the relief sought by petitioner in this motion seems to be directed at the potential relief that should be awarded by this Court in her Article 78 proceeding, and as such, should not be a part of this omnibus discovery motion. NYPA refers this Court to its arguments contained in its response to petitioner's Article 78 proceeding.

WHEREFORE, it is respectfully submitted that this Court issue an Order and Judgment denying the petitioner's omnibus discovery motion and granting such other and further relief as the Court deems just and proper.



EILEEN P. FLYNN

Dated: November 2, 2020

Affirmation of Michael Matsler in Opposition to Omnibus Motion October 28, 2020
(1178-1181)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of Deborah Kopald,
Petitioner,

X
AFFIRMATION IN OPPOSITION
TO OMNIBUS MOTION

For a Judgment Pursuant to Article 78

Index No. EF004088-2020

-against-

The Town of Highlands New York, Orange and
Rockland Utilities, Inc., and The New York
Power Authority,

Respondents.

Assigned Judge:

X Hon. Maria S. Vazquez-Doles

Michael J. Matsler, an attorney duly admitted to practice in the courts of the State of New York, affirms under penalty of perjury:

1. I am an officer of Rider, Weiner & Frankel, P.C., attorneys for Respondent Town of Highlands (hereinafter "Town").
2. I am fully familiar with the facts to which I refer in this Affirmation, submitted in opposition to the Petitioner's omnibus motion.
3. Pro Se Petitioner Kopald filed her Article 78 petition on July 31, 2020. The adjourned return date is November 3, 2020. Respondent Town of Highlands' opposition was filed on or about September 29, 2020 along with its verified answer. Co-Respondent New York Power Authority filed its opposing papers on or about October 2, 2020.
4. The Court is also respectfully referred to the Town's affidavits dated September 29, 2020, filed with the Answer.
5. Petitioner has now filed another application demanding sundry relief in the form of an "Omnibus Motion".

6. For the reasons stated below, Petitioner is not entitled to oral argument; not entitled to document discovery or depositions; nor is she entitled to the “permanent dismissal of certain contracts” or an order at this late date directing a “SEQR review” and a “public hearing”, which in any event are time-barred, as set forth in Respondents’ affidavits.

7. Petitioner Kopald demands in her Petition that the Court vacate a Town resolution dated April 27, 2020 authorizing a contract to buy existing street lighting facilities from Orange & Rockland Utilities, Inc.(hereinafter “O&R”) She also demands a judicial declaration that “the project authorized by the Resolution does not constitute a co-called ‘Type II’ action.” (See Petition, ¶1).

8. As set forth in the Answer and Respondent’s opposing affidavits, Petitioner lacks standing to maintain her claims; and the purchase of O&R’s fixtures is expressly exempt from SEQRA review, as a Type II action under Part 617.5(c) of the regulations. No amount of “oral argument, document discovery, a hearing or depositions” can change the plain language of the regulations or create standing where none exists. Her “Omnibus Motion” must be denied.

9. Her Petition further demands as against the Town that the Court vacate “any contract related to the Resolution...since December 9, 2019 or whatever date is deemed four months ago...” among the Town, O&R and NYPA. As set forth in the affidavit of Supervisor Mervin Livsey sworn to September 29, 2020 filed with this Court, the contract with O&R authorized by the Resolution was executed on June 15, 2020. (Ex. “E” to the Town’s Answer; Livsey Aff. ¶9). No other contracts or bid preparation have been undertaken due to this Court’s TRO. The June 15, 2020 O&R contract, as stated above, is exempt as a Type II action under SEQRA.

10. Petitioner’s demand for documents in her Omnibus Motion, even if arguendo she were to have standing and a valid claim, is blatantly improper. Petitioner’s motion amounts to a demand for all documents signed or unsigned, complete or incomplete, specified or unspecified, and which is presumptively improper in an Article 78 proceeding given Petitioner’s lack of standing or valid claim. See Stapleton Studios, LLC v. City of New York, 7 A.D.3d 273, 776 N.Y.S.2d 46 (1st Dept. 2004)(“Accordingly, Stapleton should not have been granted leave to conduct discovery absent a showing that the discovery sought was likely to be material and necessary to the prosecution or defense of this proceeding. No such showing was possible here, because the pleadings and the terms of the Permit establish that Stapleton is not entitled to the relief it seeks.”). See also National Energy Marketers Association v. New York State Public Service Commission, 57 Misc.3d 282 (Sup. Ct. Albany Cty. 2017)(“On this record, the petitioners have failed to establish a ‘demonstrated need’ for the further discovery they seek in these proceedings.”).

11. In essence, Petitioner is attempting to transfer her Article 78 Petition into a fishing expedition. She is seeking to construct belatedly a foundation to support the framework for a claim after already having filed her Petition. Her Petition, the Answers and affidavits and the records submitted, already amply define the issues and establish that Petitioner lacks standing and fails to state a valid claim.

12. Petitioner has not established any legitimate necessity for the documents and testimony she requests. In effect, she is attempting to expand her Petition into a Star Chamber to persecute the Town and use it as a vehicle to obtain documents which are available through FOIL. Moreover, as her affidavit shows, the records she requests such as the “master” agreement between the Town and NYPA for general services, issued in 2019, and the topics they address, all concern

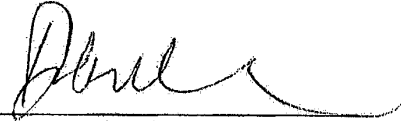
Petitioner's attack on the LED light conversion program which she had launched in July 2019, a full year before filing her Article 78 Petition. It is clear that the focus of her grievance – based on pure speculation – stems from events and contracts entered into between the Town and NYPA in 2019 regarding which Petitioner's claims are time-barred.

13. Accordingly, Respondent Town of Highlands respectfully requests that the Omnibus Motion be denied in all respects.

Dated: October 28, 2020

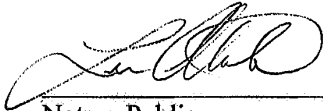


Michael J. Matsler



Deborah Kopald,
Petitioner
P.O. Box 998
Fort Montgomery, NY 10922

Sworn to before me this
4th day of November 2020



Notary Public

LISA ALVARADO
Notary Public, State of New York
No. 01AL6101150
Qualified in Orange County
Commission Expires November 3, 20 23

Notarization was made pursuant to NY Governor's Executive Order 202.7, as extended.

Michael Matsler, Town
mmatsler@riderweiner.com
via NYSCEF

Grace Su, O&R
sug@coned.com
via NYSCEF and email

Justin Driscoll., NYPA
michael.mccarthy@nypa.gov
via NYSCEF

Exhibit 27 Receipts Other than Court Receipts
(1184-1188)

FILED: ORANGE COUNTY CLERK 11/04/2020 04:59 PM

NYSCEF DOC. NO. 126

INDEX NO. EF004088-2020

RECEIVED NYSCEF: 11/04/2020

Printeks 3D Scanning & Printing

25 Walkill Avenue
Montgomery, NY 12549 US
(845) 294-0877
support@printeksrepro.com
www.printeksrepro.com



INVOICE

BILL TO

Deborah Kopald

INVOICE # 10797

DATE 08/27/2020

DUE DATE 08/27/2020

TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
8.5x11 - B/W	2,829	0.115	325.34T
COPY SHOP:20LB BOND:8.5X11 LETTER - COLOR	102	0.50	51.00T
GRAPHIC DESIGN - PER / HR	2	95.00	190.00

Legal Documents 977 pages each			
		SUBTOTAL	566.34
		TAX	30.58
		TOTAL	596.92
		PAYMENT	596.92
		BALANCE DUE	\$0.00

PAID

FILED: ORANGE COUNTY CLERK 11/04/2020 04:59 PM

INDEX NO. EF004088-2020

NYSCEF DOC. NO. 126

RECEIVED NYSCEF: 11/04/2020

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Montgomery, NY 12549 US
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support@printeksrepro.com
www.printeksrepro.com



Receipt

Received From
Deborah Kopald

Date: 11/03/2020
Payment Method: Credit Card
Reference No:

Invoice Number	Invoice Date	Due Date	Original Amount	Balance	Payment
11081	11/03/2020	11/03/2020	195.60	195.60	195.60

Memo:

Amount Credited: \$0.00
Total: \$195.60

Signature: _____

Michael Crudele
66 Hickory Drive
Campbell Hall, NY 10916

8/28/20

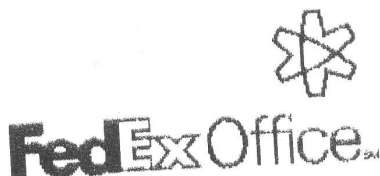
Deborah Kopald v. Town of Highlands New York, Orange and
Rockland Utilities, Inc., New York Power Authority

Service of Commencement Papers (Petition, Notice of Petition,
Memorandum of Law, OSC proposed, OSC, OSC Amended, Affidavit
and Exhibits, RJI, Notice of E-filing)

Town of Highlands.....	\$60
New York Power Authority.....	\$80
Orange and Rockland Utilities, Inc.....	\$160
(attempted Rte 208 Monroe, Rte 59 Spring Valley, 4 Irving Pl. New York, NY)	

Total	\$300
-------	-------

Michael Crudele
Process Server



Address: 111 E ROUTE 59
 NANUET
 NY 10954
 Location: GMVKK
 Device ID: -BTC04
 Transaction: 940279853807

FedEx First Overnight
 398533267020 28.65 lb (S) 106.15
 Declared Value 350
 Pack & Ship Service:
 Standard Small Filler
 .790363029700 1(T) \$3.99

Recipient Address:
 SERVIC0
 Attn Heather
 283 WASHINGTON AVE
 ALBANY, NY 12206
 5184634179

Scheduled Delivery Date 11/4/2020

Pricing option:
ONE RATE

Package Information:
FedEx Extra Large Box

Shipment subtotal:	\$106.15
Merchandise taxable subtotal:	\$3.99
Tax(County): 4%	\$0.16
Tax(SC): 0.375%	\$0.01
Tax(NY): 4%	\$0.16

Total Due: \$110.47

(S) CreditCard: \$110.47
 *****2004

M = Weight entered manually
 S = Weight read from scale

(518) 463-4179
 (800) 828-4428 NYS ONLY
 (518) 463-3752 Fax
 www.servico.com
 14-1638171 Tax I.D. No.



P.O. Box 871, Albany, New York 12201

Invoice

Date	Invoice #
11/4/2020	S1848549

Bill To
Deborah Kopald Deb Kopald PO Box 998 Fort Montgomery, NY 10922

Ship To
Deborah Kopald Deb Kopald PO Box 998 Fort Montgomery, NY 10922

Your File #	Biller	Account #	Customer Phone
	MP	463768	845.446.3768

Description	Amount
In the Matter of The Application of Deborah Kopald For A Judgment Pursuant to Article 78 VS The Town of Highlands New York., et al	
SERVICE ON: Orange and Rockland Utilities, Inc	
(RUSH) SERVICE OF PROCESS - SECRETARY OF STATE	70.00
ADMINISTRATIVE CHARGE	5.00
DISBURSEMENT TO DEPARTMENT OF STATE	40.00
Dish Fee	2.00
SALES TAX NYC 5 BOROUGHHS	0.00
- THANK YOU - PAY THIS INVOICE UPON RECEIPT -	
Total	\$117.00
Payments/Credits	\$0.00

RETURN COPY OF INVOICE WITH PAYMENT - WRITE INVOICE NUMBER ON ALL PAYMENTS

Balance Due \$117.00

NOTE: We guarantee our information to be as accurate as REASONABLE CARE can make it. However, the ultimate responsibility for maintaining files rests with the filing officer and/or government agency and we will accept NO LIABILITY beyond the exercise of REASONABLE CARE.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPARTMENT

Supreme Court
Index No: EF004088-2020

-----X
In the Matter of the Application of Deborah Kopald,
Petitioner-Appellant

For a Judgment pursuant to CPLR Article 78

CERTIFICATION PURSUANT TO
CPLR §2105

-against-

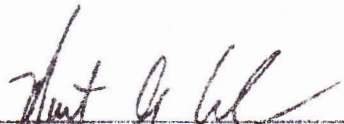
The Town of Highlands New York,
The New York Power Authority,
Respondents-Respondents

Appellate Division
Docket Number: 2021-01543

Orange and Rockland Utilities, Inc.,
Respondent

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I, Martin A. Cohen, an attorney admitted to practice in the courts of the State of New York,
hereby certify pursuant to CPLR §2105, that I have compared the foregoing papers with the
originals on file with the Clerk in Orange County Supreme Court as reflected on NYSCEF and
have found them to be a true, accurate and complete copy thereof.

Dated: November 22, 2021



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