

**South Portland City Council  
Position Paper of the Interim City Manager**

***Subject:***

**ORDER #69-16/17 – Authorizing the Interim City Manager to sign an LED Street Light Use Agreement between the City of South Portland and RealTerm Energy US, L.P., of Annapolis, MD. Passage requires majority vote.**

***Position:***

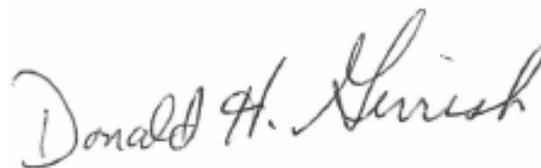
This item was discussed at last Wednesday's City Council workshop. The City currently leases its street lights from Central Maine Power. This agreement will enable the City to replace approximately 1,600 high pressure sodium and metal halide street lights with energy efficient LED lights and fixtures.

This order is brought forward to authorize the signing of a Use Agreement with RealTerm Energy US, L.P. in order to convert our street lights to LEDs.

Attached is a memorandum from Planning Director Tex Haeuser regarding his recommendation. He will be at Monday's meeting to answer any questions.

***Requested Action:***

Council passage of ORDER #69-16/17.



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Interim City Manager

**To:** Don Gerrish, Interim City Manager  
**From:** Tex Haeuser, Planning Director  
Greg L'Heureux, Finance Director  
**Cc:** Joshua Reny, Assistant City Manager and Economic Development Director  
**Date:** October 7, 2016  
**Re:** **Conversion of Street Lights to LED Fixtures**

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### **Project Purpose**

This project is to replace the approximately 1,600 high pressure sodium and metal halide street lights that the City leases from Central Maine Power (CMP) with LED fixtures (and, if necessary, new mast arms) that the City would own and maintain. Doing so will save the taxpayers a significant amount of money and also will greatly decrease the City's carbon footprint by reducing the amount of electricity used.

### **Historical Background**

It has taken four attempts to change State law to enable municipalities to own street lights that are attached to utility-owned poles. The Municipal Street Lighting Group (MSLG), consisting of Falmouth, Rockland, and South Portland, got together for the last two efforts and eventually succeeded in getting a section on street lights included in the 2013 Omnibus Energy Bill. These statutory provisions were somewhat general, however, so it has taken all the time since then to negotiate with CMP and Emera Maine through a PUC rule-making process on the details. That process was completed when the PUC Commissioners made their final ruling on September 13<sup>th</sup> of this year.

### **Key Legislative and PUC Documents**

There are several key documents that together create the framework for how municipalities can own street lights on utility-owned poles. In addition to being hyper-linked, these may be found at <http://www.southportland.org/departments/planning-and-development/street-lights/> and are summarized as follows:

- **Street Light Law**—These are the enabling provisions that were created under Title 35-A: Public Utilities, Chapter 25: Regulation of Faculties in the Public Way. They lay out the three ownership and maintenance options available for municipalities:
  - The transmission and distribution (TND) utility leases the street lighting components to the municipality and maintains them; or,
  - The TND utility installs street lighting components purchased and owned and maintained by the municipality; or,

- The municipality installs, owns, and maintains the street lighting components.

The law also directed the PUC to establish criteria for locating street lights on poles, for safety criteria related to installing street lights, establishing delivery rates, and determining a fair cost for cases where the municipality wants to purchase the existing street lights.

- [PUC Findings 9-22-14](#)—These findings relate to several points of discussion between the parties (MSLG, CMP, Emera Maine), including requiring municipalities to purchase liability insurance and indemnify the utility, only allowing the utility to disconnect existing street lights and cut in fuses, and limits on phasing of municipal purchases of existing street lights.
- [PUC Order 10-17-15](#)—This order included areas of agreement between the parties, including:
  - A Standard Form Agreement will need to be developed for municipalities to use to enter into agreements with the TND utilities for owning their own street lights.
  - Power connections can only be done by the utility.
  - Fusing is required so that street lights can be worked on without requiring power disconnects by the utility (except initially to install the fuse).
  - Notification to the utility is required except for routine maintenance.
  - Utility has to approve equipment being installed.
  - Street light usage will be based on the utilities' street light profiles (as opposed to being metered).
  - Each street light has to be labeled with a label visible from the ground.
  - Street lights have to be set in the "fail off" mode.
  - Utilities are allowed to enter into municipal maintenance agreements.
  - No access or pole attachment fee can be charged by the utility. [A significant win for the MSLG]
  - Utilities may conduct field audits of the municipality's street lighting equipment at the utility's expense. But, if they find discrepancies with what the municipality says they have for street lights, a full audit commences at the municipality's expense.
  - No charge for protective covers over electrical lines to protect municipal employees or contractors.
  - Municipal employees or contractors working on street lights have to be licensed Maine electricians and have to meet training certifications.

- There will be an ongoing working group among the parties.
- Purchase of existing lights can be phased in over three years.
- No charge to the municipality for the removal of any street lighting equipment at least 15 years old.
- Purchase is based on Net Book Value (NBV).

The order also included areas of disagreement among the parties, including:

- Amount of liability insurance.
  - CMP energy-only price—CMP wanted \$0.10 per kWh; we said it should be about half of that. [Eventually we won.]
  - Utility worker qualifications
  - Calculation of Net Book Value of equipment
- [PUC Order 9-13-16](#)—This order dealt with the last major sticking point between the parties: how to calculate the value of existing street light equipment should a municipality choose not to buy new equipment. Finance Director Greg L’Heureux argued strenuously and repeatedly that the method proposed by CMP did not fully credit municipalities for the many years of payments made on street lights long after they had been fully depreciated. The Commissioners sided with a PUC staff methodology based on Greg’s input. The order also gave CMP 60 days to file a Standard Form Customer Service Agreement (which works out to mid-October).
  - [Standard Form Agreement](#)—As discussed, this is the standard agreement document that will be used by municipalities to enter into agreements with the TND utilities in order to own their street lights. Although the final version of the agreement has not yet been issued by CMP (see above), a copy of the original CMP version is hyper-linked so as to provide a general idea of what will be included in these agreements.
  - [CMP Terms & Conditions for Municipal Ownership of Street Lights](#)—this document is a price list containing CMP’s fees and charges for various connection, fusing, installation, maintenance, and other activities. Given the logistics of replacing street lights, it may be difficult not to use CMP to install the replacement LED fixtures and any related equipment.

### **Implementation Firm Selection Process**

Beginning last winter, the MSLG, now joined by the City of Biddeford, began to think about how to go about doing the street light conversions once the PUC rulemaking was completed. Consistent with South Portland’s procurement procedures, and with the ongoing review and advice of Alyssa Tibbetts, Esq., of Jensen, Baird, Gardner & Henry, the four communities prepared a joint Request for Qualifications for a firm to assist in the project. We were looking

for a turn-key proposal that would include an investment grade audit of our street lights; a design analysis that fit the street systems and met industry standards as modified per municipal preference; a financial analysis to indicate return on investment (ROI); and so on.

The RFQ was sent out at the end of January, and four firms responded: Siemens, RealTerm, Pemco, and TEN (The Efficiency Network). After interviewing Siemens, RealTerm, and TEN, the four communities unanimously selected RealTerm. Copies of both the [RFQ](#) and the [RealTerm proposal](#) are attached.

### **Steps to Replace our Street Lights**

As contained in the [proposed agreement with RealTerm](#) (which will be identical to the version signed by Falmouth that is linked here), the steps that will be performed to accomplish the conversion of our street lights to LEDs include:

- **Undertaking an Investment Grade Audit (IGA)**—this will be a GIS inventory of all of our existing public street and outdoor lights that includes such attributes as:
  - Fixture Type
  - Fixture Wattage
  - Mounting Height
  - Arm Length
  - Wire Location
  - Pole Material
  - Pole Setback
  - Road Width
  - Road Classification
  - Pedestrian Conflict
  - Decorative with Photocell (if applicable)
  - Decorative Color (If applicable)
  - Utility Pole ID (When present)
  - Problems (Tree trimming, Transformer present, Primary wire, High reach, Inaccessible by vehicle)
  - General Comments
  - Collection Date
  - GPS Location (XY Coordinate)

The audit report will include:

- Recommendations on how to address identified serious deficiencies in the current street lighting network. The City will direct the Consultant on how to address these issues before the procurement of equipment and installation stages commence;

- Baseline energy use, energy cost and operations & maintenance costs;
  - Estimated retrofit energy use and operations & maintenance costs;
  - Estimated sources of funding, including rebates;
  - Calculation of estimated total conversion cost (remaining design tasks, product, and installation), energy reduction, and simple payback
- **Lighting design analysis**—the main point here is that it rarely works to simply replace existing street lights with LEDs on a one-for-one basis on exactly the same poles. An analysis has to be done to determine how desired light levels will be obtained and in which places. This will include identifying target areas that may need special consideration:
    - Pedestrian/vehicle and bicycle/vehicle crash data for the last 5 years to identify areas where light levels and/or spacing have affected public safety.
    - Important localized land uses (e.g. parks, schools, hospitals, etc.)
    - Relative volumes of pedestrian and bicycle activity
    - Unique neighborhood characteristics
- **Comprehensive financial analysis**-- The ROI will include a comparative analysis of all viable options including but not limited to the following:
    - Status quo – do not replace light fixtures and continue reliance on the utility to maintain the existing system.
    - Take ownership of all existing fixtures; install fuses; and replace fixtures at a future date to be determined.
    - Take ownership of all existing fixtures; install fuses; and replace fixtures at a specified time.
    - Require utility to remove all fixtures and install new fixtures as soon as practicably possible.
- **Public process**—RealTerm will convene and host a public process to provide citizens with an opportunity to offer input into the final design recommendations, including such aspects as:
    - Criteria for Manufacturer Selection;
    - Color Temperature Selection;
    - Business Improvement Area (BIA) Consultation for Decorative Replacement recommendations;
    - Public Education and Consultation Process;
    - Design Process;
    - Schedule and Project Milestones;
    - Post-Installation Outage Reporting Process.

- **Procurement of the LED light fixtures**—RealTerm will work with the City to develop detailed specifications and to procure a firm through a competitive process. One of the reasons the MSLG selected RealTerm was its strong relationship with LED vendors.
- **Apply for available grants and rebates**—Efficiency Maine is not nearly as generous as they had been for street lights, but for whatever grants or rebates available, RealTerm will pursue them.
- **Perform project management including oversight of LED installations**—this also will be done by RealTerm, including overseeing the recycling or disposal of all waste material.
- **At project commissioning, RealTerm will provide to South Portland:**
  - RealTerm Energy Documents:
    - Proposal
    - Letter of Intent
    - Investment Grade Audit (IGA)
    - Contract Document
    - Supplemental Conditions
    - RealTerm Energy Insurance Certificate
    - Confirmation of Utility Billing Update,
    - Warranty Service Request System Overview
  - Installation Contractor:
    - Contractor Insurance and Workman’s Compensation Documents (as applicable),
    - Utility Inspection Certificates (as applicable)
  - Luminaires:
    - Warranty Coverage Information
    - Manufacture Warranty
    - Fixture Seal of Approval
    - Photocell Warranty
    - Recycling Certificate
  - GPS/GIS Lighting Infrastructure:
    - Installation Summary
    - Fixture Specifications
    - Lighting Designs
  - Lighting Network Metadata
  - Closing Documents:
    - Request from you: Feedback and Testimonial
    - Post Project Customer Care & Company Information

## **Schedule**

The anticipated schedule is as follows:

- September – October 2016      Meet with staff, utility and other stakeholders
- November – December 2016      Audit
- January – February 2016/17      Product and installation selection processes
- January – March 2016/17      Design and product selection
- April – June 2017      Procurement and delivery of the fixtures
- July – September 2017      Installation

## **Financial Aspects**

The overall financial goal of the Streetlight project is to reduce costs. Under the current CMP owned structure, CMP currently leases the street lights to the City. With the passage of the Street Light Law and the various PUC orders and findings, we are now able to purchase these Streetlights. Based on preliminary information provided by CMP, the purchase price will be approximately \$300,000. One option the City has available would be to remove the light head and install a new fixture on the mast arm. We will also have the option of simply having CMP remove the existing streetlights. Under this option, we would be responsible for paying for only those streetlights less than 15 years old and installing a fused connection point for all streetlights. Additionally, under this option the City would purchase all new hardware and have the new equipment installed. The IGA and ROI analysis performed by RealTerm will assist the City in determining which option to proceed with is best for the City. With our partnership with the other three communities, it provides us a measure of bulk size to have economies of scale in the purchase process. We believe this will lower our costs. The agreement with RealTerm allows us to determine what steps we wish to maintain to move forward. In summary the various preliminary phases of the agreement with RealTerm for the City's 1,600 streetlights would cost:

<u>Step</u>	<u>Cost per unit</u>	<u>Cost</u>	<u>Cumulative</u>
1. IGA	\$10.50	\$16,800	\$16,800
2. Design	\$2.50	\$4,000	\$20,800
3. Selection	\$1.81	\$2,900	\$23,700
4. Procurement	\$.68	\$1,100	\$24,800

At any point, the City would have the ability to not proceed. Thinking beyond the preliminary phase and depending on which option the City elected, the cost of the purchase of existing equipment from CMP, new hardware costs, installation costs, and a 17% margin on equipment and installation costs would be in addition to the base \$16,800. The exact project costs are not known until the preliminary phases determine which option is best for the City. In concept, the cost of replacement would be funded through an energy savings Municipal Lease Agreement, in whole or in part, (with partial funding from the unassigned fund balance as an option). The

annual savings on electrical charges would pay for the annual lease payments and ongoing maintenance costs.

It should be noted if the City purchased its light from CMP or installed new lights, it would be responsible for the ongoing maintenance and repair. The PUC orders allows this to be done through CMP (rates spelled out) or by another qualified contractor (negotiated rate).

### **Recommendation**

The staff recommendation is to develop an order, and hold a Council hearing, to authorize the Interim City Manager to execute the proposed agreement with the RealTerm consulting firm. Additionally, our recommendation would be that the City provide preliminary funding (approximately \$25,000) from an unassigned fund to pay for the initial costs analysis and ROI study.



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON H. GERRISH  
Interim City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

**IN CITY COUNCIL**

**ORDER #69-16/17**

**ORDERED**, that twenty-five thousand (\$25,000) be transferred from General Fund Unassigned Fund Balance and appropriated to the Fund 4156 Planning Department Street Light Planning CIP account 415665-658800-16563.

**BE IT FURTHER ORDERED**, that the Interim City Manager be authorized to sign the Agreement in substantially the same form as shown on the attached with RealTerm Energy US, L.P.

Fiscal Note: \$25,000

Date: October 17, 2016

District One  
CLAUDE V. Z. MORGAN

\_\_\_\_\_

District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

\_\_\_\_\_

At Large  
THOMAS E. BLAKE

## AGREEMENT

### **I. PARTIES**

This contract (hereinafter referred to as "Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the Inhabitants of the City of South Portland with a mailing address of 25 Cottage Road, South Portland, ME 04106 (hereinafter referred to as "City"); and RealTerm Energy US, L.P., a Delaware limited partnership, with a mailing address of 201 West Street, Suite 200, Annapolis, MD 21401 (hereinafter referred to as "Consultant"). In consideration of the mutual promises contained herein, the Consultant agrees to perform the following services for the City.

### **II. SCOPE OF WORK**

In consideration of the payment terms set forth in Section IV of this Agreement, the Consultant shall perform the services as outlined below and consistent with Consultant's response to a request for qualifications dated January 28, 2016 and attached hereto as Exhibit A, which response is also attached hereto as Exhibit B.

This proposal is to be a turn-key proposal that includes the following:

#### **A. Undertake an IGA (Investment Grade Audit) of the street lights and their attributes.**

The Consultant will compile an inventory of the existing public street and outdoor lights via a Geographic Information Systems (GIS) inventory assessment of all the streetlights and outdoor lights included in the project. The Consultant will include the following attributes and describe how they relate to the design process.

- Fixture Type
- Fixture Wattage
- Mounting Height
- Arm Length
- Wire Location
- Pole Material
- Pole Setback
- Road Width
- Road Classification
- Pedestrian Conflict
- Decorative with Photocell (if applicable)
- Decorative Color (If applicable)
- Utility Pole ID (When present)

- Problems (Tree trimming, Transformer present, Primary wire, High reach, Inaccessible by vehicle)
- General Comments
- Collection Date
- GPS Location (XY Coordinate)

During the inventory assessment, the Consultant will report and review all issues with the City on a regular basis, when appropriate, including any necessary interim reports, so that the City may begin to address them in order to minimize any delay on the eventual conversion.

The Consultant must produce an electronic inventory file suitable for use in common GIS software (e.g. ESRI ArcMap), as well as Microsoft Excel, that contains the required attributes.

The Consultant will meet as necessary with the utility to reach agreement on the final inventory.

Based on the inventory, utility bill analysis, and consultation on controls and/or other products, the Consultant will develop an Audit Report which will include:

- Recommendations on how to address identified serious deficiencies in the current street lighting network. The City will direct the Consultant on how to address these issues before the procurement of equipment and installation stages commence;
- Baseline energy use, energy cost and operations & maintenance costs;
- Estimated retrofit energy use and operations & maintenance costs;
- Estimated sources of funding, including rebates;
- Calculation of estimated total conversion cost (remaining design tasks, product, and installation), energy reduction, and simple payback

**B. Perform an independent and certified lighting design analysis which includes designing each unique street to either an RP 8-14 standards where applicable or at a standard to be specified, to be determined at a later date and mutually agreed upon by both the City and Consultant**

The determination of adequate light levels for safety of pedestrians, cyclists, and vehicles is guided by the Illuminating Engineering Society (IES) Standard for Roadway Lighting (RP-8-14). The City recognizes that existing pole placement limits the degree to which IES standards may be met. The Consultant must use design methodologies that will best deliver adequate lighting through the City for the expected life of the products

and the City's desire for specific goals associated with customized lighting levels if IES standards are not the standard selected by the City.

The Consultant will advise the City on the use of potential controls in terms of impact on safety, standardization, and energy and cost savings. The Consultant should be able to present analysis of how controls could impact the total lifecycle costs of the system. The Consultant must also propose to the City any other value-add systems and discuss with the City their financial impacts, commercial readiness, and alignment with utility policies.

Additionally, the City in some or all cases, will work with the Consultant to incorporate an analysis of the following data points to identify target areas that may need special consideration:

- Pedestrian/vehicle and bicycle/vehicle crash data for the last 5 years to identify areas where light levels and/or spacing have affected public safety.
- Important localized land uses (e.g. parks, schools, hospitals, etc.)
- Relative volumes of pedestrian and bicycle activity
- Unique neighborhood characteristics

**C. Provide a comprehensive financial analysis to indicate ROI (Return on Investment), savings and payback period; completing all applicable incentive applications.**

The ROI shall include a comparative analysis of all viable options including but not limited to the following:

- Status quo – do not replace light fixtures and continue reliance on the utility to maintain the existing system.
- Take ownership of all existing fixtures; install fuses; and replace fixtures at a future date to be determined.
- Take ownership of all existing fixtures; install fuses; and replace fixtures at a specified time.
- Require utility to remove all fixtures and install new fixtures as soon as practicably possible.

The ROI shall be amended based on any final decisions prior to the conclusion of the project including after public review, as directed by the City, to include accepted public comments.

**D. The Consultant will convene and host a public process where the public will have an opportunity to offer input on the final design and recommendations. Such approval to include, but not be limited to, the following;**

- Criteria for Manufacturer Selection;
- Color Temperature Selection;
- Business Improvement Area (BIA) Consultation for Decorative Replacement recommendations;
- Public Education and Consultation Process;
- Design Process;
- Schedule and Project Milestones;
- Post-Installation Outage Reporting Process.

**E. Carry out all procurement requirements.**

**i. Selection of manufacturer**

The Consultant must develop complete and detailed specifications for LED Luminaires to replace lighting fixtures and will procure fixtures through a competitive process. The specifications will be non-proprietary performance specifications describing all relevant photometric, electrical, physical, and durability characteristics of the luminaires.

The Consultant must provide details on their method of developing specifications and how that ensures that appropriate quality standards are met.

**ii. Construction specification development**

The Consultant will work with the City to develop detailed specifications and will procure a firm through a competitive process, which is authorized by Central Maine Power to work on their grid, to install the light fixtures.

**F. Apply on behalf of the City for all available grants and rebates relating to the LED conversion project.**

**G. Perform project management functions including oversight of the LED luminaire installation and the recycling/disposal of all waste material.**

Based on the finalized design, the Consultant will oversee the installation and maintenance as an owner representative. The following elements will be covered:

- Description of Work

- Required installation schedule
- Reference standards
- Submittals
- Quality Assurance and Warranty
- Installation
- Field Quality Control
- Adjusting and Cleaning
- Disposal
- Perform a sampling of spot-checks on installed lights to ensure proper installation procedures are being followed, especially at the beginning of the project
- Manage data on installations and provide a weekly status update of the project
- Confirmation of satisfactory installation completion by install contractor

**H. At project commissioning, the Consultant will provide the following to the City;**

- RealTerm Energy Documents:
  - Proposal
  - Letter of Intent
  - Investment Grade Audit
  - Contract Document
  - Supplemental Conditions
  - RealTerm Energy Insurance Certificate
  - Confirmation of Utility Billing Update,
  - Warranty Service Request System Overview
- Installation Contractor:
  - Contractor Insurance and Workman’s Compensation Documents (as applicable),
  - Utility Inspection Certificates (as applicable)
- Luminaires:
  - Warranty Coverage Information
  - Manufacture Warranty
  - Fixture Seal of Approval
  - Photocell Warranty
  - Recycling Certificate
- GPS/GIS Lighting Infrastructure:
  - Installation Summary
  - Fixture Specifications
  - Lighting Designs
- Lighting Network Metadata
- Closing Documents:
  - Request from you: Feedback and Testimonial
  - Post Project Customer Care & Company Information

### **III. COMMENCEMENT AND COMPLETION**

The Consultant will commence work immediately upon contract signing and complete the tasks in their entirety within a reasonable schedule, provided below/;

- September – October 2016      Meet with staff, utility and other stakeholders
- November – December 2016    Audit
- January – February 2016/17    Product and installation selection processes
- January – March 2016/17      Design and product selection
- April – June 2017              Procurement and delivery of the fixtures
- July– September 2017          Installation

The City may authorize changes in the scope, extent or character of the services provided under this Agreement and the time and cost for completion may be adjusted accordingly with approval by the City.

### **IV. PAYMENT TERMS**

The Consultant shall submit an invoice on or about the first of each month reflecting services performed at the City's normal professional billing rates in effect at the time of execution of this Agreement, which invoices will be due and payable within 30 days of receipt. The Consultant understands that the payment for completion of the services shall be based upon a cost plus basis whereby the consultant agrees to charge a \$10.50 per pole fee for data collection services plus the Investment Grade Audit (Sections A-C), plus a 17% margin on the costs for the procurement of fixtures and installation (Section D-H).. The Consultant agrees to perform the services on that basis.

### **V. TERMINATION**

Either party may terminate this Agreement for cause after giving the other party written notice and a reasonable opportunity to cure. The City may terminate without cause by giving the Consultant fourteen (14) days notice, and compensating the Consultant equitably to the termination date for services performed or materials furnished in accordance with this Agreement through the effective date of termination.

The City may elect to exit the Agreement after various stages of the project. The following are the costs to exit at each respective project stage:

Exit Cost after GIS (Sec II.A.)	\$10.50	/fixture
Exit cost after GIS and Design (Sec II.A through D.)	\$13.00	/fixture
Exist cost after manufacturer selection (Sec II.A through E.i.)	\$14.81	/fixture
*Exist Cost After procurement but before installation Sec II.A through E.ii)	\$15.49	/fixture

- This cost does not include the cost of the fixtures
- The unit rates listed apply to the specific task(s) listed and include all previous scope of work elements [ie, an exit after Design (Sec II.A through D) phase will cost \$13.00 per fixture and includes the exit costs after the completion of the GIS (Sec II.A) phase costs of \$10.50 per fixture, and so on).

**VI. DISPUTE RESOLUTION**

Any controversy or claim arising out of or related to this Agreement, which cannot be resolved between the parties shall be submitted to the Maine Superior Court (Cumberland County). This agreement shall be governed by Maine law, notwithstanding its conflict of law principles.

**VII. QUALIFICATIONS**

The Consultant represents and holds, and will continue to hold during the term hereof any and all qualifications, licenses and certifications required to perform its services in Maine. The Consultant shall perform all services in accordance with professional standards.

**VIII. USE OF DOCUMENTS**

All documents, reports, data, studies, estimates and other work material developed under this Agreement shall be the property of the City and shall be promptly delivered to the City in a form compatible with the City’s software or other records management systems. All data collected shall be disclosed only to the City’s authorized representatives, at the direction of the City.

**IX. SUBCONTRACTORS**

The Consultant shall be fully responsible for the acts and omissions of any subcontractors and of persons both directly or indirectly employed by it, and shall hold subcontractors to the same terms and conditions as the Consultant is held under this Agreement. No subcontractors shall be retained on this Agreement without the specific prior written approval of the City. Subcontractors shall not be deemed employees of the City under any circumstances and Consultant assumes full responsibility for payment of compensation, taxes and all other benefits due and payable to all such personnel involved in performing services under this Agreement.

## **X. SUCCESSORS & ASSIGNMENT**

The City and Consultant are hereby bound to this Agreement and to the successors of the other party in respect of all covenants, agreements and obligations of this Agreement, subject only to the appropriation by the City of sufficient funds to fulfill its obligations hereunder. Neither the City or Consultant may assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other party, unless mandated by law. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement, unless expressly provided otherwise in a written consent to assignment.

## **XI. INSURANCE**

The Consultant shall purchase and maintain Workers' Compensation Insurance, General Public Liability and Property Damage Insurance including vehicle coverage and professional liability insurance, all with limits and terms satisfactory to the City. The City shall be named as an additional insured on the liability policy.

## **XII. INDEMNIFICATION**

The Consultant will indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Agreement by the Consultant, its officials, employees, agents and subcontractors. To the extent permitted by law, the City will indemnify and hold harmless the Consultant, its officers, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the City's negligent performance under the Agreement. Any obligation of the City to indemnify pursuant to this Agreement shall not be deemed or construed to operate in practical effect to waive any defense, immunity, or limitation of liability which may be available to the City, its officers, agents or employees, under the Maine Tort Claims Act (14 M.R.S. §§ 8101, et seq.) or any other privileges or immunities which may be provided by law.

## **XIII. CONFLICT OF INTEREST**

The Consultant will represent the City and not suppliers, avoiding both the appearance, as well as any actual conflict of interest. Any subsequent disclosure of a conflict of interest after this contract is awarded, but which existed at the time of proposal submission, will be grounds for termination.

## **XIV. ENTIRE AGREEMENT**

This Agreement and its attachments represent and contain the entire agreement between the parties. Prior discussions or verbal representations by the parties that are not contained in this Agreement and its attachments are not a part of this Agreement. Where there is any conflict between the provisions of this Agreement and the provisions of any attachment, the provisions of this Agreement shall control.

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

RealTerm Energy US, L.P., a Delaware limited partnership

**By:** RealTerm Energy US, LLC, its General Partner

**By:** \_\_\_\_\_  
Sean Neely, President

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

INHABITANTS OF THE  
CITY OF SOUTH PORTLAND, MAINE

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

Don Gerrish, Interim City Manager

COMMUNITY PROFILE	Approximate Units
<p><b>Falmouth, Maine</b></p> <ul style="list-style-type: none"> <li>• Road Miles</li> <li>• Street Lights attached to public utility poles and scheduled for replacement through this project</li> <li>• Population</li> </ul>	<p>78</p> <p>700</p> <p>11,185</p>
<p><b>Rockland, Maine</b></p> <ul style="list-style-type: none"> <li>• Road Miles</li> <li>• Street Lights attached to public utility poles and scheduled for replacement through this project</li> <li>• Population</li> </ul>	<p>60</p> <p>704</p> <p>7,297</p>
<p><b>South Portland, Maine</b></p> <ul style="list-style-type: none"> <li>• Road Miles</li> <li>• Street Lights attached to public utility poles and scheduled for replacement through this project</li> <li>• Population</li> </ul>	<p>153</p> <p>1,597</p> <p>25,002</p>
<p><b>Biddeford, Maine</b></p> <ul style="list-style-type: none"> <li>• Road Miles</li> <li>• Street Lights attached to public utility poles and scheduled for replacement through this project</li> <li>• Population</li> </ul>	<p>135</p> <p>2,325</p> <p>21,277</p>