

**AGREEMENT**  
**BY AND BETWEEN THE NARRAGANSETT BAY COMMISSION**  
**AND THE CITY OF CENTRAL FALLS**

THIS AGREEMENT is made and entered into this 26<sup>th</sup> day of April, 2016 by and between the Narragansett Bay Commission (hereinafter the "Commission" or "NBC") having a principal place of business at One Service Road, Providence, RI 02905 and the City of Central Falls (hereinafter "Central Falls"), having a principal office location at 580 Broad Street, Central Falls, RI 02863 (hereinafter NBC and Central Falls may collectively be referred to as the "Parties" and each individually as a "Party").

WHEREAS, NBC controls and has possession of a certain electric meter station located in the parking lot of 660 Roosevelt Avenue, Central Falls, RI (hereinafter the "Meter Station"); and

WHEREAS, Central Falls requested that four (4) certain electric street lamps under their possession and control be tied into the Meter Station; and

WHEREAS, NBC agreed to allow Central Falls to tie-in four (4) certain street lamps to the Meter Station in consideration of payment of certain usage fees; and

WHEREAS, Central Falls agreed to pay certain usage fees; and

WHEREAS, Central Falls acknowledges that the City of Pawtucket and the Blackstone Valley Tourism Council also have certain electric lights tied into the Meter Station; and

WHEREAS, Central Falls acknowledges that the use by the City of Pawtucket, the Blackstone Valley Tourism Council, and any other user does not directly affect the terms of this Agreement; and

WHEREAS, on or about January 2015 Central Falls tied in four (4) certain street lamps to the Meter Station;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**Payment By NBC**

NBC will pay a flat fee of \$12.00 per month to the electricity provider (the "Flat Fee"). The Flat Fee will not vary based on Meter Station usage by Central Falls or other individuals or entities who receive prior approval from NBC to connect to the Meter Station. NBC has the sole right to reassess the Flat Fee.

## **Payment By Central Falls**

Central Falls will pay an annual usage fee to NBC upon receipt of an invoice from NBC. The usage fee will be calculated based upon the total usage for the calendar year. NBC will deduct the Flat Fee and usage fee of the Blackstone Valley Tourism Council from the annual usage fee. Central Falls will pay half of the remainder of the total calculated annual usage fee after such deductions (the "Annual Payment Amount"). Central Falls understands and acknowledges that the Annual Payment Amount will vary annually depending on the usage of the Meter Station. If Central Falls receives approval from NBC to tie in additional lights or use power through the Meter Station in any form beyond the initial four (4) street lamps, then Central Falls also understands and acknowledges that it will be required to pay additional amounts beyond the Annual Payment Amount (the "Additional Payment"). NBC has the sole right to reassess the Annual Payment Amount with regard to any Additional Payment.

## **Maintenance**

Central Falls will be responsible for maintaining the four (4) street lamps tied into the Meter Station and any cables, conduits, or other matter relative to such a connection as well as any cables, conduits, or other matter relative to any future power usage by Central Falls that has been approved by NBC. NBC will not be liable for any harm incurred by Central Falls relative to their use of the Meter Station whether harm results from the Meter Station itself or otherwise.

If Central Falls requires access to the Meter Station or the building that houses it, then Central Falls must contact Margaret Goulet, NBC Interceptor Maintenance Manager at (401) 461-8848 ext. 302 during normal business hours.

## **Extent of Agreement**

Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than NBC and Central Falls. The failure of NBC to demand from Central Falls performance of any act under the Agreement shall not be construed as a waiver of NBC's right to demand, at any subsequent time, such performance.

## **Captions**

Captions and section headings are for reference only and shall not limit or otherwise affect the meaning of the sections.

## **Remedies**

Claims, counter-claims, disputes, and other matters in question between NBC and Central Falls arising out of, or relating to, this Agreement or the breach of it will be decided by arbitration if the parties mutually agree, or by a court of competent jurisdiction.

## **Term and Termination**

This Agreement will inure to the benefit of the Parties and their successors and/or assigns for an indefinite term. Either Party may terminate this agreement upon written notice sent at least seven (7) calendar days prior to the intended termination date. If the termination date occurs prior to the issuance of the Annual Payment Amount invoice, Central Falls will be responsible for paying their prorated share of the Annual Payment Amount inclusive of any Additional Payment upon receipt of an invoice from NBC.

## **Default**

Failure by Central Falls to pay the Annual Payment Amount or any Additional Payment under the terms specified in this Agreement and in an invoice issued to it from NBC will constitute an event of default. Central Falls will have thirty (30) days to cure the default prior to the assessment of additional fees and costs inclusive of any reasonable attorney's fees and costs expended by NBC in the collection of the defaulted payment. After the expiration of the thirty-day cure period, NBC may undertake any and all remedies to collect the defaulted payment including, but not limited to, filing a court action and NBC may assess additional charges on the defaulted payment including reasonable attorney's fees and costs.

## **Integration**

The Agreement represents the entire understanding of NBC and Central Falls to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing and signed by both parties notwithstanding NBC's right to reassess any fees, costs, or payments as described herein.

## **Severability**

If any provision of the Agreement or the application thereof is held invalid by a court, arbitrator or government agency of competent jurisdiction, the Parties agree that such a determination of invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions and thus shall remain in full force and effect or application.

## **Jurisdiction**

This Agreement shall be administered and interpreted under the laws of the State of Rhode Island. Jurisdiction of litigation arising from this Agreement shall be in the State of Rhode Island. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of this Agreement shall be in full force and effect.

### **Indemnification**

Central Falls agrees to forever defend, indemnify, and hold harmless NBC, and their agents, servants, contractors, and employees, from and against any and all claims, complaints, demands, causes of action, actions and liabilities arising out of, or in any way connected with this Agreement including but not limited to those claims, complaints, demands, causes of action, actions and liabilities in any way connected with the Meter Station, howsoever caused, except to the extent that such claims, complaints, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of NBC.

### **Tax Implications**

Central Falls agrees that if it is later determined by the Internal Revenue Service or any other taxing body that taxes of any type should have been paid in connection with any benefit they receive pursuant to this Agreement, they will be solely responsible for paying such taxes. NBC makes no representations or warranties regarding the legal effect or tax consequences of this Agreement, or of any such filing or reporting by NBC. Central Falls further expressly acknowledges that they neither received nor relied upon any tax advice from NBC or their representatives and attorneys.

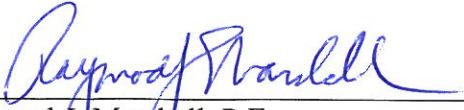
### **Advice of Counsel**

Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such counsel with respect to its decision to enter into this Agreement. The individuals whose signatures are affixed to this Agreement in a personal or representative capacity represent that they are competent to enter into this Agreement and are doing so freely and without coercion by any other Party or non-party hereto.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, the Agreement in four counterparts each of which shall be deemed an original on the date first below written.

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**The Narragansett Bay Commission:**



Raymond J. Marshall, P.E.  
Executive Director

4/26/16

Date

**The City of Central Falls:**



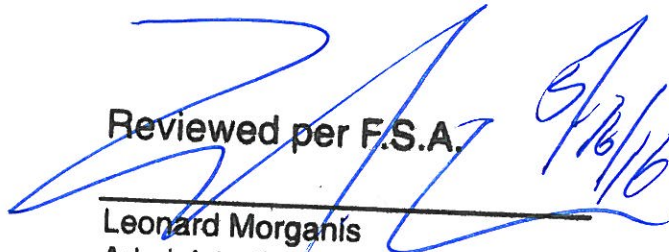
Print Name: James A Diassa

Title: Mayor

5-19-16

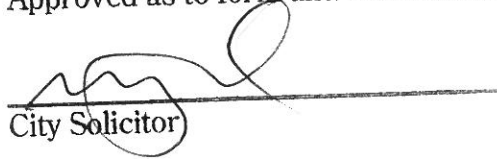
Date

Reviewed per F.S.A.



Leonard Morganis  
Administration & Finance Officer

Approved as to form and correctness

  
City Solicitor