

**AGREEMENT
FOR THE ONGOING INCIDENTAL AND
EMERGENCY MAINTENANCE OF THE STREET
LIGHTS OWNED OR MAINTAINED BY THE CITY
OF SANTA FE**

This Agreement for the Ongoing and Emergency Maintenance of the Street Lights Owned or Maintained by the City of Santa Fe (this "**Agreement**"), effective as of _____, 2021 (the "**Effective Date**"), is between the City of Santa Fe ("**Santa Fe**") and the Public Service Company of New Mexico ("**PNM**") (together, the "**Parties**"). This Agreement supersedes and replaces all previous and existing maintenance agreements for streetlights between Santa Fe and PNM.

BACKGROUND

A. Santa Fe owns approximately 3,355 streetlights in the City of Santa Fe ("**Santa Fe Lights**"). Santa Fe may request PNM to perform maintenance on streetlights owned or maintained by Santa Fe ("**Santa Fe Lights**") at the request and expense of Santa Fe according to the terms of PNM Electric Services 16th Revised Rate No. 20 Canceling 15th Revised Rate No. 20 (the "**Rate Tariff**") approved by the New Mexico Public Regulation Commission.

B. Other streetlights in the City of Santa Fe are owned and maintained by PNM ("**PNM Lights**"). Pursuant to the Agreement for the Conversion of Streetlights Owned by the Public Service Company of New Mexico, Santa Fe has asked PNM to convert the PNM Lights into light-emitting diode ("**LED**") lights. PNM will retain maintenance obligations for the PNM Lights according to the terms of the Rate Tariff and as further explained by this Agreement.

C. The Parties desire to enter into this Agreement to set forth the Parties' respective obligations arising from and related to coordination of outage calls and PNM's ongoing incidental and emergency maintenance of Santa Fe streetlights. These obligations: (i) supersede any prior agreement between PNM and Santa Fe with respect to the Santa Fe Lights, and all such amendments, restatements or additional agreements thereto between Santa Fe and PNM; and (ii) recognize the assumption of maintenance obligations for Santa Fe Lights by third party contractor(s) ("**Contractor**") engaged by Santa Fe to maintain Santa Fe Lights, including any successor contractor (together with Santa Fe, the "**City Parties**").

D. In connection therewith, the Parties expect (i) instances when Contractor will be unable to fulfill its maintenance obligations for Santa Fe Lights without PNM disconnecting the electricity to certain Santa Fe Lights and, following Contractor's completion of its maintenance obligations, reconnecting electricity to those Santa Fe Lights, and (ii) other

emergency situations when PNM may need to secure the area by disconnecting power to Santa Fe Lights. The Parties also expect instances in which Santa Fe or its Contractor may request PNM to perform incidental service on Santa Fe Lights.

E. This Agreement is read together with the Rate Tariff and is made pursuant to NMSA 1978, Section 62-6-15 wherein rates and service regulations may be established by contract between a municipality and the utility.

Accordingly, the Parties agree as follows:

AGREEMENT

1. Tasks. Beginning on the Commencement Date and subject to Santa Fe's payment obligations set forth in Section 6 hereof, PNM shall disconnect and reconnect electricity to, and inspect (or re-inspect), Santa Fe Lights and respond to emergencies, emergency personnel, or other incidental requests related to the maintenance and repair of Santa Fe Lights in accordance with the terms and subject to the conditions set forth below (the "**Tasks**"). PNM acknowledges that maintenance of PNM Lights (defined above) is not the responsibility of Santa Fe.

2. Public Notifications; Safety and Road Personnel Notifications. The Parties shall reasonably coordinate as requested by Santa Fe in the development and distribution of public notifications, via website postings or the like, regarding the appropriate Santa Fe and Contractor contacts in the event of an emergency (e.g., a downed Street Light, a live wire, etc., collectively, an "**Emergency**") or a Street Light outage (each, an "**Outage**"). Santa Fe shall also notify all necessary authorities including city and county police, highway patrol, fire, and the New Mexico Department of Transportation (together with the public, collectively, the "**Outage Reporters**") regarding Contractor assumptions of Santa Fe Lights maintenance obligations and the appropriate Contractor contact in the event of an Emergency or an Outage.

3. Coordination of Outage Calls

(a) Call Centers. Each party shall have a call center or outage contact where Outage Reporters may call to report Outages and Emergencies ("**Outage Calls**").

(b) Outage Calls. The party receiving an Outage Call shall use commercially reasonable efforts to determine whether the Street Light noted in an Outage Call is owned by PNM or is a Santa Fe Light. If the party receiving the Outage Call can definitively determine that the Street Light in question is a Street Light owned by the other party, then the party receiving an Outage Call shall redirect the Outage Reporter to the other party's call center in accordance with the other party's processes. If the party receiving the Outage Call cannot determine with certainty the ownership of the Street Light in question based on information provided by the Outage Reporter and other information actually available to the party receiving the Outage Call, then, that party shall do the following:

(i) The party receiving an Outage Call shall include the Outage on its

maintenance and repair worklist as a Street Light requiring maintenance and shall determine the ownership of the Street Light in question in accordance with its processes at the time its service crew arrives at the Street Light. If it is determined by the service crew that the Street Light in question is owned by the other party, then the party receiving the Outage Call shall notify the other party's Authorized Representative (or his or her designee) of the Outage. The tasks performed by each party pursuant to the terms of this Section 3(b)(i) shall be at each party's sole cost and expense.

(ii) In the case of an Emergency, the party receiving an Outage Call shall promptly dispatch a service crew in accordance with the terms set forth in Section 4 at such party's sole cost and expense.

4. Provision of Emergency Maintenance.

(a) If PNM is the party responding to an Emergency and PNM determines it is a Santa Fe Light when its service crew arrives on scene, then PNM shall:

(i) attempt to disconnect power to the Santa Fe Light by any means necessary in light of the Emergency,

(ii) perform any other functions it deems necessary and appropriate in accordance with its processes and applicable safety codes and safety standards to make the area safe, and

(iii) notify the City Parties of the Emergency in accordance with its processes.

(b) If the City Parties are responding to the Emergency and the City Parties determine it is a PNM Light when its service crew arrives on scene, then the City Parties shall:

(i) attempt to disconnect power to the Street Light by any means necessary in light of the Emergency, but only to the extent possible without disconnecting power at PNM's transformer, junction box, cabinet, or other equipment,

(ii) perform any other functions it deems necessary and appropriate in accordance with its processes and applicable safety codes and safety standards to make the area safe (other than disconnecting power to such Street Light at PNM's transformer, junction box, cabinet, or other equipment), and

(iii) notify PNM of the Emergency in accordance with its processes.

(c) If the City Parties are responding to an Emergency on a Santa Fe Light that requires PNM to disconnect power to the Santa Fe Light at PNM's transformer, junction box, cabinet, or other equipment, then the City Parties shall notify PNM of the Emergency in accordance with the notification requirements set forth on **Schedule 1** to this Agreement (the "**Notification Requirements**"), and PNM shall perform the Tasks in accordance with its Processes and applicable safety codes and safety standards for addressing the specific type of Emergency.

5. Incidental Service Requested by Santa Fe. The City Parties may request PNM to disconnect and reconnect power to Santa Fe Lights in situations other than emergency situations, and the City Parties may also request PNM to provide other service on Santa Fe Lights. This is considered "Incidental Service." PNM will perform Incidental Service on Santa Fe Lights, as outlined in this Section 5. The City Parties must give at least two weeks' written notice to PNM's Authorized Representative that specifies the type of Santa Fe Light, the location of the Santa Fe Light, on which date and at what approximate time the Tasks will be required, and any other information reasonably requested by PNM's Authorized Representative (each, a "Notice"). PNM shall perform the Tasks on the Santa Fe Light identified in the Notice. Santa Fe will pay PNM for Incidental Service pursuant to the provisions of Section 9.

6. Maintenance of High Pressure Sodium, Mercury Vapor, and LED Santa Fe Lights:

(a) High Pressure Sodium and Mercury Vapor Lights. Certain Santa Fe Lights are high pressure sodium or mercury vapor lighting facilities (hereafter collectively called High Intensity Discharge or "HID Lights") and are billed monthly under the Rate Tariff, Net Rate including Section A, but excluding Sections B and C. PNM has performed maintenance on lamps, photoelectric cells, fixture fuses, and lens cleaning for HID Lights pursuant to the terms of the Rate Tariff. PNM will continue to provide maintenance of the HID Lights under the terms of the Rate Tariff until Santa Fe notifies PNM pursuant to Section 6(b) that the light is scheduled to be converted to LED.

(b) Maintenance of HID Lights Scheduled for Conversion to LED: Santa Fe will provide PNM a schedule for the LED conversion of the HID Lights. PNM will continue to provide maintenance of the HID Lights until each such light is converted to LED, unless an HID Light is scheduled to be converted to LED within 14 calendar days of a request by Santa Fe for maintenance, which PNM will not service pending the transition to LED.

(c) LED and other Unmaintained Santa Fe Lights. Certain Santa Fe Lights will be LED lighting facilities. These luminaires will be billed pursuant to the Rate Tariff, Net Rate including Section C. Section A and B of the Rate Tariff will not apply to LED lighting. Santa Fe shall assume all maintenance of these LED lighting facilities. In the event Santa Fe replaces Santa Fe Lights with new lighting technology other than LED lights, that new lighting technology will be treated pursuant to the terms of this Section 6(c).

7. Maintenance of PNM Lights.

(a) Standard Repair of PNM Lights. PNM shall, consistent with the Rate Tariff and except as provided in Section 7(b), repair outages of PNM Lights and return to regular operation within 72 hours of receiving notice of the outage.

(b) Non-Standard Repair of PNM Lights. For outages of PNM Lights that cannot be repaired within 72 hours, including but not limited to pole knockdown, circuit-related work, or copper theft, PNM shall endeavor to repair outages and return to regular operations within 30 days of receiving notice of the outage. If PNM is unable to repair and return PNM Lights to regular service within 30 days, PNM shall notify the City's Authorized Representative and explain the

reason for the delay and an estimate timeframe for completion.

(c) **Monthly Reports of Outages of PNM Lights.** Each month, PNM shall provide the City's Authorized Representative with a written report listing the current outages of PNM Lights.

8. **Authorized Representative.** Each party shall designate (and shall have designated at all times) one representative authorized to act and administer this Agreement on behalf of the designating party and, in connection therewith, the coordination of the scheduled maintenance (each, an "Authorized Representative") and shall provide to the other party (and update, if necessary) the name, address, telephone number, email address, facsimile and any other pertinent contact information ("**Contact Information**") for its Authorized Representative. A party may replace its Authorized Representative by written notice to the other party. If a party desires to designate any additional authorized representatives, it shall specify the nature of the communications for which each such representative is authorized to act on the designating party's behalf. The Contact Information for each of the parties' current Authorized Representatives is set forth in **Schedule 2** to this Agreement. Neither party's Authorized Representative shall have any authority to amend, modify, or waive this Agreement or any provision hereof, but the Authorized Representatives may provide information where expressly specified herein or to the extent reasonably necessary for the parties' respective performance of their obligations hereunder.

9. **Agreed Costs; Payments; Late Payments; Payment Disputes; Taxes.**

(a) **Agreed Costs.** The agreed costs for PNM's performance of Emergency Maintenance and Incidental Services Requested by Santa Fe, as those tasks are outlined in Sections 4 and 5 of this Agreement, include but are not limited to the actual costs incurred by PNM, third party actuals, any applicable taxes, and the cost of applicable PNM's loads.

(b) **Payment and Late Payments.** All invoices must be paid by Santa Fe within 45 days after the date of receipt, unless Santa Fe reasonably and in good faith disputes any invoiced amounts in accordance with the terms set forth in Section 9(c) ("**Disputed Amounts**"). Except for Disputed Amounts, any amounts not paid after the 75th day following the date of receipt of the applicable invoice will bear interest at the annual rate of 8% or the highest rate allowed by law, whichever is lower, from such date to the date of full payment.

(c) **Payment Disputes.** If Santa Fe disputes any invoiced amount for PNM's performance of the Tasks, Santa Fe must give notice to PNM by the date that such invoiced amount is due and payable in accordance with Section 9(b), setting forth in reasonable detail the basis for the Dispute. Upon Santa Fe timely giving notice of any Disputed Amount, the parties shall refrain from pursuing any other rights or remedies at law or in equity with respect to such Disputed Amount until all commercially reasonable efforts to resolve such Disputed Amounts in accordance with Section 14(r) are pursued.

(d) **Taxes.** The Agreed Costs for the Tasks do not include any applicable gross receipts taxes, and if taxes are payable with respect to the Tasks performed by PNM, Santa Fe will be responsible for reimbursing PNM for those taxes.

(e) Nothing in this Agreement alters the provisions of the Rate Tariff. In the event of any conflict between the terms of this Agreement and the Rate Tariff, the Rate Tariff will control.

10. Work Limits. Notwithstanding anything to the contrary in this Agreement, PNM shall make a good faith effort to perform the Tasks but shall have no obligation to perform Tasks (other than with respect to Emergencies) to the extent that such Tasks would violate the work hours and limitations required by its collective bargaining agreements and procurement contracts with vendors. PNM shall give notice promptly to Santa Fe upon becoming aware that any Tasks requested or required hereunder would violate any such agreement and will propose alternative times or arrangements for the requested or required Tasks.

11. Access to Equipment and Materials. Access to Equipment and Materials. The parties stipulate and agree that, with respect to Santa Fe Lights, Santa Fe owns or leases that portion of the equipment and materials comprising and connected to the Santa Fe Lights and PNM owns that portion of the equipment and materials connected to the Santa Fe Lights, in each case, as set forth in the descriptions and the diagrams on **Schedule 3** to this Agreement which may be amended, revised, or modified from time to time by the written agreement of each of the Authorized Representatives. Except as otherwise contemplated in Section 3(c), each party shall not and shall not allow any of their respective employees, contractors, or agents to tamper, modify, or interfere with any materials or equipment owned or leased by the other party (including, in the case of the City Parties, the tampering, modifying, or engaging with PNM's transformer to access Santa Fe's cable within PNM's transformer), unless otherwise agreed to by the parties in writing. Each party will be responsible for any and all costs arising from its tampering, modifying, or interfering with the other party's materials or infrastructure, including the costs of any work, reversion, modification, or inspection of any Street Light.

12. Term; Termination; Effect of Termination.

(a) **Term.** Provided that this Agreement is not terminated earlier in accordance with the terms set forth in Section 12(b), the initial term of this Agreement will be for 5 years beginning on the Effective Date (the "**Initial Term**"). Following the Initial Term, this Agreement will continue annually until terminated in accordance with the terms set forth in Section 12(b) (collectively until terminated, the "**Term**"), but in no instance shall the term exceed the time allowed under NMSA 1978, Section 13-1-150.

(b) **Termination.**

(i) **Termination for Convenience.** Following the Initial Term, either party may terminate this Agreement at any time for convenience upon 60 days' prior written notice to the other party.

(ii) **Termination for Cause by Santa Fe.** Santa Fe may terminate this Agreement pursuant to this Section 12(b)(ii) immediately upon written notice to PNM upon the occurrence of any of the following circumstances.

(A) PNM becoming insolvent or being unable to pay its debts in the ordinary course of its business; PNM filing a voluntary petition under applicable bankruptcy or other insolvency laws; a receiver being appointed for the business affairs of PNM; any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or other insolvency law being instituted against PNM that is not dismissed within 45 days thereafter; PNM making an assignment for the benefit of creditors; or PNM liquidating or ceasing to do business as a going concern.

(B) A material breach of this Agreement by PNM and such breach not being cured, to Santa Fe's reasonable satisfaction, within 30 days following notice thereof.

(C) PNM's failure to comply with applicable law in all material respects with respect to its obligations under this Agreement, and such failure not being cured within 30 days following notice thereof.

(D) PNM's failure to maintain in insurance requirements in Section 14(a).

(iii) Termination for Cause by PNM. PNM may terminate this Agreement pursuant to this Section 12(b)(iii) immediately upon written notice to Santa Fe upon the occurrence of any of the following circumstances.

(A) Santa Fe becoming insolvent or being unable to pay its debts in its ordinary course; Santa Fe filing a voluntary petition under applicable bankruptcy or other insolvency laws; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or other insolvency law being instituted against Santa Fe that is not dismissed within 45 days thereafter.

(B) A material breach of this Agreement by the City Parties (including a material breach of the Acknowledgement) and such breach not being cured, to PNM's reasonable satisfaction, within 30 days follow notice thereof.

(C) The failure of the City Parties to comply with applicable law in all material respects with respect to their respective obligations under this Agreement (or the Acknowledgement), and such failure not being cured within 30 days following notice thereof.

(D) The failure of Santa Fe or Contractor to maintain the insurance requirements set forth in Section 14(a).

(c) Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, (i) PNM shall discontinue the performance of all of the Tasks, (ii) Santa Fe shall pay PNM all unpaid amounts owed and not Disputed under this Agreement within 45 days, including any amounts owed for Tasks performed that have not yet been invoiced to Santa Fe, (iii) in the case of default of a party under this Agreement, the non-defaulting party may exercise any other remedies available at law or in equity, all of which will be cumulative, and (iv) Section 9, Section 12, Section 13, and Section 14 will survive.

13. Limitations on Liability. In no event will either party be liable to the other party under this Agreement or otherwise for indirect, special, consequential, punitive, or exemplary damages arising out of or relating to this Agreement, including lost profits, costs of procurement of substitute services, or business interruption, even if the parties have been advised of the possibility of such damage. Except with respect to any claims based on allegations of fraud, willful misconduct, or gross negligence (and except for Santa Fe's payment obligations for Tasks performed hereunder), under no circumstances will either party's liability arising out of this Agreement, regardless of whether such claim or action is based in warranty, contract, tort, or otherwise, exceed the total Agreed Costs paid by Santa Fe to PNM for the performance of the Tasks.

14. Miscellaneous.

(a) Insurance. Each party shall maintain insurance in accordance with such party's own internal policies and procedures. Each party shall provide certificates of insurance and renewals thereof upon request by the other party.

(b) Standards of Performance and Obligations. In performing the parties' respective obligations hereunder, each party shall, in all material respects, (i) comply with applicable law, (ii) perform such obligations in a good and workmanlike manner consistent with such party's Processes and applicable safety codes and safety standards, and (iii) obtain any and all permits, licenses, or approvals required or necessary to perform such party's obligations.

(c) Public Statements. Each party acknowledges and agrees that any oral or written public statements that are made by one party regarding the other party, its employees, officers, directors, contractors, or elected officials, its products, or its services may be responded to by the other party to offer its side of the events, and, in connection therewith and in accordance with NMSA 1978, Section 62-8-11, Santa Fe hereby expressly consents, and grants permission, to PNM making such statements.

(d) Hazardous Materials. PNM shall have no responsibility for detection, abatement, remediation, removal or disposal of any substance, material, waste, gas or particulate matter, hazardous substance, pollutant or contamination that is regulated, listed, or identified under any law or that becomes regulated, listed, or identified under any law (collectively, "**Hazardous Materials**"), except for any Hazardous Materials furnished or used by PNM in connection with the performance of the Tasks or contained in or on PNM owned equipment.

(e) Subcontractors. Each party may use subcontractors in the performance of such party's obligations under this Agreement, provided that, in each case, such party will be responsible as a principal for the acts and omissions of its subcontractors.

(f) Regulatory Reporting and Cooperation. The parties acknowledge that PNM

is regulated by the New Mexico Public Regulation Commission and may be regulated by other governmental agencies including the Federal Energy Regulatory Commission, and that PNM may have certain reporting requirements related to the performance of the Tasks. The City Parties shall maintain detailed and accurate records of the costs and activities related to the Tasks and the performance of its obligations under this Agreement and shall provide such records, together with such other information or documents related to the Tasks as may be reasonably requested by PNM promptly upon request by PNM to the extent required in a regulatory proceeding. The City Parties shall take such formal actions and execute such formal documents or instruments as may be reasonably requested by PNM that are reasonably related to PNM's regulatory compliance obligations with respect to the Tasks.

(g) Audits and Inspections. PNM understands Santa Fe has certain governance accountability and inspection requirements pursuant to Santa Fe ordinances ("**Ordinances**"), and the parties acknowledge and agree that PNM does not consider itself a contractor, as such term is defined under the Ordinances. Upon no less than thirty days' prior written notice, and during normal office hours, PNM will allow Santa Fe auditors or other authorized inspector to access those records relevant to PNM's cost of service and provision of services under this Agreement. The scope of an audit will be limited to materials and records covering facts and circumstances not more than 3 years older than the date of the audit. Any request of relevant information, materials, or documents that are deemed confidential, proprietary or privileged by PNM will only be disclosed, or made available for review by Santa Fe's auditors and/or the inspector general, after execution of an appropriate confidentiality agreement between PNM and Santa Fe.

(h) Inspection of Public Records. PNM acknowledges that, if a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) ("**Act**") is received for materials relating to this Agreement or obtained by Santa Fe as part of an audit conducted pursuant to paragraph "g" above, and provided such materials are not exempt under the Act ("**Exempted Materials**"), Santa Fe is required to disclose those records. Santa Fe shall make a good faith effort to determine what materials are Exempted Materials and to not disclose Exempted Materials. Santa Fe shall, unless prohibited under the Act, provide PNM with immediate notice before any disclosure to allow PNM an opportunity, within the Act's 15 day deadline, to initiate legal action (such as an injunction or other judicial remedy) to prevent the release of trade secret, proprietary data, or confidential data, or any other materials that to a reasonable person could be considered Exempted Materials, should PNM wish to do so. **Notwithstanding anything to the contrary herein, with the exception of Exempted Materials, Santa Fe shall not be responsible to PNM for any disclosure of records required by the Act or an order of a court or other tribunal with jurisdiction over Santa Fe.**

(i) Severability. If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and, accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been

contained herein. To the extent that any provision is held void, voidable, invalid or inoperative, PNM and the City Parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

(j) No Third-Party Rights. This Agreement and all rights hereunder are intended for the sole benefit of the parties hereto and will not imply or create any rights on the part of, or obligations to, any other person.

(k) Joint Preparation. This Agreement shall be deemed to be jointly prepared. No provision in this Agreement shall be interpreted for or against any party because that party or its counsel drafted such provisions.

(l) Notices. Unless this Agreement specifically requires otherwise, any notice, demand, or request provided for herein or served, given, or made as contemplated hereby must be in writing and either (i) delivered in person, (ii) sent by email, (iii) sent by certified United States mail, postage prepaid, or (iv) sent by an overnight courier service that provides a receipt of delivery, in each case, to the other party's Authorized Representative. Notice given by personal delivery, mail, or overnight courier pursuant to this Section is effective upon receipt (or refusal of delivery) by the other party's Authorized Representative. Notice given by email pursuant to this Section is effective if sent to the email address of the other party's Authorized Representative that is set forth on **Schedule 2**, regardless of acknowledgement of receipt.

(m) Relationship of the Parties. Nothing contained in this Agreement will be construed in any manner as creating an agency, partnership, joint venture or any other type of relationship between PNM and the City Parties. Neither party will have, nor will such party hold itself out as having, any authority whatsoever, whether express or implied, to assume, create, or incur any obligation or liability whatsoever, contractual or otherwise, on behalf of or in the name of the other party or to bind the other party in any other manner whatsoever.

(n) Assignment. Either party may assign this Agreement and any of the rights, interests, or obligations hereunder (whether by operation of law or otherwise) without the prior written consent of the other party. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

(o) Waiver. A waiver by either party of any breach or default by the other party under this Agreement will not constitute a waiver of any other or subsequent breach or default by such other party, and the failure or delay of either party to enforce any term of this Agreement will not constitute a waiver of such party's rights to subsequently enforce the term.

(p) Entire Agreement. This Agreement contains the full and complete understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, and, except as otherwise provided, cannot be modified except in a writing signed by both parties. Nothing in this Agreement alters or diminishes PNM's obligations to provide electric service pursuant to the requirements of the New Mexico Public Regulation

Commission and does not alter the present nor future franchise agreements.

(q) Governing Law. The formation, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

(r) Dispute Resolution. If any question, dispute, difference, or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance, or termination (a "**Dispute**"), then either party may provide written notice to the other together with a sufficiently detailed explanation of the notifying party's position with respect to the Dispute, and the parties' Authorized Representatives or their delegates shall meet promptly and shall diligently attempt in good faith to resolve the Dispute for a period of not more than 5 days (the "**Initial Meeting**"). If the Authorized Representatives are unable to resolve such Dispute during the Initial Meeting, then each party shall designate an agent authorized to bind such party or with settlement authority, and such designated agents shall meet within 10 days, or at a time mutually agreed upon by the Authorized Representatives, following the end of the Initial Meeting to attempt in good faith to resolve the Dispute and produce written terms of settlement for the Dispute (a "**Settlement Agreement**"). A Settlement Agreement executed by each designated agent shall serve as conclusive evidence of the resolution of such Dispute. If the designated agents do not produce and execute the Settlement Agreement within 20 days after the date of the first meeting of the designated agents or within a longer period agreed to by each designated agent, then either party may, upon written notice to the other party, pursue all of its rights and remedies provided at law or in equity or otherwise in this Agreement.

(s) Continuance of Work. During the pendency of any Dispute arising under this Agreement, unless otherwise agreed between the parties, the parties shall continue to perform each of their respective obligations under this Agreement.

(t) Venue. The parties agree that the courts of the State of New Mexico sitting in Santa Fe County, New Mexico will have exclusive jurisdiction to hear any action or judicial proceedings with respect to this Agreement. The parties each agree not to raise any objection to jurisdiction or venue or any defense of inconvenient forum to any action or judicial proceeding brought by the other party or arising in connection with this Agreement brought in the aforementioned courts.

(u) Waiver of Jury Trial. Each party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceeding brought to enforce or interpret this Agreement. Each party acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

(v) Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including, without limitation."

(w) Force Majeure. PNM shall not be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Force Majeure. The term "Force Majeure" shall mean any cause beyond the control of the Company and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm,

fire, lightning, epidemic, pandemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any local, state, tribal, or federal agency for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, strikes or other labor disputes, delay associated with lack of skilled labor or resources in Santa Fe County, or restraint by court or public authority, any of which by exercise of due foresight PNM could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. PNM shall not, however, be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require PNM to prevent or settle a strike or other labor disputes against its will. The Party whose performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. Santa Fe shall make no claim against PNM and hereby waives, releases and discharges any and all claims against the Company for additional compensation or Damages by reason of any delay or additional services due to a Force Majeure.

(x) **Indemnification.** Subject to the limitations set forth in this Agreement, including but not limited to the limitations set forth in Section 13, PNM shall indemnify, hold harmless and defend Santa Fe from all losses, damages, claims or judgments, including payments of all reasonable attorneys' fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from PNM's grossly negligent performance under this Agreement as well as the grossly negligent performance of PNM's employees, agents, representatives and subcontractor.

(y) **New Mexico Tort Claims Act.** Any tort-related liability incurred by the City in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended, so long as the tort-related liability at issue implicates the New Mexico Tort Claims Act. The City and its "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

[signature page follows]

This Agreement is executed by the parties and effective as of the date first set forth above.

City of Santa Fe, New Mexico

Jarel LaPan Hill

Jarel LaPan Hill (Dec 1, 2021 18:04 MST)

Jarel Lapan Hill, City Manager
City of Santa Fe, New Mexico

Attest:

Kristine Bustos-Mihelcic

Kristine Bustos-Mihelcic, City Clerk

XIV
XIV

City Attorney's Office:

Marcos Martinez

Marcos Martinez (Sep 21, 2021 15:33 MDT)

Senior Assistant City Attorney

Approved for Finances:

Mary McCoy

Mary T. McCoy, Finance Director

Public Service Company of New Mexico

Todd Fridley

Todd Fridley

Vice President, PNM New Mexico Operations

SCHEDULE 1
Emergency Notification Requirements

When the City Parties are responding to an Emergency and it is determined the Santa Fe Light will require PNM to disconnect power, then the City Parties shall notify PNM of the location of the Santa Fe Light, the type of Emergency, the type of Street Light involved in the Emergency, and any other information that the parties deem necessary and pertinent.

The City Parties shall call PNM at the following phone number in the event that it requires PNM to disconnect power to the Street Light: 1-888-342-5766.

SCHEDULE 2
Authorized Representatives

The Contact Information for the Authorized Representatives is initially as follows:

Public Service Company of New Mexico

Matthew Holbert
Craft Supervisor
Northern Operations Line Department
PNM
4565 State Road 14
Santa Fe, NM 87508
Office: (505) 473-3229
Mobile: (330) 730-9732
Matthew.Holbert@pnm.com

Andrea D. Brito, Field Coordinator
Northern Operations Line Department
PNM
4565 State Road 14
Santa Fe, NM 87508
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SCHEDULE 3
Demarcation of Ownership of Santa Fe Lights

Metered Circuits or Underground Contactors - Wholly Owned Santa Fe Circuits:

Regarding any metered circuit, everything after the meter is Santa Fe owned. The meter base is owned by Santa Fe, but the meter itself is owned by PNM. On the line side of the meter on underground transformers, the wire is also owned by Santa Fe up to the transformer where it ends with either a fuse (which is PNM owned) or more likely to a direct connection on a transformer connector. If there is a riser to an overhead service, Santa Fe owns up to the "pigtailes" coming out of the riser weatherhead, and PNM attaches the conductor to their pigtailes.

Overhead Contactor Controlling - Wholly Owned Santa Fe Circuits:

This is a circuit where everything downstream of a contactor is owned by Santa Fe. In this circuit, the contactor, photo control, associated fuses, and wire on the load side of the contactor is owned by Santa Fe. The line side wire is entirely owned by PNM including the wire inside the contactor. Standard constructions of this type include DS-12-9.0, DS-12-10.0, and DS-12- 11.0.

Santa Fe Lights Directly Fed From Underground Padmount Equipment:

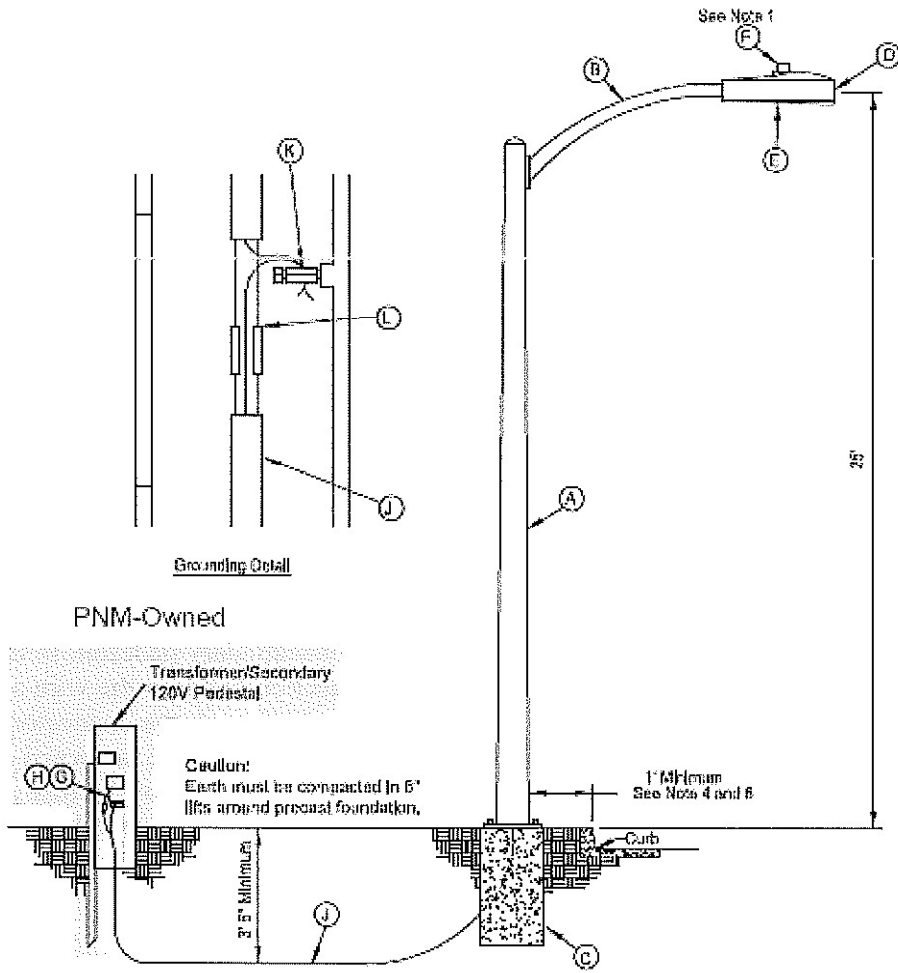
This is a circuit that is fed directly from a padmounted transformer or secondary pedestal. In this circuit, the fuse marks the demarcation if there is a fuse, or the connection between the wire and the connector of the transformer is the demarcation. Everything past the fuse or the connector if there is no fuse including wire from inside the padmounted equipment to the pole is owned by Santa Fe. Any fuses inside of the padmounted equipment and wire on the line side of the fuse are owned by PNM. Standard constructions of this type include DS-12-6.0, DS-12-6.1, DS- 12-6.2.

Santa Fe Lights Fed From an Overhead Circuit Or Transformer:

This is a circuit that has no contactor for an overhead circuit. This is generally not allowed, and Santa Fe should report any instances of this to PNM and should correct by adding a contactor as close to the connection to the main circuit or PNM transformer which is owned by PNM.

On Circuits With Mixed Ownership:

Mixed ownership circuits are not allowed. In the event a mixed ownership circuit is identified where the circuit feeds both Street Lights owned by Santa Fe and PNM, the parties shall meet to resolve ownership of the circuit.



Remainder matches ownership of pole / fixture

NOTES

- (1) Adjust and turn twist lock receptacle to the North, level luminaire in accordance with manufacturer's instruction.
- (2) Ground pole as shown in grounding detail.
- (3) Connect neutral and ground conductor of streetlight cable to secondary neutral in pedestal.
- (4) May be reduced if necessary, but not less than 6'.
- (5) Minimum clearance to the hydrant 4'.
- (6) NESC rule 231, 314B.
- (7) Leave 18" to 24" tall from edge of opening for splicing.

REFERENCES

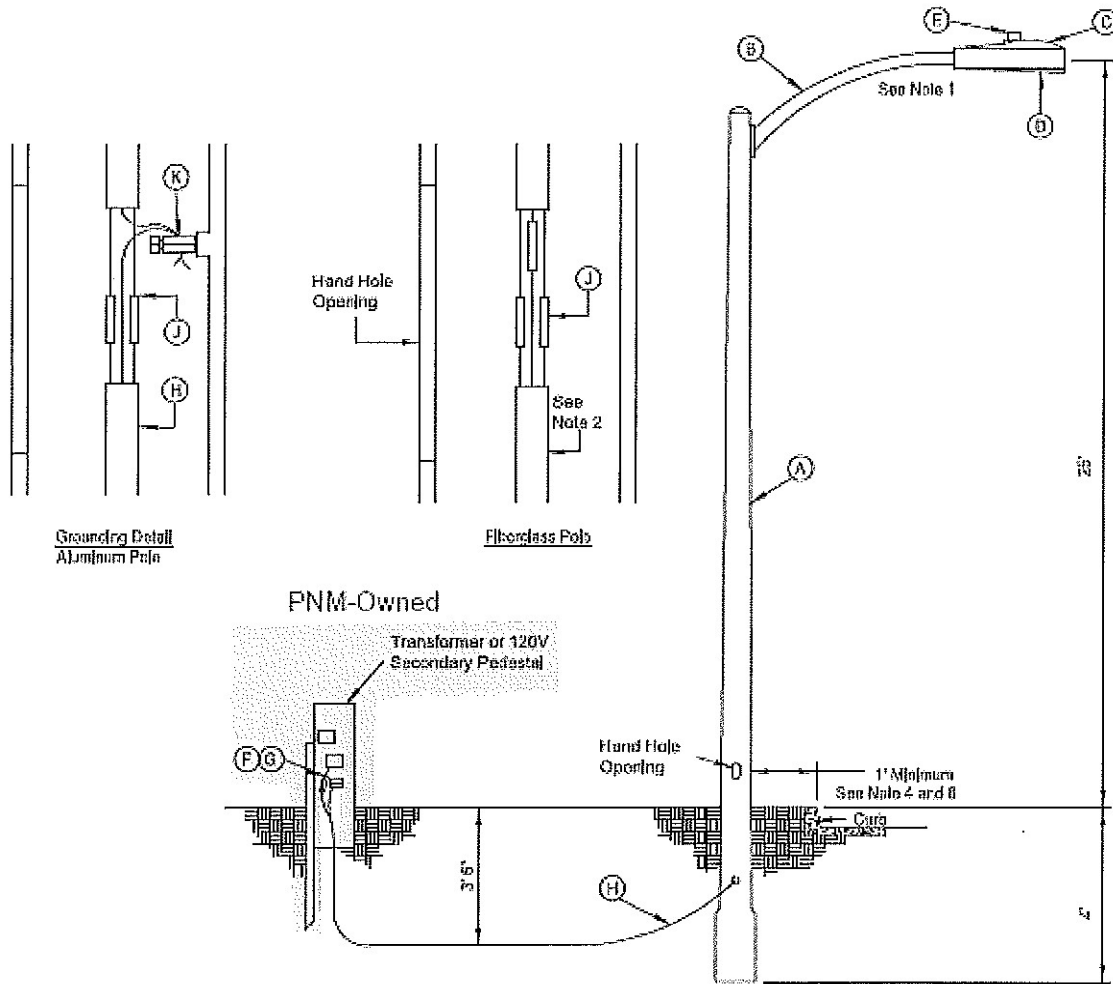
- (1) See DS-12-1.0 Lamp and Photo Identification Coding

Material List			
Item	Quan.	Description	Stock #
A	1	23' 6" Aluminum Pole	6600-006014
B	1	6' Aluminum Arm	6975-208613
C	1	Concrete Streetlight Foundation	6975-268790
D	1	70/100W HPS Cutoff Luminaire	6215-002635
E	1	70/100W HPS Lamp	
F	1	105-305V Photo Control	0000-006640
G	1	Fuse Connector Kit	6920-227641
H	1	Luminaire Fuse KIT-00	6920-227790
J	1	2/0 #10 UF Cable w/Ground	6145-008320
K	1	Streetlight Pole Ground Lug	6935-216942
L	2	Insulated Compression Connector	6935-234203

120V Underground Residential Streetlight

DS-12-6.0

DISTRIBUTION
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PNM



Remainder matches ownership of pole / fixture

NOTES

- (1) Adjust and turn twist lock receptacle to the North, Laval luminaire in accordance with manufacturer's instructions.
- (2) Leave 18" to 24" tall from edge of opening for splicing.
- (3) Connect neutral and grounding conductor of streetlight cable to secondary neutral in pedestal.
- (4) May be reduced if necessary, but not less than 6".
- (5) Minimum clearance to fire hydrant 4'.
- (6) NESC 231, 314B.

REFERENCES

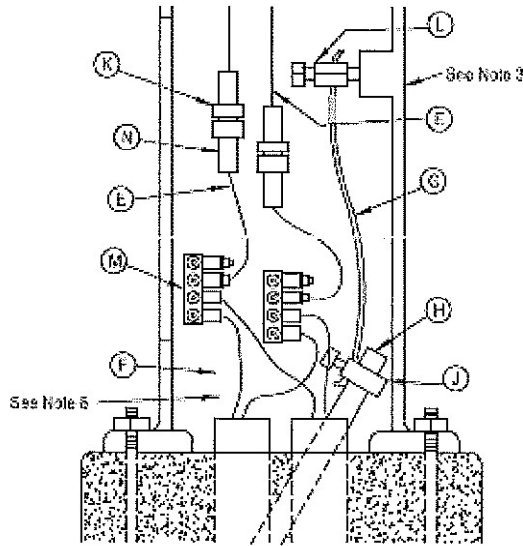
- (1) See DS-12-1.0 Lamp and Photo Control Identification Coding

Material List

Item	Quan.	Description	Stock #
A	1	27' Aluminum or Fiberglass Street Light Pole	6680-
B	1	6" Aluminum Arm	6976-268813
C	1	70/100W HPS Cutoff Luminaire	6210-002836
D	1	70/100W HPS Lamp	
E	1	185-305V Photo Control	6030-005548
F	1	Fuse Connector Kit	5920-227647
G	1	Emtron Fuses KTK-300	5926-227790
H	1	2/C #10 UF CU Cable w/Ground	6145-000326
J	1	Compression Connector	5935-231293
K	1	Street Light Pole Grounding Lug	6936-236942

120V Underground Residential Aluminum or Fiberglass Streetlight

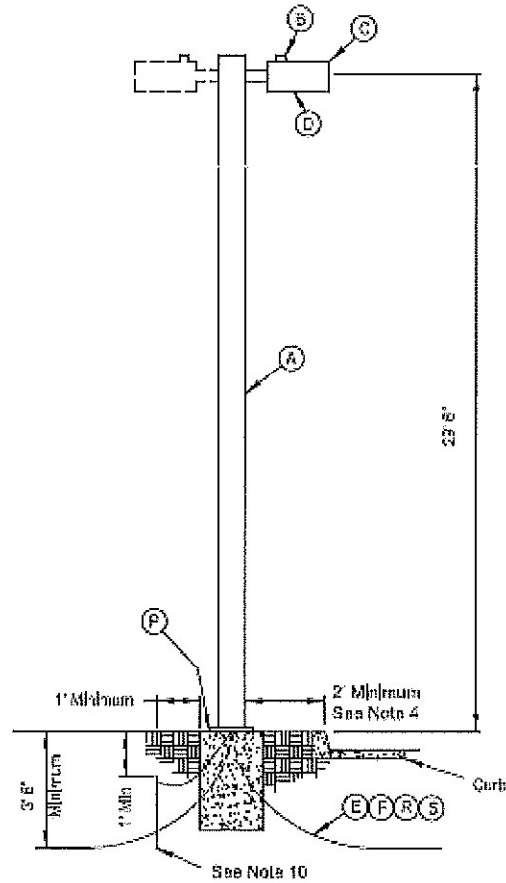
DS-12-G.1



Grounding Detail

Caulker

If precast foundation is used, earth must be compacted to 6" lifts.



Everything on drawing matches ownership of pole / fixture

NOTES

- (1) For customer owned and designed systems only.
- (2) Level luminaires in accordance with manufacturer's instructions.
- (3) When system neutral is available, ground to pole.
- (4) May be reduced if necessary, but not less than 6".
- (5) Pole must be at least 4' from a fire hydrant.
- (6) Poured-in-place foundation must cure for 14 days before erecting pole.
- (7) NESC rule 231 and 314B
- (8) Leave 18" to 24" fall from edge of conduit stubout.
- (9) 25' square poles should only be used in residential areas. 25' square pole has a 1 1/2" bolt circle, 30' square pole has a 12" bolt circle and should be used with a breakway base #5680-000602.
- (10) Driven ground rod is required if precast foundation is used and pole is not grounded to system neutral.

REFERENCES

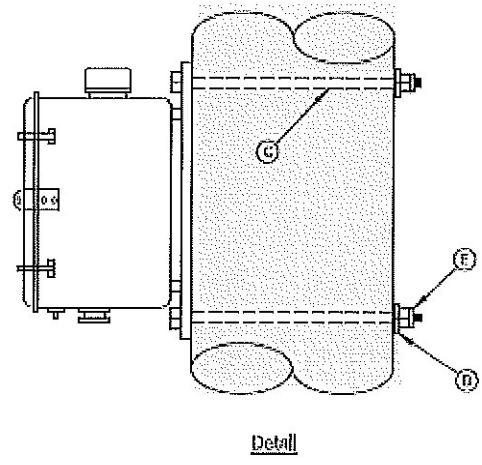
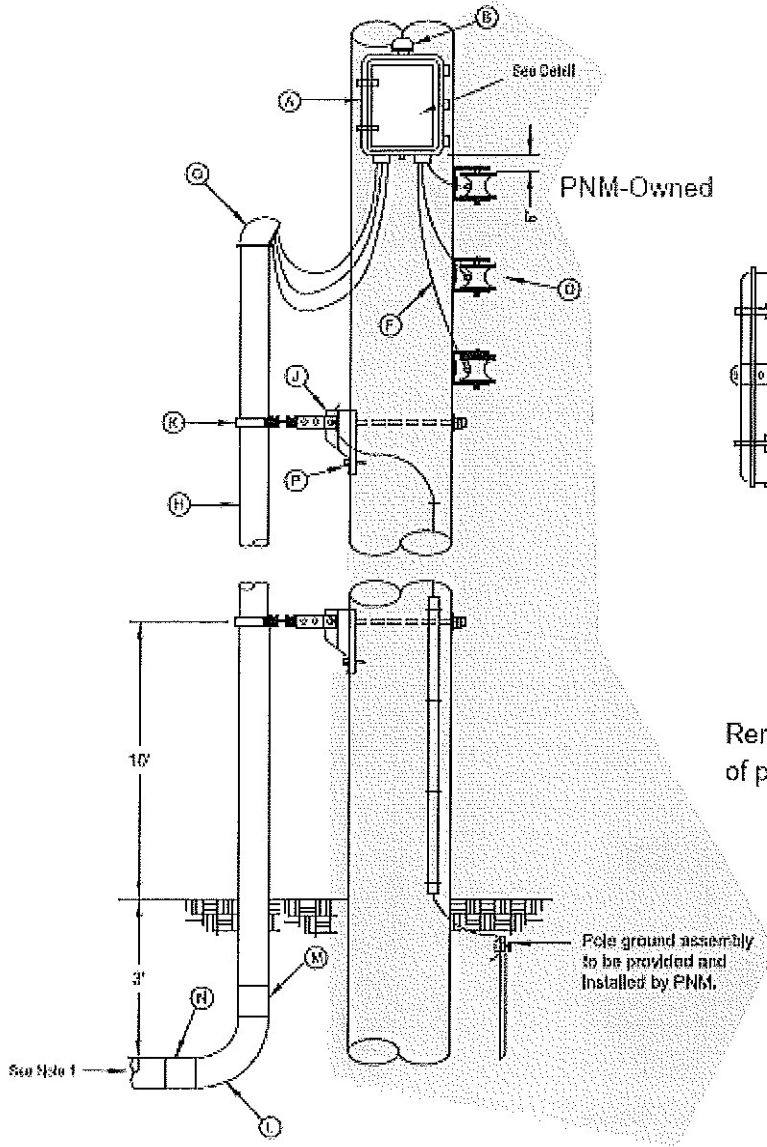
- (1) See DS-12-1.0 Lamp and Photo-Control Identification Coding
- (2) See DS-12-15.0 Precast Foundation Detail Decorative Street Light
- (3) See DS-12-17.0 Precast Street Light Foundation
- (4) See DS-18-20.0 Ground Assembly

Material List			
Item	Quan.	Description	Stock #
A	1	25' or 30' Aluminum/Fiberglass Square Pole	5680-000005649
B	1	105-308V Photo Control	6210-
C	1	100 or 250W HPS 240V Luminaire	6240-
D	1	100 or 250W HPS Lamp	6145-000326
E		600V 2/C #12 UF CU Cable	6145-001884
F		or 600V #2 AL Cable	6145-002486
G	1	#8 CU Wire	5875-258388
H	1	5/8" x 8' Ground Rod	5875-232784
J	1	5/8" Ground Rod Clamp	5820-231437
K	2	Fuse Holder	5835-238404
L	1	Streetlight Pole Grounding Lug	5820-227525
M	2	Four-Way Streetlight Connectors	5875-275287
N	2	5A Limbion Fuse	03-12-14,1
Q	1	Precast or Poured-in-Place Foundation	6145-003346
R	2	#2 AL Taplex	0800-000423
S	1	#2 CU Taplex	5680-000000
T	1	3' Breakway Base for 30' Pole	

120/240V Underground Decorative Streetlight

DS-12-6,2

DISTRIBUTION
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Detail
Remainder matches ownership
of poles / fixtures on circuit

Pole ground assembly
to be provided and
installed by PNM.

NOTES

(1) Can be in conduit or direct buried. For direct buried, use 2" plastic bushing 5375-259796.

REFERENCES

(1) See DS-18-22.0 Universal Support Bracket
(2) See DS-18-20.0 Ground Assembly

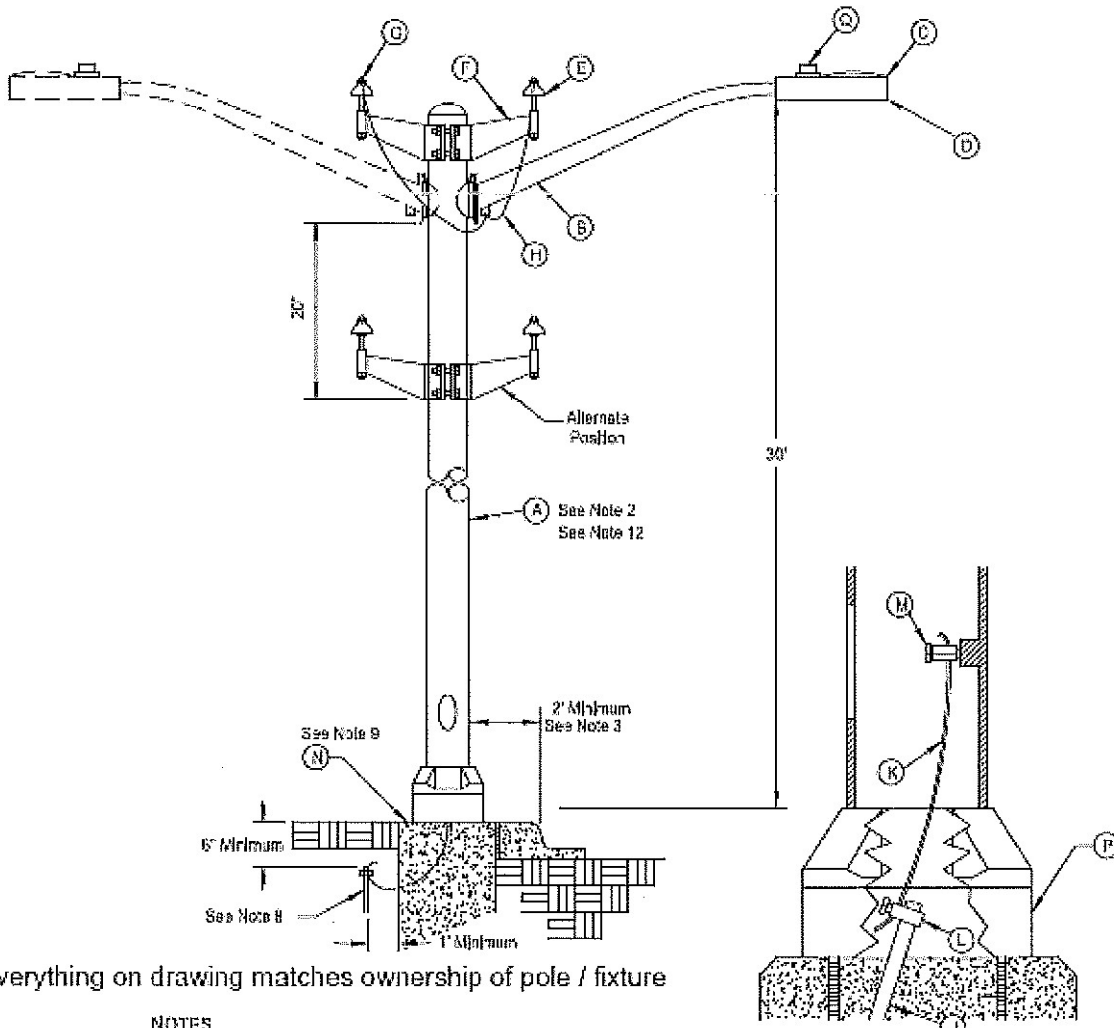
Material List			
Item	Quan.	Description	Stock #
A	1	100 Amp 240V Contactor	5945-244001
B	1	105-300V Long Life Photo Control	0100-306041
C	4	5/8" x _____ Machine Bolt	DS-18-25.0
D	4	2 1/4" Square Washer	5310-153071
E	4	5/8" MF Locknut	5310-153005
F	7'	#4 Stranded Copper Weatherhead	6145-302208
G	1	2" Rigid Conduit	5975-263277
H	1	2" Rigid Conduit	5975-263057
J	2	Standoff Bracket	5975-260471
K	2	2" Pipe Strap Kit	5975-263145
L	1	2" 90° Galvanized Elbow	5975-269549
M	1	2" Galvanized Coupling	5975-272252
N	1	2" Female Adapter	5975-263500
P	2	Lag Screw	5305-547704
Q	3	_____ Line Tap	DS-18-99.0

Underground Street Lighting Riser Pole

DS-12-9.0

Not to Scale

04/01/05



Everything on drawing matches ownership of pole / fixture

NOTES

- (1) Level (vertical) in accordance with manufacturer's instruction.
- (2) For tangent and angle changes up to 5° use light duty 5680-000048, For angle changes between 5° and 25°, use heavy duty 5680-000264.
- (3) May be reduced if necessary, but not less than 6".
- (4) Pole must be at least 4' from the hydrant.
- (5) Poured-in-place foundation must cure for 14 days before erecting pole.
- (6) NESC rules 216C1, 231.
- (7) Maximum span length: 170'
- (8) Install driven ground rod if precast foundation is used.
- (9) Caution: Precast may not be used for angle change greater than 5°.
- (10) Caution: If precast foundation is used, earth must be compacted in 6" lifts.
- (11) Caution: Deadends must be guyed.
- (12) For 28"-6" aluminum light duty pole 5680-000048 no breakaway base is required, Unit has this feature built into it.

REFERENCES

- (1) See DS-12-14.0 Lamp and Photo-Cond. Identification Coding
- (2) See DS-12-14.0 Foundation Detail-Arterial Street Light
- (3) See DS-12-17.0 Precast Street Light Foundation
- (4) See DS-18-20.0 Ground Assembly

Grounding Detail

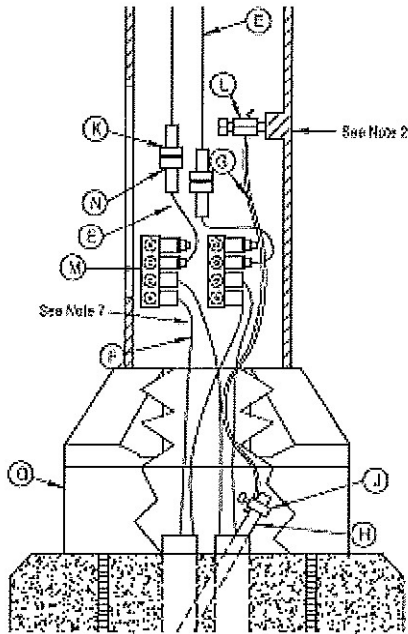
Material List			
Item	Quan	Description	Stock #
A	1	28" 6" Aluminum Pole (heavy duty)	5680-
B		6" Aluminum Arm	5975-269913
C		250W/HPS Galed Luminaire	0400-000816
D		250W/HPS Lamp	6240-312717
E	2	5 kV Gray Pth Insulator	5975-262706
F	1	Double Feeder Pth Arm	5975-263224
G	2	#2 Line Tie	5975-262452
H	16	#8 CU Insulated Black Wire	6145-003282
J	1	68" x 8" Ground Rod	5975-269368
K	8"	#8 CU Wire	6145-002466
L	1	68" Ground Rod Clamp	5935-232784
M	1	Street Light Pole Grounding Lug	5935-235842
N	1	Precast Street Light Foundation	5975-269233
P	1	3" Breakaway Base	5680-000600
Q		Sparking Cap	7000-192500
		Poured-In-Place Foundation	DS-12-14.0

240/480V Overhead Arterial Streetlight

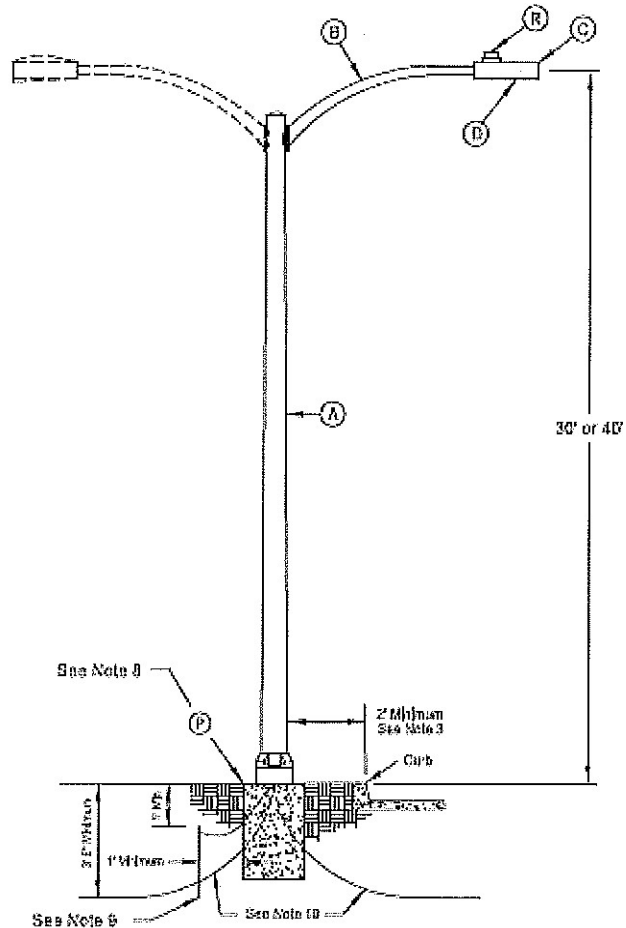
DS-12-10.0

REVISION Corrected Reference 3

DISTRIBUTION STANDARD PNM



Grounding Detail



	250/250W	400/400W
Pole	5680-200345	5680-200373
Luminaire		
250W	6000-000516	6000-000510
400W	6000-000515	6000-000516
Lamp	6240-012717	6240-014374

Everything on drawing matches ownership of pole / fixture

NOTES

- (1) Level luminaires in accordance with manufacturer's instruction.
- (2) When system neutral is available ground to pole.
- (3) May be reduced if necessary, but not less than 6'.
- (4) Pole must be at least 4' from fire hydrant.
- (5) Poured-in-place foundation must be cured for 14 days before erecting pole.
- (6) NESC Rule 231, 314B.
- (7) Leave 18" to 24" fall from edge of conduit stubout.
- (8) Poured-in-place DS-12-14.0 or precast foundation 5875-26B233. Caution; if precast foundation is used, earth must be compacted in 6" lifts.
- (9) Driven ground rod is required if precast foundation is used and pole is not grounded to system neutral.
- (10) Typical connections:
 2#2AL with 1-#6 SD CU Ground Wire
 #2 CU Triplex with 1-#8 CU Ground Wire
 #2 AL Triplex with 1-#4 AL Ground Wire

REFERENCES

- (1) See DS-12-1.0 Lamp and Photo-Control Identification Coding
- (2) See DS-12-14.0 Foundation Detail-Arterial Street Light
- (3) See DS-12-16.0 Precast Street Light Foundation
- (4) See DS-18-20.0 Ground Assembly

Material List

Item	Quan	Description	Stock #
A	1	28' 6" or 38' 6" Aluminum Pole	5880- 5876-268813
B		6' Aluminum Arm	
C		250 or 400W HPS Cutoff Luminaire	
D		250 or 400W Lamp	6240-
E		600V 2/C #10 LF CU Cable	6146-000328
F		or 600V #2 AL Cable	6146-001884
G		#8 CU Wire	6146-002486
H	1	5/8" x 8' Ground Rod	5876-269386
J	1	5/8" Ground Rod Clamp	5835-232784
K	2	Fuseholder	5820-227041
L	1	Streetlight Pole Grounding Lug	5835-236042
M	2	Four-Way Streetlight Connectors	5835-238084
N	2	10 Amp Limbion Fuse	5820-226155
P	1	Precast Street Light Foundation or Four-Way Place Foundation	DS-12-14.0
Q	1	8" Breakaway Base	5880-003880
R		Shoring Cap	7006-182580

240/480V Underground Arterial Streetlight

DS-12-11.0

Not to Scale

01/01/18