

AGREEMENT

I. PARTIES

This contract (hereinafter referred to as "Agreement") is made and entered into on this 29 day of September, 2016, by and between the Inhabitants of the Town of Falmouth with a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (hereinafter referred to as "Town"); 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 Town.

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 Town on a regular basis, when appropriate, including any necessary interim reports, so that the Town 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 Town 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 Town 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 Town 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 Town for the expected life of the products

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

The Consultant will advise the Town 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 Town any other value-add systems and discuss with the Town their financial impacts, commercial readiness, and alignment with utility policies.

Additionally, the Town 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 Town, 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 Town 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 Town 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 Town;

- 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 Town 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 Town.

IV. PAYMENT TERMS

The Consultant shall submit an invoice on or about the first of each month reflecting services performed at the Town'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 Town 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 Town 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
Exit cost after manufacturer selection (Sec II.A through E.i.)	\$14.81	/fixture
*Exit 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 Town and shall be promptly delivered to the Town in a form compatible with the Town's software or other records management systems. All data collected shall be disclosed only to the Town's authorized representatives, at the direction of the Town.

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 Town. Subcontractors shall not be deemed employees of the Town 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 Town 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 Town of sufficient funds to fulfill its obligations hereunder. Neither the Town 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 Town. The Town shall be named as an additional insured on the liability policy.

XII. INDEMNIFICATION

The Consultant will indemnify and hold harmless the Town, 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 Town 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 Town's negligent performance under the Agreement. Any obligation of the Town 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 Town, 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 Town 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.

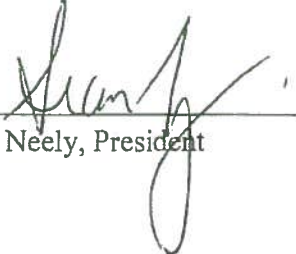
XIV. ENTIRE AGREEMENT

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: Sept 22/16

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

By: Realterm Energy US, LLC, its General Partner

By: 
Sean Neely, President

Date: 9-29-16

INHABITANTS OF THE
TOWN OF FALMOUTH, MAINE

By: 

Nathan A. Poore, Town Manager

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