

## **NORTHWESTERN MUTUAL STREET LIGHT POLE, FIXTURE AND CONCRETE POLE BASE LICENSE AND MAINTENANCE AGREEMENT**

This NM Lighting License and Maintenance Agreement (“Agreement”) is made as of the \_\_\_\_ day of January, 2025, by and between The Northwestern Mutual Life Insurance Company, a Wisconsin corporation and the City of Milwaukee, a Wisconsin municipal corporation, acting by and through its Department of Public Works, each a Party and collectively the Parties.

Section 1 – DEFINITIONS. The following terms shall have the respective meaning assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise.

“Agreement” means this NM Lighting License.

“City” means the City of Milwaukee, a municipal corporation with its principal offices at 200 E. Wells Street, Milwaukee WI 53202.

“DPW” means the Milwaukee Department of Public Works, a department of the City, with its offices at 841 N. Broadway, Room 501, Milwaukee, WI 53202.

“DPW Personnel” means the officers, employees, and agents of DPW.

“NM Lighting” means the non-standard street light pole, fixture and concrete pole bases installed at Northwestern Mutual’s Tower and Commons Project.

“Northwestern Mutual” is a corporation, with its principal offices at 720 E. Wisconsin Avenue, Milwaukee, WI 53202.

“Project” means the Tower and Commons Project carried out by Northwestern Mutual and subject to that certain Cooperation and Development Agreement between the parties dated December 1, 2013.

### Section 2 – BACKGROUND and PURPOSE

WHEREAS, In connection with the Project, Northwestern Mutual currently has six (6) non-standard painted steel light poles in a garage located on Northwestern Mutual’s downtown Milwaukee campus that serves as attic stock for light poles surrounding Northwestern Mutual’s campus.

WHEREAS, If a previously installed NM Lighting on the Project campus within the public right of way no longer functioned properly, from damage or otherwise, the Parties understood that DPW may, upon at least three (3) business days’ prior written notice to Northwestern Mutual, draw from such stock and install the replacement in kind from Northwestern Mutual’s attic stock (though over the past eight (8) years, DPW has not needed to draw on such stock).

WHEREAS, DPW is now requiring that the arrangement described above be formally documented in a written agreement in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitations and agreements, the parties hereto agree as follows:

### Section 3 – TERMS and CONDITIONS

#### 1. NORTHWESTERN MUTUAL'S OBLIGATIONS

- a. If an NM Lighting no longer functions properly (from damage or otherwise), then upon at least three (3) business days' prior written notice from DPW to Northwestern Mutual, Northwestern Mutual shall permit DPW Personnel access to the storage in which it maintains its stock of backup NM Lighting, to draw an identical replacement from the attic stock and install it in lieu of the damaged or non-functioning NM Lighting. DPW will properly dispose of the damaged or non-functioning NM Lighting.
- b. DPW Personnel must be accompanied by a Northwestern Mutual representative or designee at all times while on Northwestern Mutual's property.
- c. Northwestern Mutual shall provide DPW with the contact information of an individual (which may be subject to change from time to time) who can provide access to the garage and who will accompany DPW or designate someone else to accompany DPW. Notice of a new contact individual may be provided by giving notice in compliance with Section 3.8 herein.
- d. If a replacement part is not available from Northwestern Mutual within three (3) months from written notice from DPW, DPW will have the option to replace the defective NM Lighting with standard DPW stock in order to illuminate the public right of way within the Project area.
- e. Northwestern Mutual shall be responsible for maintaining an appropriate inventory level and quality of NM Lighting replacement parts. DPW will not be responsible to stock or source or otherwise be financially responsible for the replacement parts.

#### 2. DPW'S OBLIGATIONS

- a. DPW will obey all legal rules, directives, and instructions given by Northwestern Mutual, which relate to DPW's access to the garage.
- b. DPW agrees to provide Northwestern Mutual with the contact information of an individual who can respond to any concerns by Northwestern Mutual with regard to DPW's access and NM Lighting installation activities. The current individual is Neal Karweik at 414-286-5943, subject to change. Notice of a new contact individual may be provided by giving notice in compliance with Section 3.8 herein.
- c. DPW will comply with all applicable laws and local ordinances relating to its access and installation activities and will be responsible for any damage or loss it causes while accessing the attic stock, installing the new pole, and disposing of the old pole.

3. **TERM.** This Agreement shall terminate upon the mutual agreement of the Parties or at such time as there are no more NM Lighting light poles in stock.
4. **INDEPENDENT LEGAL ENTITIES.** The Parties are independent legal entities. Neither Party's directors, officers, employees, or agents are employees of the other Party, nor are they entitled to fringe or any other benefits which the other Party's employees are entitled to or are receiving. City and Northwestern Mutual form no joint venture or legal partnership under this Agreement.
5. **RESPONSIBILITY.** Each Party agrees that it will be responsible for its own acts and/or omissions and those of its officials, officers, employees and agents in carrying out the terms of this Agreement to the extent authorized by law and shall not be responsible for the acts and/or omissions of the other Party or its respective officials, officers, employees or agents. Nothing contained in this Agreement shall waive or amend, nor be construed to waive or amend any privilege, defense, limitation of liability, or immunity that either Party, their respective officials, agents, or employees may have under any applicable federal, state, local, or common law.
6. **PUBLIC RECORDS LAW.** Northwestern Mutual understands that City is bound by the Wisconsin Public Records Law, Wis. Stat. § 19.21, et. seq. Pursuant to Wis. Stat. § 19.36(3), City may be obligated to produce, to a third (3rd) party, records, as that term is defined under Wis. Stat. § 19.32, of Northwestern Mutual that are "produced or collected" by Northwestern Mutual under this Agreement ("Records"). Northwestern Mutual agrees to: (1) retain Records for seven (7) years from the date of the Record's creation, and (2) produce such Records to City if, in City's determination, City is required to produce the Records to a third (3rd) party in response to a public records request. Northwestern Mutual's failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and Northwestern Mutual must defend and hold City harmless from liability due such breach.
7. **NON-DISCRIMINATION.** It is City's policy not to discriminate against any qualified employee or qualified applicant for employment because of an individual's sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories ("Protected Classes"), pursuant to Milwaukee Code of Ordinances (MCO) Section 109-9. Contractors and their subcontractors employing any resident of the City of Milwaukee may not discriminate against any member of the Protected Classes, and such contractors must insert this clause into any subcontracts of subcontractors employing any resident of the City of Milwaukee under this Agreement.
8. **NOTICE.** Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at the email addresses provided below, provided no failure to send or other error is received:

City: Department of Public Works  
841 N. Broadway, Room 501  
Milwaukee, WI 53202  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Northwestern Mutual: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

- 9. **AUDIT.** Northwestern Mutual shall furnish City with such statements, records, reports, data, and information as City may reasonably request which are related solely to the requirements of City, local, state, or federal audits and this Agreement.
- 10. **HEADINGS.** The captions and headings of paragraphs and sections in this Agreement are for convenience of reference only and shall not be construed as defining or limiting the terms.
- 11. **SEVERABILITY.** If any term of the Agreement is, to any extent, held invalid or incapable of being enforced, such term shall be excluded only to the extent of such invalidity or unenforceability. All other terms of the Agreement shall remain in full force and effect and, to the extent possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term as mutually determined by the Parties.
- 12. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between City and Northwestern Mutual concerning its subject matter and supersedes all prior agreements, discussions, representations, warranties and covenants between them concerning the subject matter of the Agreement.
- 13. **AMENDMENT.** Any amendments, changes, or modifications to this Agreement shall be in writing and signed by the Parties.
- 14. **AUTHORITY.** The Parties each represent that they, and their signatories, possess the legal authority to enter into the Agreement and to validly and legally bind their respective Party to all terms of the Agreement.

City and Northwestern Mutual have fully executed this Agreement as of the date of the final signature below:

CITY OF MILWAUKEE,  
A Municipal Corporation

NORTHWESTERN MUTUAL

By Its Dept. of Public Works

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

Reviewed and Approved by City Attorney  
Pursuant to MCO § 304-21

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

Alex Carson  
Assistant City Attorney

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

Common Council Resolution