

DIVISION _____

COMMON USE AGREEMENT
BETWEEN
GEORGIA POWER COMPANY
AND
City of Lawrenceville

MAILING ADDRESS
70 S Clayton St
Lawrenceville GA 30046

EFFECTIVE DATE OF AGREEMENT: _____

ANNUAL POLE RENTAL RATE: See each exhibit "A"

COMMENTS:

STATE OF GEORGIA
COUNTY OF [INSERT]

THIS AGREEMENT made and entered into this ___th day of _____, 20___, by and between the GEORGIA POWER COMPANY, hereinafter sometimes referred to as “GPC”, a corporation organized and existing under the laws of the State of Georgia; and the _____, a Municipality organized and existing under the laws of the State of Georgia, hereinafter sometimes referred to as “_____”.

W I T N E S S E T H:

WHEREAS, the parties desire to enter into an agreement for the common use of poles owned by each;

NOW, THEREFORE, in consideration of the mutual undertakings, promises and covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS

For the purpose of this Agreement, the following terms when used herein, unless the context indicates otherwise, shall have the following meanings:

ATTACHMENTS are any material or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

CODE means the most current edition of the National Electrical Safety Code.

COMMON USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

COMMON USE POLE is a pole upon which space is provided under this agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefore upon specific request.

LICENSEE is the party having the right under this agreement to make attachments to a common use pole of which the other party is the OWNER.

OWNER is the party owning the common use pole.

ARTICLE II SCOPE OF AGREEMENT

All work to be performed in establishing the pole attachments and which is not otherwise provided for herein shall be performed in accordance with the specific details contained in Exhibit "A" attached hereto, which by this reference is made a part hereof.

The common use poles to be attached hereunder are shown on sketch Exhibit "B" attached hereto, which by this reference is made a part hereof, and on which is indicated for each pole the exact location, the height and class.

Additional poles may be attached pursuant to this Agreement by additional Exhibits "A" and "B" which designate such additional pole and which are signed by the duly authorized officers or agents of the parties and appended hereto.

ARTICLE III SPECIFICATIONS

The poles and all attachments covered by this Agreement shall at all times conform to the requirements of the Code, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

ARTICLE IV ESTABLISHING ATTACHMENTS

(a) The Licensee agrees to perform, upon the request of the Owner, such work on the Licensee's system as necessary to facilitate the installation of new poles and the removal of old poles to conform to the requirements of this Agreement, provided, however, that the Licensee shall not be required to perform this work in such a manner as to cause undue interruption of service to its consumers.

(b) The cost of all work performed by the Parties on their respective systems, clearing rights-of-way and tree trimming and the installation of Licensee's attachments and circuits on the Owner's poles shall be borne by the Parties as specified in Exhibit "A".

(c) All poles attached under this Agreement shall remain the property of the Owner and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to the ownership of any of said poles.

ARTICLE V
EASEMENTS AND RIGHTS-OF-WAY

(a) While the parties will cooperate as far as may be practicable in obtaining rights-of-way for both parties on common use poles, neither party warrants or assures to the other party any right-of-way privileges or easements, and if either party shall at any time be prevented from placing or maintaining its attachments on the poles herein designated, no liability on account thereof shall attach to the other party. Each party shall be responsible for obtaining its own easements and rights-of-way.

(b) Where the poles are located on public rights-of-way by franchise or other similar authority, the Licensee shall obtain authority to occupy such rights-of-way before any attachments are made hereunder.

ARTICLE VI
MAINTENANCE OF POLES, ATTACHMENTS AND RIGHTS-OF-WAY

(a) The Owner shall, at its own expense, maintain the poles attached hereunder in a safe and serviceable condition and in accordance with the requirements of the Code, or lawful requirements of public authorities whichever are more stringent and shall replace, reinforce or repair such of these poles as become defective.

(b) Whenever right-of-way considerations or public regulations make relocation of a pole or poles necessary, such relocations shall be made by the Owner at its own expense, except that each party shall bear the cost of transferring its own attachments.

(c) Whenever any pole attached hereunder is insufficient in height or strength to meet Licensee's requirements, the Owner shall, upon request of Licensee, replace such pole and Licensee shall reimburse Owner the total net cost of such replacement according to Uniform System of Accounting. The new pole shall remain as the property of the Owner.

(d) Whenever it is necessary to replace or relocate a pole or poles, the Owner shall, before making such replacement or relocation, give 20 days notice thereof in writing (except in case of emergency, when verbal notice shall be given and subsequently confirmed in writing) to the Licensee, and the Parties shall agree as to the time of such proposed replacement or relocation, and the Licensee shall, at the time so agreed, transfer its attachments to the new or relocated common pole or poles. Should the Licensee fail to transfer its attachment to the new or

relocated pole or poles at the time agreed for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall reimburse the Owner the cost thereof.

(e) Each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Article III and shall keep them in safe condition and in thorough repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed as provided in Exhibit "A" and the cost thereof shall be borne by the parties as provided in said Exhibit "A".

ARTICLE VII LIABILITY

Whenever any liability incurred by either or both of the parties hereto for damages or injuries to the employees or to the property of either party, or for injuries to other persons or their property, arising out of the common use of poles under this agreement or due to the proximity of the wires and fixtures of the parties hereto attached to the common use poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows to the extent allowed by applicable law:

- (a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Code.
- (b) Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.
- (c) Each party shall be liable for 1/2 of all damages for such injuries to persons other than employees of either party and for 1/2 of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.
- (d) Where, on account of injuries of the character described in the preceding paragraphs of this article, either party hereto shall make any payments to its injured employee or to his relatives or representatives

in conformity with (i) the provision of any workmen's compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (ii) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages for injuries within the terms of the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto in accordance with paragraphs (a) and (b).

- (e) All claims (which shall include actions) for damages arising hereunder that are asserted against or affect the parties hereto jointly shall be dealt with by the parties hereto jointly; provided, however, if a claimant desires to settle upon terms acceptable to one party hereto but not to the other, the party hereto desiring to settle may, without waiver of or prejudice to its rights under this article, pay to the other party hereto 1/2 of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim, provided, should upon subsequent proceeding the matter be adjudged so that after the payment of all costs, a refund in whole or in part should be made, it will so be made.
- (f) Expenses of defense for the purpose of this article shall be deemed to include costs, attorneys' fees and other proper charges and expenditures.

ARTICLE VIII PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

(a) When either party desires to change the character of its circuits, such party shall give thirty (30) days notice to the other party of such contemplated change in the character of its circuits, and in the event that the other party agrees in writing to common use with such changed circuits then, subject to the procedure hereinafter provided for in Section (b) of this Article, the common use of poles shall be continued with such changes in construction as may be required to

meet the terms of the specifications mentioned in Article III for the character of circuits involved.

(b) If the change in character of circuits requires pole replacement for the sole benefit of the Owner, the pole replacements shall be made at the expense of the Owner. If the change in character of circuits requires pole replacements for the sole benefit of the Licensee, the pole replacements shall be made at the expense of the Licensee. The time and manner in which the work is performed shall be as mutually agreed upon and in accordance with the procedure provided for in paragraph (d), Article VI, Maintenance of Poles, Attachments and Rights-of-Way.

(c) In the event, however, that the other party fails within thirty (30) days from receipt of notice of contemplated change in character of circuits to agree in writing to continue the common use of such poles with such changed circuits, then both parties shall cooperate in accordance with the following plan:

1. The parties hereto shall determine and agree in writing upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.
2. The net cost involved in re-establishing such circuits in the new location as are necessary to furnish the same service facilities that exist at the time such change is decided upon, shall be equitably apportioned between the parties hereto.

ARTICLE IX ABANDONMENT OF COMMONLY USED POLES

(a) If the Owner desires at any time to abandon any commonly used pole, it shall give the Licensee notice in writing to that effect at least 60 days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the Owner from all obligation, liability, damages, cost, expenses or charges incurred thereafter, save for those costs or expenses resulting from injuries or damages occurring prior to the effective date of abandonment by the Owner, and which occurred, because of the presence or condition of

such pole or of any attachments thereof; (such costs or expenses to be governed by Article VII, "Liability"). The Licensee shall pay to the Owner for such abandoned pole or poles, an amount as may be mutually agreeable to both parties, the Owner shall further evidence transfer to the Licensee of title to the pole or poles by means of a bill of sale.

(b) The Licensee may at any time abandon the use of a common pole by giving due notice in writing to the Owner and by removing therefrom any and all attachments it may have thereon. The Licensee shall in such case pay to the Owner the full rental for said pole for the then current year.

ARTICLE X RENTALS

(a) On or about the first day of December of each year the parties acting in cooperation shall tabulate the total of the number of poles in common use as of the preceding day and the number of poles on which the Licensee removed all of its attachments during the twelve preceding months, which tabulation shall indicate the number of poles on which rentals are to be paid.

(b) The rental per pole due from the Licensee to the Owner shall be SEE EXHIBIT "A" per annum which shall be paid by the Licensee to the Owner for each commonly used pole as shown by the annual tabulation of common poles provided for herein.

ARTICLE XI RIGHTS OF OTHER PARTIES

If either party, prior to the execution of the Agreement has conferred, or hereafter confers, upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and the grantor shall have the right, by contract or otherwise, to continue or extend such existing rights or privileges, it being expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party shall be treated as attachments belonging to the grantor, and the rights, obligations, and liabilities hereunder of the grantor with respect to such attachments shall be the same as if it were the actual owner thereof.

ARTICLE XII
ASSIGNMENT OF RIGHTS

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or any of its rights or interests in any of the commonly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, provided however, that nothing herein contained shall prevent or limit the right of either party to lease or transfer any or all of its property, rights, privileges, and franchises, to another corporation organized for the purpose of conducting a business of the same general character as that of the leasing or transferring party. Either party to this agreement may mortgage any or all of its property, rights, privileges, or franchises, or enter into any merger or consolidation, and in the case of foreclosure of such mortgage, or in case of lease, transfer, merger, or consolidation, such party's rights and obligations hereunder shall pass to and be acquired and assumed by the transferee, lessee, assignee, merger or consolidation company as the case may be.

ARTICLE XIII
WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XIV
PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said commonly used poles, and the taxes and the assessments which are levied on said common poles shall be paid by the owner thereof, but any tax, fee, or charge levied on the Owner's poles solely because of their use by the Licensee shall be paid by the Licensee.

ARTICLE XV
INTEREST AND PAYMENTS

All amounts to be paid by one party to the other under this Agreement shall be due and payable within 30 days after an itemized statement shall have been presented to the party

required to make such payment. Any payment not made within 30 days from the due date shall thereafter bear interest at the rate of 7% per annum until paid.

ARTICLE XVI DEFAULTS

If either party shall make default in any of its obligations under this agreement and such default shall continue thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder pertaining to the right to attach to additional poles of the other shall be suspended, and if such default shall continue for a period of ninety (90) days after such suspension, the other party may forthwith terminate the right of both parties to attach to additional poles of the other party. Any such termination of the right to attach to such additional poles of the other by reason of any such default shall not abrogate or terminate the right of either party to attach to existing common use poles or to maintain existing attachments, and all such attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this agreement, which agreement shall, so long as such attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such attachments.

ARTICLE XVII SERVICE OF NOTICE

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the City of Lawrenceville at its office at 70 S Clayton St Lawrenceville Ga 30046 or to the Georgia Power Company at its office at 241 Ralph McGill Boulevard, Atlanta, Georgia 30308 as the case may be, or to such other address as either party may from time to time designate in writing to the other party for that purpose.

ARTICLE XVIII TERM OF AGREEMENT

This Agreement shall remain in effect until terminated at the end of five (5) years from the date hereof or thereafter upon either party's giving written notice to the other party not less than one year prior to the date of termination.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed in triplicate by their respective officers thereunto duly authorized on the ___th day of _____, 20__.

(SEAL)

Witness

By:

Witness

Title:

GEORGIA POWER COMPANY

By:

Title: