

**CITY OF CALHOUN  
REGULAR CITY COUNCIL MEETING  
DEPOT COMMUNITY ROOM  
109 SOUTH KING STREET  
CALHOUN, GA  
JANUARY 14, 2008 7:00 P.M.**

**MINUTES**

**PRESENT: James F. Palmer, Mayor  
Ray Denmon, Councilman  
George R. Crowley, Councilman  
Al Edwards, Councilman**

**ABSENT: David Hammond, Councilman**

**ALSO: William P. Bailey, City Attorney  
Kelly Cornwell, Director of Utilities  
Eddie Peterson, City Administrator**

1. Mayor Palmer called the meeting to order and welcomed everyone in attendance. Councilman Crowley gave the invocation.
2. Mayor Palmer led the group in the Pledge of Allegiance to the United States Flag.
3. Councilman Crowley made a motion to approve the proposed agenda as written. The motion was second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.
4. Councilman Denmon made a motion to approve the minutes of the December 17, 2007 regular City Council meeting as written. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried.
5. Mayor Palmer gave the State of the City Address. **(Exhibit "A")**.
6. Mayor Palmer announced the department appointments for the calendar year 2008.
  - Councilman Al Edwards – Street, Sanitation, Cemetery, Animal Control, Parks, Zoning Advisory Board, Main Street Partnership, Downtown Development Authority, Safety.
  - Councilman Ray Denmon – Water Plant, Sewer Plant, Water Construction, Sewer Construction, Building Inspection.
  - Councilman George Crowley - Electric Department, Telecommunications, Revolving Loan Advisory Commission, Airport Authority, School.
  - Councilman David Hammond – Police, Fire, Coosa Valley RDC.
    - Mayor Palmer also recognized Councilman Hammond for his appointment as 3<sup>rd</sup> Vice President of the Georgia Municipal Associations District One.

7. Mayor Palmer made a recommendation to appoint Councilman Crowley as Mayor Pro Tem for 2008. Councilman Edwards made a motion to appoint Councilman Crowley as Mayor Pro Tem for 2008. The motion was second by Councilman Denmon with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.
8. Mayor Palmer made a recommendation to appoint the following department heads for 2008.  
**General Government Division:**
  - City Administrator – City Clerk - Eddie Peterson
  - Police Chief – Garry Moss
  - Fire Chief – Lenny Nesbitt
  - Street Department Superintendent - Kevin McEntire
  - Recreation Director – Ronnie Reeves
  - Golf Professional - Eric Stewart
  - Superintendent of Maintenance (Golf) - Harold Franklin**Utility Division:**
  - Director of Utilities - Kelly Cornwell
  - Director of Finance/Utilities – Andrea Bramlett
  - Electric Superintendent - Larry Vickery
  - Director of Telecommunications – Brad Carrick
  - Director of Customer Service – Ray Dudkowski
  - Director of Water & Sewer - Jerry Crawford
  - Manager of Engineering Department – David Burnett
  - Superintendent of Water Treatment – Danny Stephens
  - Superintendent of Water Construction – Kenneth Logan
  - Superintendent of Sewer Treatment – Carlton Rogers
  - Superintendent of Sewer Construction – Mark Williamson
  - Superintendent of Water & Sewer Maintenance – Bobby Robertson
9. Councilman Edwards made a motion to appoint Bert Vaughn as City Chaplain for 2008. The motion was second by Councilman Crowley with Councilman Edwards and Councilman Denmon voting affirmatively, motion carried.
10. Councilman Denmon made a motion to appoint William P. Bailey as City Attorney for 2008. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried.
11. Councilman Edwards made a motion to appoint Suzanne Hutchinson as Municipal Court Judge for 2008. The motion was second by Councilman Denmon with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.
12. Councilman Crowley made a motion to appoint Rebecca Paris as Indigent Defense Attorney for 2008. The motion was second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.

13. Councilman Edwards made a motion to appoint Randy Jackson as Town Marshal for 2008. The motion was second by Councilman Denmon, with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.
14. Councilman Crowley made a motion to appoint R.M. Dobbs & Co. as Independent City Auditors for 2008. The motion was second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.
15. Mayor Palmer read the Banking Resolution for General and Utility Funds for 2008. Councilman Denmon made a motion to approve the resolution. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried. (**Exhibit “B”**)
16. **Mayors Comments:**
  - A. Mayor Palmer reviewed the Martin Luther King, Jr. celebration activities which will occur on January 19, 20, & 21, 2008. The City of Calhoun has placed a commemorative boulder and plaque at the corner of Court Street and M.L.K. Boulevard. The unveiling ceremony will occur Sunday January 20, 2008 at 4:30 P.M. at the site. The wording for the plaque was provided by Laura Pullum. (**Exhibit “C”**)
  - B. Mayor Palmer reminded everyone of the Mayor’s Day Training and GMA conference on January 26, 27, & 28, 2008 in Atlanta. GMA Mayor’s Day provides an opportunity to meet with our Senator’s, Representatives, and other State leaders to discuss Calhoun’s needs and upcoming legislation for 2008. There are also opportunities for additional governmental training for those who attend.
  - C. Since Mayor’s Day is scheduled the same date as the next regular Council meeting, Mayor Palmer asked for a motion to reschedule the next Council meeting to January 21, 2008. Councilman Crowley made a motion to reschedule the next Council meeting to January 21, 2008. The motion was second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.
  - D. Mayor Palmer reviewed the zoning hearing scheduled for February 11, 2008.
    1. Annexation and C-2 zoning request for approximately 7 acres on Belwood Road South of Gordon County property and east of the Outlet Mall. The request is made by D&D Investment Properties.
17. **Council Comments:**
  - A. Councilman Edwards gave the December reports as follows:
    - 1) The Street Department:
      - o Routine maintenance of street sweeping, vacuuming leaves, and picking up brush
      - o Placed 7 new street signs
      - o Completed 12 shop work orders
      - o Ran storm water maintenance plan on December 21<sup>st</sup> checking all grates and pipes inside the City

- Dug out and poured 70x12 driveway apron and 160 ft. sidewalk at the main entrance to the 58 acre recreation park
  - Removed 60 ft damaged curb and 40 ft damaged sidewalk at the corner of Court Street and Martin Luther King Jr. Blvd. Placed a large granite stone at the intersection and will dedicate a commemorative plaque honoring Dr. King on Sunday, Jan 20<sup>th</sup> at 4:30 P.M.
  - Dug out and patched on Court St, Elm St, Kent Ln, and Edmond St. using 6.3 tons of asphalt
  - The leaf vac and street crews worked 2 weeks prior to the Christmas holidays cleaning up all the leaves
  - Worked with the police department blocking roads for traffic control during the annual parade of lights Christmas parade
  - Set 6000 lb granite stone at the new recreation playground for a plaque naming city and county officials and others.
- 2) The Parks and Maintenance Department:
- Provided routine maintenance of picking up liter, mowing, weed-eating, and cleaning up leaves at all City departments and parks
  - Completed maintenance jobs for the Depot, and the Library
  - Worked completing the exterior portion of the new recreation pavilion (started in the interior of 2 bathrooms at the pavilion)
- 4) Cemetery Department:
- Supervised the opening and closing of 14 grave sites
  - Performed routine maintenance on Fain and Chandler Cemeteries
  - Sold 20 new grave spaces
  - Assisted Contractors with installation of 6 new monuments
  - Worked 10 grave sites
- 5) Animal Control:
- Housed 24 dogs and 5 cats
  - Responded to 24 customer calls
  - No fines issued for lease law violations
- 6) Safety Committee:
- Had a safety topic of Liquefied Petroleum (LP) gases
  - Inspected Water Plant on December 11<sup>th</sup>
  - Reported 1 vehicle accident
- B. Councilman Denmon gave the December reports as follows:
- 1) The Water Treatment Plant Facility:
- Pumped a total of 303,360,000 gallons of water for a daily average of 9,785,806 million gallons
  - The Brittany Drive Treatment Plant produced 26.3% of the City's potable water for the month.
- 2) The Waste Treatment Plant:

- Treated a daily average of 4.273 MGD, with an average BOD effluent of 6, average suspended effluent of 14, and an average COD effluent of 61
  
- 3) The Water Construction Department:
  - Made 29 water connections
  - Installed 4,270 feet of 2” PVC pipe
  - Installed 120 feet of 6” PVC pipe
  - Set 26 new meters
  - Repaired 21 city side meter leaks
  - Changed out 38 meters
  - Pulled 10 meters
  - Responded to 320 locates
  - Called in 49 locates
  - Called in and worked 37 emergency locates
  - Received 121 misc. calls
  
- 4) The Sewer Construction Department:
  - Provided 1 sewer connections during the month
  - Serviced 9 sewer services lines
  - Repaired 3 manholes
  - Inspected 18 sewer mains for a total of 3,047 ft
  - Inspected 7 sewer service lines for a total of 1,100 feet
  - Provided 221 locates for developers
  - Repaired 4 lift stations
  - Responded to 9 calls for service (8 were sewer service lines, 6 on customer side)
  - Cleaned 37 sewer lines totaling 11,100 feet
  - Opened and inspected 43 manholes
  - Removed 18 beaver dams located at and around sewer line right-of-ways, which were causing site specific “flooding”, even though creek flows are below normal, which was causing some sewer inflow.
  
- 5) The Sludge Department:
  - Applied 1,824 cubic yards representing 247.3 dry tons of sludge
  
- 6) Building Inspection Department:
  - Issued 24 permits for an estimated cost of \$1,053,975.00. This included 2 grading, 1 new residential, 2 residential remodeling, 3 commercial remodeling, 4 commercial plumbing, 2 commercial HVAC, 1 new Industrial plumbing, 1 residential electric, 4 commercial electric, 2 industrial electric, & 2 sign permits.
  
- C. Councilman Crowley gave his December reports as follows:
  - 1) The Electric Department:
    - Long Term Projects Under Construction:
      - Continued to upgrade the older clarifiers and thickeners under construction at the Waste Treatment Plant. The project remains approximately 80% complete. Motors for new screws will be installed in December

- Phase II of the System Loss Program for 2007-2008; Engineering Revision Phase is complete.
- The final phase of System Reliability Project is in progress

Projects and Maintenance Under Construction:

- The primary lines for the new recreation project has been completed
- The Avalon Estates Subdivision continues under construction
- New projects for Magnolia Plaza and Willow Brook remain under construction
- Electric service for the new DFACS building on Mauldin Road is complete and energized. Lighting is near completion
- Christmas decorations and lights have been removed

Work Orders in Process or Completed for December:

- Street and security lighting – 31
- New business and maintenance – 42
- After hours trouble callouts – 10

2) Telecommunications Department:

- Created new fuel reporting database to speed up processing fuel data
- Participated in site survey with Hitachi in preparation for installing electronics for trial and testing
- Updated bills with new name, address, and phone numbers
- Implemented new email server and had all city employees access it through web-mail
- Installed a quarter-mile of fiber on Miller Ferry Rd
- Opened 68 work orders and closed 49

During the Month of December the GIS Department:

- Created maps for police department
- Started work on Water/Sewer data models
- Finished converting electric department Autocad drawings
- Trained electric department to make corrections and additions

During the Month of December the Electric Department:

- Set 4 meters
- Purchased over 24 million KWH of electricity

D. Upon the absence of Councilman Hammond, Mayor Palmer gave the December reports as follows:

1) The Police Department:

- Made 856 cases with 11 DUI's
- Fines collected by Municipal Court - \$84,015.00
- Issued 623 warnings
- Investigated 65 highway accidents and 29 private property accidents, 1 injury, no fatalities
- Provided 130 escorts
- Filed 1,723 incidents reports
- Responded to 216 alarms
- Patrolled 47,185 miles
- Responded to 5,869 calls for service by E-911

- 3) The Fire Department:
- Responded to 64 calls for service, 9 fire incidents for damages totaling an estimated \$41,030.00
  - Responded to 29 emergency medical service calls with 23 injuries and 1 fatality
  - Responded to 8 hazardous conditions incidents
  - Responded to 6 miscellaneous service calls, 11 false alarms, and 1 special incident
  - Installed street markers for fire hydrants
  - Assisted the police department and Chamber of Commerce with the Christmas Lights Parade
  - Conducted a safety class for the Boy Scouts at station 1
  - Conducted drivers training and testing for Engineers position
  - After testing, promoted Burton Fox to Lieutenant; Page McEntyre to Engineer/FF III; Lieutenant Mark Dooley to Inspector
  - Conducted final inspection at the dealer in Ohio of new Aerial truck to be delivered in January
  - Completed in-house training during the month for all firefighters on State required core skills along with additional department training
  - Completed all scheduled station and vehicle maintenance
- 4) Fire Inspection Department:
- Provided 42 inspections during the month: 11 annual, 7 requested, 12 follow-up re-inspections, 9 consultations
  - Attended 3 plan review
  - Lt. Duvall Attended the Local Emergency Planning Committee meeting (LEPC)
  - Lt. Dooley attended the monthly City Safety Meeting
  - Both inspectors attended the North GA. Code Officials meeting in Dalton

18. **Zoning and other Public Hearings:**

- A. Mayor Palmer stated at this time the public hearing on zoning matters will be held. The public will have an opportunity to make pro and con comments with a ten minute maximum time limit for each side of the matter and with each person speaking giving their name and address and with each person speaking having filed a financial disclosure statement five days prior to the hearing if required. Mayor Palmer made an inquiry to determine if any elected official has filed or needed to file a disclosure statement regarding any ownership or special interest in the agenda item. There were none. Mayor Palmer stated that the land use maps are on display at the Council Chambers for both the Zoning Advisory Board and the City Council hearings and the Council members have a copy of the Zoning Minutes from the latest Zoning Advisory Board Meeting.
1. Mayor Palmer gave a second reading of an annexation and zoning request of C-2 for two lots on Kelly Court off of Hwy 41 South by Four Star, LLC.
- The public hearing was opened
  - Peterson stated signs on the property and notices to the local legal organ were completed & the adjoining property notices were not available at this time but are in process

- Attorney Bailey reviewed the request as the Zoning Review Committee's primary concern was storm water management and that Kelly Court was not a City street due to the fact that the original developer, Brian Wright, did not want to convey sufficient right-of-way to the City for dedication
- Mayor Palmer asked if there were any other comments.
- Tammy Rokers, a co-worker of Four Star Properties, respectfully asked for consideration of annexation and zoning of C-2 for the two lots in question. Ms. Rokers also provided USPS receipts for adjoining property owners notification.
- There were no other comments and the public hearing was closed
- The findings of the Mayor and Council were:

- |   |
|---|
| <ul style="list-style-type: none"><li>(1) The zoning proposal will permit a use that is suitable in view of the use and development of the adjacent and nearby property.</li><li>(2) The zoning proposal will not adversely affect the existing use or usability of the adjacent or nearby properties.</li><li>(3) The property is currently within Gordon County and is zoned commercial.</li><li>(4) The zoning proposal will result in additional traffic on existing streets; however, it will not impact utilities or schools.</li><li>(5) The capital expense associated with the development of the property will be incurred by the developer.</li><li>(6) The zoning proposal is in conformity with the policy and intent of the land use plan.</li><li>(7) There are no other existing or changing conditions effecting the use and development of the property which would give supporting grounds for their approval or disapproval of the zoning proposal.</li><li>(8) Other than a storm water management issue there are no other factors relevant to balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of the property.</li></ul> |
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- Councilman Crowley made a motion to annex the two lots into the City of Calhoun as requested by Four Star Properties. The motion was second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.
- Councilman Edwards made a motion to zone the two lots C-2 as requested by Four Star Properties. The motion was second by Councilman Denmon with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.

B. Other Hearings and Public Comments: None

19. **Old Business:**

- A. Mayor Palmer gave a second reading of a beer & wine package license application of L.A. Kyrillos, LLC with Hannah Soliman as authorized agent for the location of the Food Mart # 530 at the Shell station located off of Hwy 53 east #921 for change of ownership.

- Administrator Peterson stated the application and required documentation was in order.
- Councilman Crowley made a motion to approve the beer & wine request as presented. The motion was second by Councilman Edwards with Councilman Crowley, Councilman Edwards, and Councilman Denmon voting affirmatively, motion carried.

20. **New Business:**

- A. Mr. Ray Elrod asked to be on the agenda to discuss ComCast and Peters Street but was not present at the meeting.
- B. Mayor Palmer read a request for an address change for Taxi Latino for their proposed location of 602 Hwy 53 S.W.
  - Councilman Denmon made a motion to approve the address change request from 802 North Wall Street to 602 Hwy 53 S.W. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried.
- C. Mayor Palmer explained that the Police Department has requested \$15,300 be transferred from the asset seizure account for the purchase of a 2006 Chevrolet Equinox. The request was made due to an officer being transferred from the patrol division to the criminal investigation division and requires an unmarked vehicle.
  - Councilman Crowley made a motion to transfer \$15,300 from asset seizure to purchase the 2006 Chevrolet Equinox for C.I.D. The motion was second by Councilman Edwards with Councilman Crowley, Councilman Edwards, and Councilman Denmon voting affirmatively, motion carried.
- D. Mayor Palmer gave a first reading of a beer package license request of Chaudhari Enterprises with Ashish Kumar R. Chaudhari as authorized agent for the location of 312 North Wall Street. Mayor Palmer stated the earliest date for a public hearing would be February 11, 2008.
  - Councilman Crowley made a motion to set the public hearing for February 11, 2008. The motion was second by Councilman Edwards with Councilman Crowley, Councilman Edwards, and Councilman Denmon voting affirmatively, motion carried.
- E. Attorney Bailey reviewed changes in the State Law, as adopted by HB 227, which established an alternative statewide franchise for cable or video service.
  - Bailey explained the new law allowed cable operators to “opt out” of their current local franchise agreements with cities and counties and work through a state franchise. Today a cable or video provider, at its option, may use local rights of way to offer service through a franchise issued under one of three options: a state issued franchise; a local franchise; or continue operating under the existing terms of the current locally issues franchise.
  - Bailey recommended a resolution be adopted, (**Exhibit “D”**), as a short term measure and an ordinance be adopted, (**Exhibit “E”**), to provide for changes in the state law.
  - Mayor Palmer read the resolution of the City of Calhoun, through the City Council to authorize the Mayor or the authorized representative of said City to establish a franchise fee applicable to holders of cable and video franchises issued by the State of Georgia.

- Councilman Crowley made a motion to adopt the resolution as read by Mayor Palmer. The motion was seconded by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.
- Mayor Palmer also set a first reading for February 11, 2008 for an ordinance by the Mayor and Council of the City of Calhoun to amend the code of ordinances of Calhoun, Georgia to establish a franchise fee applicable to holder of cable or video franchises issued by the State of Georgia by adopting an article to Chapter 22 of said code to be designated section 22-701 – Franchise fee for state issued cable or video franchise and section 22-702- authorized designee; to designate an agent; to provide for codification; to repeal conflicting ordinances; to provide an ad option date; to provide an effective date; and for other purposes.
- Mayor Palmer also asked for a motion to amend the existing contract between the City of Calhoun and GMA to provide Cable and Telecommunications Management Services to the City of Calhoun (**Exhibit “F”**).
- Councilman Denmon made a motion to approve the amendment of the existing contract. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried.
- F. Mayor Palmer read a parade request by Alzheimer’s Forget Me Not Parade on the normal route to be held on October 25, 2008 at 11:00 A.M.
  - Councilman Denmon made a motion to approve the request based on approval from the D.O.T. The motion was second by Councilman Crowley with Councilman Denmon, Councilman Crowley, and Councilman Edwards voting affirmatively, motion carried.
- G. Mayor Palmer explained that a voting delegate would be required for the general business meeting at the Mayor’s Day Conference on January 27, 2008.
  - Councilman Edwards made a motion to appoint Councilman Hammond as Calhoun’s primary voting delegate for the GMA business meeting on January 27, 2008. The motion was second by Councilman Denmon with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.
  - Councilman Edwards made a motion to appoint Councilman Denmon as the alternate delegate for business voting at the GMA Mayor’s Day Conference. The motion was second by Councilman Crowley with Councilman Edwards, Councilman Crowley, and Councilman Denmon voting affirmatively, motion carried.
- H. Mayor Palmer reviewed a contract, DOT project no. CSSTP 0008 00(743), P.I. number 0008743 for stripping and raised reflective markers for six city streets. (**Exhibit “G”**)
  - Councilman Crowley made a motion to approve the \$90,237.50 DOT contract. The motion was second by Councilman Edwards with Councilman Crowley, Councilman Edwards, and Councilman Denmon voting affirmatively, motion carried.
- I. Mayor Palmer gave a first reading of a zoning change request from C-2 to R-2 by Harmony Road Development for 10.35 acres located at 1401 Dews Pond Road. Mayor Palmer stated the earliest date for a public hearing would be March 10, 2008.

- Councilman Edwards made a motion to set the public hearing for that date. The motion was second by Councilman Crowley with Councilman Edwards, Councilman Crowley, and Councilman Denmon voting affirmatively, motion carried.

21. **Other Written Items Not on the Agenda: None**

22. **Work Reports:**

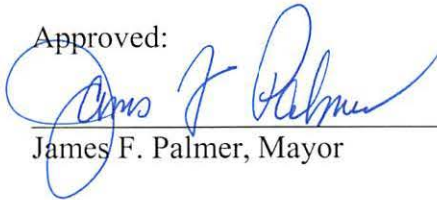
A. Kelly Cornwell, Director of Utilities: Provided the Mayor and Council with a utility pole agreement. **(Exhibit "H")**

- Councilman Edwards made a motion to approve the agreement as written. The motion was second by Councilman Denmon with Councilman Edwards, Councilman Denmon, and Councilman Crowley voting affirmatively, motion carried.

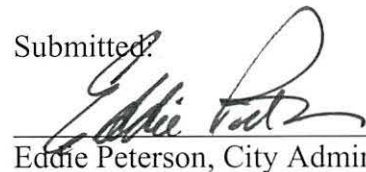
23. Mayor Palmer stated there was no need to move to Executive Session.

24. Councilman Crowley made a motion to adjourn, second by Councilman Denmon with Councilman Crowley, Councilman Denmon, and Councilman Edwards voting affirmatively, motion carried.

Approved:

  
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James F. Palmer, Mayor

Submitted:

  
\_\_\_\_\_  
Eddie Peterson, City Administrator

"EXHIBIT A"

State of the City

January 14, 2008

I want to begin by saying thank you from myself, Councilman Crowley and Councilman Edwards for the opportunity to serve you for the next four years. We want to continue the cooperation with Councilman Hammond and Councilman Denmond that we have enjoyed in the past and has proven to be effective.

We all want to thank the staff department heads and employees for the job they do and for making 2007 a very successful year

2008 brings with it major personnel changes. We have seen the retirement of key people with the city. We thank them for their years of service and wish them well in the future.

I want to say a special thank you to Cathy Harrison. She served 33 years as City Administrator and we all benefitted from her knowledge, experience and dedication to the City of Calhoun

2007 will long be remembered as the year of the drought. We saw our driest year

on record. we had 26 inches of rain compared with 31 inches as the next driest year.

We are fortunate that past decisions addressing capacity and daily decisions concerning distribution allowed us to meet our demands.

We treated and sold over 4.5 billion gallons of water. This included water pumped from the Coosawattee river and the Brittany Drive facility.

The lines are in place and the pumps will soon be installed to connect Big Spring to the Brittany Drive facility. We are also meeting with other nearby governments to study the possibility of a regional water reservoir that could address water needs for Calhoun and Gordon County for the next 50 years.

The sewer department treated over 2.5 billion gallons of waste and began the Belmont Creek sewer project. This is a major addition that will be funded with SPLOST dollars and private developer funds.

We completed the renovation of the former West Line Street school. It now houses the utility administrative offices, utility finance, customer service, engineering and community development.

The city added 1.22 miles of new streets through developer donation and repaved 2 miles of existing streets with Department of Transportation LARP funds. City crews rebuilt Wellco Drive and repaved another mile of streets with SPLOST funds.

Recreation participation and opportunities continued to increase. Tennis activity increased tremendously due to the new courts and tennis building. The new football field was completed with lighting and stands and walking paths around the 58 acre complex were started.

The playground area that is 60% handicapped accessible was completed including sidewalks and the pavilion is near completion. This project was made possible due to a joint effort between the City and County governments.

We continue to provide a safe community. The police and fire departments provide protection for over 14 square miles with a daily service delivery population of over 40,000 people.

The police department responded to 57,810 calls through E-911 and patrolled 632,000 miles. They had 8,322 cases and very importantly removed 115 drunk drivers from our streets.

The department continued in the regional Safe Streets Program and assisted in major cases that make Calhoun a safer community.

The Calhoun Fire Department and the joint Special Operations Team was awarded a ground search and rescue vehicle valued at 1.2 million dollars. This will allow area departments to respond more efficiently to emergency calls and we are expanding station two to house the vehicle in Calhoun.

Six firemen spent 7 days at the US Center for National Response in West Virginia for selective and specialized training. The Calhoun Fire Dept. also sent a team for a nine day rotation to South Georgia to assist with forest fires.

Calhoun was one of the communities that was chosen as a "Signature Community". This will include practical funding for redevelopment plans for west Calhoun and DOT Larp funds.

We were also chosen for the Georgia Initiative for Community Housing. This will allow a team of local volunteers to meet with State agencies and professional planners to determine the best approach to meet our housing needs.

The City received approval from the Georgia Department of Community Affairs on the new Comprehensive Plan. It will include growth and development guidelines and cover the planning period of 2007 to 2027.

This year the millage rate for City M&O is 1.615. This is a \$64.60 tax bill on a house valued at \$100,000. Over the past 9 years the average City M& O millage rate is 1.65. There are only a few cities and counties in Georgia that have this type of long term approach to property taxes. For this you receive police protection, garbage service, fire protection, recreation, parks, street paving, animal control, and a host of other valuable and demanded services.

In 2008 we will continue to stress long range planning, development and management. We will do the things necessary to prepare not only for tomorrow but 10 years from now. We will seek improvements, continue to replace older infrastructure and remain dedicated to providing the best service at the lowest possible cost.

Calhoun millage rates

1999 1.95  
2000 1.70  
2001 1.58  
2002 1.57  
2003 1.54  
2004 1.50  
2005 1.75  
2006 1.67  
2007 1.615

"EXHIBIT B"

**CITY OF CALHOUN  
CALHOUN, GEORGIA  
RESOLUTION**

**WHEREAS**, the City of Calhoun requires City Bank Accounts to be structured according to its investment policies, and

**WHEREAS**, the City of Calhoun requires accounts to be segregated according to General Funds and Utility Funds, and

**WHEREAS**, two signatures will be required on all checks,

**NOW THEREFORE BE IT RESOLVED**, the City Depositories will include AmSouth/Regions, BB&T, GB&T, North Georgia National Bank, Wachovia and Unity National Bank

**BE IT FURTHER RESOLVED**, those authorized to sign General Fund checks, to open new accounts, close accounts are: James F. Palmer, Eddie Peterson or Linda Brookshire.

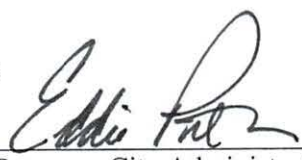
Those authorized to sign Utility Fund checks, to open new accounts, close accounts are: James F. Palmer, Kelly Cornwell or Ray Dudkowski.

**Adopted** this the 14<sup>th</sup> day of January, 2008.

**City of Calhoun, Georgia**

By: 

James F. Palmer, Mayor

Attest: 

Eddie Peterson, City Administrator/Clerk



"EXHIBIT C"

# MARTIN LUTHER KING, JR 2008 HOLIDAY CELEBRATION

DATE	EVENT	LOCATION	TIME
Sat. Jan. 19, 2008	Martin Luther King Talent	McConnell Rd Community Center	7:30 p.m.

\* Show off your Talent

\* Sign-up required (Tip Top Barber Shop—Lewis Mann (706) 459-2449 )

\* Singing, Rap, Poetry, Dance, etc

\* Judge will be on hand. 1st & 2nd Prize given (Cash)

Cost: \$3.00 Adults \$2.00 Children Age 12 & under

Sun. Jan. 20, 2008	Ecumenical Service	Friendship Baptist Church Host Pastor Reginald McDaniel	<i>4:30 at site</i> 5:30 p.m.
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\* Keynote Speaker: Evangelist Kisha Russell Lee, Smyrna, Georgia

\* Special Guest Singers: Ahmad Hall & Favor, Cartersville, GA

\* Psalmist: Richie Parker, Calhoun, GA

\* Cobb County Community Ensemble, Marietta, GA

\* Reception - Harris Arts Center, Downtown Calhoun

Mon. Jan. 21, 2008	Martin & Coretta Scott King Family Appreciation Night Banquet	McConnell Rd Community Center	7:00 p.m.
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\* Request for ALL families to come and show unity.

\* Honoring Clergy In Surrounding Area's

\* Guest Speaker: Pastor Daniel Smith - Pine Grove Baptist Church

\* All Clergy Being Nominated must be submitted by January 16, 2008

- For more Information Contact : Barbara Jackson (678) 986-8749 or Lewis Mann (706) 459-2449

Theme: KEEPING THE DREAM ALIVE, REMEMBERING THE PAST;  
FORGING TOWARDS THE FUTURE

*Walter Harris*

For more Celebration Information  
Call: (678) 848-3945

706 602-1544  
*Home*

**THE 2008 DR. MARTIN LUTHER KING, JR. HOLIDAY  
COMMUNITY CELEBRATION**

**THEME 2008: KEEPING THE DREAM ALIVE,  
REMEMBERING THE PAST;  
FORGING TOWARDS THE FUTURE**

Dear Churches, Community Leaders and Businesses:

We are preparing for the Annual Dr. Martin Luther King, Jr. Holiday Celebration which will be held January 19<sup>th</sup> – 21<sup>st</sup>, 2008. The Ideals of Civil and Human Rights will again be in fore front of the Celebration. There will be special services throughout the weekend with inspiring singers and soul-lifting speakers.

To accomplish a successful Celebration, we need YOUR financial support. All donations will be used "To Keep The Dream Alive" in our very fine city, to inform the general public of all planned activities, to purchase advertising material and to make a contribution to the King Center.

Your donation to this worthwhile cause will allow this event to continue to flourish in Gordon County. Please make your donation of \$75.00, or \$50.00 payable to: Martin Luther King, Jr /Eula Bowden Planning Committee

\_\_\_\_\_Donations of \$50.00 enclosed \_\_\_\_\_Donations of \$75.00 enclosed  
\_\_\_\_\_Donations of \$100.00 enclosed

**ALL DONATIONS ARE TAX DEDUCTIBLE!!!**

Any Churches or Businesses wishing to participate in this Grand Event, please Contact Lewis Mann, Co-Chairman – (706) 459-2449 or Walter Harris, Chairman – (678) 848-3945. Please help us "KEEP THE DREAM ALIVE !!! Thank you in advance for your consideration and donations.

Sincerely,

*Walter B. Harris*

Walter Harris – Chairman; Lewis Mann- Co-Chairman; Barbara Jackson – Asst.

**Remembering The Dream Lives In You 2008**

RESOLUTION

A RESOLUTION OF THE CITY OF CALHOUN, THROUGH THE CITY COUNCIL TO AUTHORIZE THE MAYOR OR THE AUTHORIZED REPRESENTATIVE OF SAID CITY TO ESTABLISH A FRANCHISE FEE APPLICABLE TO HOLDERS OF CABLE AND VIDEO FRANCHISES ISSUED BY THE STATE OF GEORGIA

WHEREAS, the City of Calhoun shall be notified by the Secretary of State's Office and a cable or video provider of an application for a state issued franchise in the city;

WHEREAS, the City currently collects a franchise fee from any current cable or video providers;

WHEREAS, the City considers collecting a franchise fee from a cable or video provider utilizing the public rights of way as compensation to the public for the use of the rights of way and a means of promoting the public health, safety, welfare and economic development of the City and to protect public works infrastructure;

WHEREAS, the City is authorized to collect a franchise fee of up to 5% the maximum amount established by federal and state law, of each cable or video providers' gross revenues generated within the city;

NOW THEREFORE BE IT RESOLVED, that the Mayor and Council of the City of Calhoun hereby requires a franchise fee of 5% for any cable or video state franchise issued in its corporate boundaries by the State of Georgia pursuant to O.C.G.A. 36-76-1 et seq. known as the "Consumer Choice for Television Act" of 2007.

RESOLVED by the Mayor and Council of the City of Calhoun this 14th day of January, 2008.

ATTEST:

By: [Signature]
GEORGIA, GORDON COUNTY:
I certify that the foregoing is a true and exact copy of the original which appears on record in this office.
In witness whereof I have hereunto set my hand and the city seal of
EDDIE PETERSON
City Clerk/Administrator
and my signature.
Eddie Peterson, City Clerk, City of Calhoun

Mayor: [Signature]
JAMES F. PALMER
CITY OF CALHOUN, GEORGIA

Approved as to Form
City Attorney
[Signature]
WILLIAM P. BAILEY

"EXHIBIT E"

ORDINANCE NO. 870

**AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF CALHOUN TO AMEND THE CODE OF ORDINANCES OF CALHOUN, GEORGIA TO ESTABLISH A FRANCHISE FEE APPLICABLE TO HOLDERS OF CABLE OR VIDEO FRANCHISES ISSUED BY THE STATE OF GEORGIA BY ADOPTING A NEW ARTICLE TO CHAPTER 22 OF SAID CODE TO BE DESIGNATED SECTION 22-701-FRANCHISE FEE FOR STATE ISSUED CABLE OR VIDEO FRANCHISE AND SECTION 22-702 - AUTHORIZED DESIGNEE; TO DESIGNATE AN AGENT; TO PROVIDE FOR CODIFICATION; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN AD OPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Calhoun shall be notified by the Secretary of State's Office and a cable or video provider of an application for a state issued franchise in the city;

**WHEREAS**, the City of Calhoun currently collects a franchise fee from any current cable or video providers;

**WHEREAS**, the City of Calhoun considers collecting a franchise fee from a cable or video provider utilizing the public rights of way as compensation to the public for the use of the rights of way and a means of promoting the public health, safety, welfare and economic development of the City of Calhoun and to protect public works infrastructure;

**WHEREAS**, the City of Calhoun is authorized pursuant to O.C.G.A. 36-76-1 *et seq.* known as the "Consumer Choice for Television Act" of 2007 to collect a franchise fee of up to 5%, the maximum amount established by federal and state law, of each cable or video provider's gross revenues generated within the city; and

**WHEREAS**, the City of Calhoun is authorized to designate an agent to provide notice of the city's franchise fee rate;

THE MAYOR AND COUNCIL OF THE CITY OF CALHOUN, GEORGIA HEREBY ORDAINS:

**Section 1.**

The Code of the City of Calhoun is hereby amended by adding a Section to Chapter 22 to be numbered Article IX Section 22-701, which said section reads as follows:

"Section 22-701. Franchise fee for state issued cable or video franchise.

The city hereby requires a franchise fee of 5% of gross revenues generated within the city for any cable or video state franchise issued in its corporate boundaries by the State of Georgia."

**Section 2.**

The Code of the City of Calhoun is further amended by adding a Section to be numbered Article IX Section 22-702, which said section reads as follows:

"Section 22-702. Authorized designee.

The city hereby authorizes the City Administrator upon receipt of notice to the city of its right to designate a franchise fee for an applicant for or holder of an existing state franchise, to provide written notice to the Secretary of State and each applicant for or holder of a state franchise within a service area that is wholly or partially located within the city limits of the 5% franchise fee rate applicable to such applicant or holder of a state franchise.”

**Section 3.**

The preamble to this ordinance is hereby incorporated into this ordinance as if set out fully herein.

**Section 4.**

The sections, paragraphs, sentences, clauses or phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**Section 5.**

All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

**Section 6.**

The adoption date of this ordinance is January 28, 2008.

**Section 7.**

The effective date of this ordinance is January 28, 2008.

ORDAINED by the Mayor and Council of the City of Calhoun this 28<sup>th</sup> day of January, 2008.

ATTEST:

By:   
CITY CLERK/ADMINISTRATOR  
EDDIE PETERSON

MAYOR:   
JAMES F. PALMER  
CITY OF CALHOUN, GEORGIA

(SEAL)

Approved as to Form  
City Attorney

\_\_\_\_\_  
WILLIAM P. BAILEY

## Georgia Municipal Association Cable and Telecommunications Management Services

### AGENT REPRESENTATION FORM

The undersigned is a participant in the Georgia Municipal Association's (GMA) Cable and Telecommunications Management Service (CTMS). GMA's CTMS provides assistance with all aspects of federal and state cable and video franchising, including but not limited to franchise renewals and modifications, state franchise application process, franchise fee reviews and customer service issues. As a participant in GMA's CTMS authorization is hereby granted to allow GMA's staff and/or subcontractors to act on the Participants behalf as listed above.

This AGENT REPRESENTATION FORM is effective upon date signed and until further notice.

CITY OF CALHOUN  
Name of City, Town or County

P.O. Box 248 CALHOUN 30703  
Address - Street City Zip Code

706 602-5510 | 706 625-0439 | Fepeterson@calnet-ga.net  
Phone # Fax # email address

Submitted By EDDIE PETERSON Date JAN 16, 2005

X Eddie Peterson CITY ADMIN.  
Signature Title

The Agreement between the Georgia Municipal Association, Inc. "GMA" and City of Calhoun "City" for Cable and Telecommunications Management Services is hereby amended by adding the services to be provided, clarifying that the annual term of the contract is a standard calendar year (January 1 – December 31) and authorizing GMA to serve as the city's agent upon completion of the attached Agency Form.

The following consulting services shall be provided by GMA to the City:

Rights of Way Ordinance Development

- a) Review existing Rights of Way Ordinance to determine City's current rights of way practices;
- b) Review existing permit process and other ordinances that impact use and restoration of the rights of way;
- c) Evaluate current Rights of Way practices and recommend changes; and
- d) Provide updated Rights of Way Ordinance based on the unique needs of the city

State Issued Franchise Management

State Issued Franchise Management shall include assisting the City as needed with the following based on O.C. G. A. 36-76-1 *et seq.*:

- a) Reviewing requests for state issued franchises submitted to the Secretary of State's Office to provide service within the city's corporate limits, including facilitating the Secretary of State's procedural processes related to the franchise fee percentage being submitted to the holder of the state issued franchise.
- b) Assisting with Public Educational and Government Channel (PEG) development and implementation issues.
- c) Reviewing requests for transfers of state issued franchises submitted to the Secretary of State's Office for service provided within the city's corporate limits.
- d) Assisting with customer complaint rules as established by the Governor's Office of Consumer Affairs.

## State and Local Franchise Compliance Monitoring Services

Franchise compliance monitoring services shall include systematically reviewing the cable operator's or video provider's compliance with the terms of certain aspects of a local or state issued franchise agreement to encompass the following:

- a) Upon receipt of revenue report forms from the city, monitor compliance with the definition of gross revenue and assist with recovery of any identified underpayments.
- b) Periodically perform a comprehensive review of the franchisee's books and records to determine compliance with the definition of gross revenue and assisting with recovery of any identified underpayment.
- c) Advising government concerning conducting the local performance review of operator's performance in compliance with provisions of a local franchise agreement.
- d) Reviewing funding or other issues related to the government channel, tower rental fees or pole agreement fees if applicable,
- e) Documenting operator's carriage of appropriate insurance coverage.
- f) Checking and documenting the status of system construction timeframes, if applicable.
- g) Handling and resolving subscriber complaints as referred.
- h) Monitoring operator's adherence to federal, state or local customer service standards.
- i) Notifying Cities of any identified areas of noncompliance and resolution of same or notification that the operator was found to be in compliance.

## Contract Term

The term of this contract shall be January 1 – December 31. It shall be automatically renewed for successive one-year terms thereafter, unless terminated by either GMA or the City by giving 30 days advance written notice of such termination to the other party. GMA shall be entitled to payment for services rendered to the City, including compensation due for additional services reasonably substantiated by GMA as of the effective date of termination. The total obligation of the City which will be incurred in each Calendar year renewal term shall be reflected in an annual invoice to be submitted to the City thirty (30) days prior to the due date.

Agency

In addition, the City by executing the attached Agency Form designates GMA, its officers, agents, employees, and contractors as agents of the City for purposes of Section 635A of the Communications Act of 1934, as amended, the applicable provisions of the Local Government Antitrust Act of 1984 and O.C. G. A. 36-76-1 *et seq* known as the Georgia Consumer's Choice for Television Act of 2007.

In witness whereof, the parties here caused these amendments to be duly executed on 17 day of Jan 2008

Georgia Municipal Association

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

Jim Higdon

Title: Executive Director

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

City of

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

Title: Mayor

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

Approved to Form  
City Attorney

W. P. Bailey  
Cap. Bar No 032400

"EXHIBIT G"

To: Mayor and Council  
From: E Peterson  
Subject: Street Maintenance Contract  
Date: January 11, 2008

DOT Project No. CSSTP 0008 00(743)  
P.I. Number 0008743

This contract is an agreement between the City of Calhoun and the Georgia Department of Transportation for \$90,237.50 in stripping and raised reflective markers for the following Calhoun streets;

<u>Street Name</u>	<u>Begin</u>	<u>End</u>	<u>Length</u>
C.L. Moss Parkway	Sugar Valley Rd. SR 156	SR 3	2.4 miles
Curtis Parkway	Red Bud Rd.	SR 3	2.9 miles
Dews Pond Rd.	S. Wall Street	Curtis Parkway	1.5 miles
McDaniel St. Rd	SR 53 Spur	SR 53	1.0 mile
Richardson Rd.	Union Grove Rd.	SR 53	2.4 miles
River Street	Oothcalooga St.	SR 53	1.4 miles

This project will be paid totally by the Georgia Department of Transportation. It will be a considerable safety improvement for our motoring public. The stripping will be reflective bead thermoplastic with a visible life of five to six years rather than paint with a wear life of two years. The raised pavement markers will improve night road visibility especially during rain conditions.

Credit Shawn Chastain, Street Dept. Inspector, for finding out about this program and following through the process.

"EXHIBIT H"

**GENERAL AGREEMENT FOR  
JOINT USE OF POLES**

**PREAMBLE**

THIS AGREEMENT, effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), by and between City of Calhoun, a corporation organized under the laws of the State of Georgia (hereinafter called the "Electric Company"), and BellSouth Telecommunications, Inc., a corporation organized under the laws of the State of Georgia (hereinafter called the "Telephone Company"), desiring to cooperate in the joint use of their respective Poles, erected or to be erected within the areas in which both Parties render service in the State of Georgia, whenever and wherever such use shall, in the estimation of both Parties, be compatible with their respective needs.

WHEREAS, in the areas in the State of Georgia served by both Parties, joint use of certain Poles is currently governed by the terms of a Agreement for Joint Use of Poles dated October 1, 1974, as amended by the Addendum dated June 28, 2004; and

WHEREAS, the Parties desire to continue such joint use and to use other Poles jointly in the future, when and where such joint use will be of mutual advantage in meeting their respective service requirements.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto for themselves, their successors and assigns do hereby terminate the existing agreement as of the Effective Date of this Agreement and agree to the following terms and conditions:

**ARTICLE I  
SCOPE OF AGREEMENT**

This Agreement shall be in effect in areas in which both of the Parties render service and shall cover, subject to the terms of this agreement, all Poles of the Parties now existing or hereafter erected, excepting Poles, not yet in Joint Use, which carry, or are intended by the Owner to carry circuits or facilities of such a character that makes Joint Use of such Poles undesirable because of a bona fide technical or operational reason. This Agreement is intended to govern Attachments placed by the Electric Company for the purpose of providing services over its electric facilities; and the Telephone Company for the purposes of providing services over its communications facilities.



## ARTICLE II DEFINITIONS

For purposes of this Agreement, the following terms when used herein shall have the following meanings:

- A. Agreement means this Joint Use Agreement entered into between the Electric Company and the Telephone Company.
- B. Allocated Space is the space reserved for each Party and is defined as follows:
1. For Electric Company - it is the exclusive use of eight feet (8') measured downward from the top of a Standard Joint Use Pole, including Pole top, transformer and other miscellaneous assemblies.
  2. For Telephone Company - it is the exclusive use of two (2) feet of space measured upward from the Initial Point of Attachment on the Pole. The Initial Point of Attachment shall be the lowest point on the pole required to provide at all times the Code minimum clearance above ground for the lowest horizontally run line, wire or cable attached in such space except where by mutual agreement of the field representatives of the Parties sound engineering practices dictate a higher minimum clearance. No Third Party shall place Attachments on the Pole below the point of the Telephone Company's Attachments if Telephone Company's attachments are placed at the lowest point on the pole required to provide minimum clearance above the ground.
- C. Anchor is a metal plate or screw placed in the ground to provide a counter load to the stringing tensions of Telephone Company or Electric Company plant. Anchors shall be of sufficient size to hold the load placed on it.
- D. Attachment is any wire, cable, strand, material, pedestal, or apparatus attached to a Joint Use Pole, excluding ground wires, now or hereafter used by either Party in the construction, operation or maintenance of its plant. Facilities which are bonded to a Pole ground, shall be considered an Attachment. The terms of this Agreement do not include attachment of equipment for use in wireless communications.
- E. Code means the National Electrical Safety Code (NESC), as amended from time to time.
- F. Emergency means a situation where the Pole is damaged, or subject to failing, and such failure is likely to jeopardize the general public.
- G. Joint Use means the occupancy, or reservation of space to the extent allowed by law, on a Pole by both the Owner and the Licensee.



- H. Joint 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 and to the extent allowed by law.
- I. Licensee is the Party having the right under this Agreement to make Attachments to a Joint Use Pole that the other Party owns.
- J. Make-Ready Work means the work required to accommodate Licensee's Attachments on a Joint Use Pole, including, but not limited to, Rearrangement or Transfer of existing Attachments and the facilities of other entities, inspections, engineering work, tree trimming (other than tree trimming performed for normal maintenance purposes), and Pole Relocation and Replacement.
- K. Owner is the Party owning the Joint Use Pole.
- L. Party means either Electric Company or Telephone Company; collectively Electric Company and Telephone Company will be referred to as Parties.
- M. Permit means a request to attach to a pole submitted by the Licensee to the Owner for his review and approval prior to the placement of Attachments by Licensee.
- N. Place or Placement means the installation of a Pole suitable for Attachments.
- O. Pole or Poles include the singular and plural.
- P. Rearrange is to move Attachments from one position to another on a Pole.
- Q. Relocate is to change the location of an existing Pole by removing and reinstalling said Pole in a new location or installing a new Pole in the new location and removing the existing Pole.
- R. Replace or Replacement is to install a new Pole in close proximity to an existing Pole and removing the existing Pole.
- S. Reserved, as applied to space on a Pole, means unoccupied Allocated Space provided, and maintained by Owner, either for its own use or for Licensee's exclusive use, to the extent allowed by law. All Reserved space is subject to rental payments under the terms of this Agreement.
- T. Right-of-Way is the legal right to use the property of another.
- U. Standard Joint Use Pole means a forty (40) foot class five (5) wood Pole as classified by the Pole classification tables of the American National Standards Institute. Also included as Standard Joint Use Poles are those poles which the Licensee has accepted as suitable for its use by the installation of its Attachments to the Pole.



- V. Standard Space Allocation means the Allocated Space for the Electric Company and the Telephone Company.
- W. Third Party means a person or entity that is not a signatory to this Agreement. For purposes of this Agreement, Third Party Attachments shall be considered by the Licensee as Attachments of the Owner.
- X. Transfer is the removal of Attachments from one Pole and placing them upon another.
- Y. Unallocated Space is that part of a Pole not included in allocated space.

### ARTICLE III SPECIFICATIONS

- A. Joint Use Poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and with the minimum requirements of the Code in effect at the time the respective Attachments are made, the standards of the Owner which are required of all parties using Owner's poles and with such additional requirements as may be mutually authorized by both Parties. If any Attachments were in compliance with the Code and the standards of the Owner when made, but later become out of compliance with the Code and the standards of the Owner due to changes in the Code and/or the standards of the Owner and are not covered by any grandfather clause as to such Attachments, then such Attachments shall be brought into compliance with the Code and the standards of the Owner when any work is next performed on such Attachments. To the extent any requirements or specifications of the Code or standards of the Owner may conflict, the more stringent shall apply. This provision shall not be interpreted to impose an obligation on either Party to inspect existing Attachments every time the Code is amended.
- B. As long as the provisions of Code and/or the standards of the Owner in effect at the time the Attachments were made have been met, any Joint Use Pole in place before the Effective Date of this Agreement shall be deemed a Standard Joint Use Pole and satisfactory to both Parties and adequate for their requirements, whether or not the space allocations defined herein have been observed.

### ARTICLE IV CONDITIONS FOR USE OF SPACE

Subject to the terms and conditions of this Agreement, each Party hereby permits joint use by the other Party of any of its Poles in accordance with the Standard Space Allocation and the following:

- A. Either Party may use vertical space below its Allocated Space if the proposed use is authorized by the requirements of the Code and standards of the Owner and such use does not preclude the use of the space by the Party to which such space is allocated. Use of such space must be in compliance with all other provisions of this Agreement including Article XII, Rentals.
- B. If the Allocated Space is subsequently needed and the provisions of the Code and standards of the Owner cannot be met, then the Party to whom the space is not allocated, but who is utilizing the space allocated to the other Party pursuant to section A of this Article, shall be responsible, at its sole expense, for the cost of Rearrangement or Pole Replacement when necessary in order to accommodate the Party having the Allocated Space.
- C. So long as the provisions of the Code and standards of the Owner are met, Unallocated Space below that party's Allocated Space may be used for vertical runs and/or the mounting of equipment or Attachments by either Party. If the provisions of the Code and standards of the Owner cannot subsequently be met, then billing for any required modification will be in accordance with Article IX, Division of Costs. All other provisions of the contract, including Article III and Article XII, shall apply to vertical attachments.

ARTICLE V  
ESTABLISHING JOINT USE OF POLES

- A. So long as the subject Pole is not excluded from Joint Use under the provisions of Article I, the Licensee may receive permission to install initial Attachments or place additional Attachments by submitting a Permit (Exhibit A) and receiving approval prior to placing such Attachments. Within fifteen (15) business days after the receipt of such completed application the owner shall notify the applicant in writing whether the application is approved or rejected. If so approved or if not rejected within the fifteen day period, the pole will become a Joint Pole, and the Licensee shall have the right to place Attachments on such pole subject to all other provisions of this Agreement, including Article III. If the permit is approved, it shall be considered Reserved for the Licensee's use and will be subject to all other provisions of this Agreement, including Section XII, Rentals. If Make-Ready Work is required before a Licensee can place its Attachments on a Pole, the Owner shall provide an estimate of the cost of such work and the amount which the Licensee shall be responsible for. Upon Licensee's approval of the estimated cost of Make-Ready Work, the Owner shall complete the Make-Ready Work in a reasonable time and promptly notify the Licensee in writing or by electronic means when the Make-Ready Work is completed. In emergency situations, the Owner will cooperate with the Licensee to have the Make-Ready Work performed on an expedited basis. If a Third Party must move its Attachments in order for Licensee to place its Attachments on a Pole, the Licensee shall pay the Third Party's reasonable Transfer costs. Licensee shall reimburse Owner for the actual costs of Make-Ready Work, however in no case shall the



Licensee be responsible for Make-ready Work in excess of 20% of the Owner's estimate unless Licensee has revised the character of attachments or has otherwise modified its plans from those originally submitted to Owner.

- B. Whenever Licensee desires to add to or upgrade its facilities in an existing Joint Use Pole line, it will submit a Permit in the form of Exhibit A to Owner specifying the type of existing and proposed facilities to be attached to Owner's poles. If the existing pole is insufficient for the existing and proposed new facilities, Owner shall rebuild the Pole/Poles to accommodate Licensee's upgraded facilities. For a Pole erected to replace such Joint Use Pole solely because the existing Pole is of insufficient height or strength to provide adequately for Licensee's requirements, and where such Joint Use Pole at time of erection or by Attachment thereto by Licensee had been previously pronounced satisfactory, then Licensee shall thereupon pay to the Owner the cost of the Replacement Pole, including Transfers and Rearrangements of the Owner and the cost of removal of the old pole, less salvage. Upon Licensee's request, Owner shall provide Licensee with documentation to support Owner's cost demand.
- C. Notwithstanding sections (A) and (B) above, Licensee is not required to submit a Permit or otherwise provide notice before placing non-guyed service wires.
- D. Each Party shall place its own Attachments on the new Joint Use Poles and place appropriate guys to sustain any unbalanced loads caused by its Attachments in advance of tensioning conductors or strand and/or placing cable. Guys shall be installed prior to the placement of any wires or associated equipment. The foregoing shall not apply to service drops.
- E. In the event Owner discovers: a) unreported Attachments, excluding non-guyed service drop Attachments; b) unauthorized use of Owner's anchors as outlined in Article IX, Division of Costs; and/or c) authorized Attachments which do not comply with requirements of Article III, Specifications, hereinafter "irregular plant conditions", Owner shall inform Licensee of the same. Owner shall also state whether any pole on which unreported attachments has been placed is excluded from Joint Use under Article I of this Agreement. Licensee shall, within thirty (30) days of receiving notice of any unreported attachments: (1) remit to Owner any unpaid rental due for such Attachments; and (2) remove any Attachments made to poles which are excluded from Joint Use. A completed permit for all unreported Attachments made to Joint Use Poles shall accompany payment. For purposes of determining unpaid rental for each unreported Attachment in the event that the time of installation cannot be determined, it shall be deemed to have occurred on the date succeeding the day on which the last physical inventory was performed in accordance with Article XII, Rentals.
- F. Within forty-five (45) days of receiving notice from Owner, Licensee, at its sole expense, shall, replace, relocate or modify all or any: a) unreported Attachments, excluding non-guyed service drop Attachments; b) unauthorized Attachments to



Owner's anchors as outlined in Article IX, Division of Costs; and/or c) Attachments which do not comply with requirements of Article III, Specifications. Licensee shall notify Owner of the performance of such work within two (2) weeks of its completion.

- G. Costs in connection with establishing Joint Use Poles, including any necessary Pole Replacements, shall be borne by the Parties hereto in the manner provided in Article IX, Division of Costs.

ARTICLE VI  
ERECTING, REPLACING OR RELOCATING JOINT USE POLES

- A. Existing Joint Use, Licensee Upgrades Its Facilities. Whenever Licensee desires to add to or upgrade its facilities in an existing Joint Use Pole line, it will submit a Permit in the form of Exhibit A to Owner specifying the type of existing and proposed facilities to be attached to Owner's poles. If the existing pole is insufficient for the existing and proposed new facilities, Owner shall rebuild the Pole/Poles to accommodate Licensee's upgraded facilities. For a Pole erected to replace such Joint Use Pole solely because the existing Pole is of insufficient height or strength to provide adequately for Licensee's requirements, and where such Joint Use Pole at time of erection or by Attachment thereto by Licensee had been previously pronounced satisfactory, then Licensee shall thereupon pay to the Owner the reasonable cost of the Replacement Pole, including Transfers and Rearrangements of the Owner and the cost of removal of the old pole, less salvage. Upon Licensee's request, Owner shall provide Licensee with documentation to support Owner's cost demand.
- B. Existing Joint Use, Owner Upgrades Its Facilities. In the event that Owner desires to upgrade its facilities in a manner that would require action by the Licensee in an existing Joint Use Pole line, Owner will notify Licensee in writing or by electronic means of this desire, and also when construction of the new Pole is completed or required Rearrangements have been made. Transfer of Licensee's facilities shall be governed by Article VIII, Maintenance of Poles and Attachments.
- C. In emergency situations, or in non-emergency situations with the prior written consent of the other Party, a Party may Replace Poles for the other Party. Where Poles are Replaced on an emergency basis, the Party Replacing the Poles shall give the Pole Owner verbal notice of the emergency situation as soon as practicable and give written notice of the Replacement within five (5) business days of making the Replacement. The Owner shall pay the other Party all reasonable costs associated with such Replacement. The new Pole shall remain the property of the original Owner whose Pole was Replaced.



- D. Each Party shall place its own Attachments on the new Joint Use Poles and place appropriate guys to sustain any unbalanced loads caused by its Attachments in advance of tensioning conductors or strand and/or placing cable.
- E. Costs in connection with establishing new Joint Use Poles shall be borne by the Parties hereto in the manner provided in Article IX, Division of Costs.

**ARTICLE VII  
RIGHT-OF-WAY FOR LICENSEE'S ATTACHMENTS**

- A. Each Party shall be responsible for obtaining its own rights-of-way. When new lines are constructed after the effective date of this Agreement, the Owner may obtain suitable right-of-way for both Parties on Joint Use Poles, using a form substantially similar to Exhibit B. Said right-of-way easements shall be in sufficient detail for identification and Licensee may receive a copy of any such easement for the purpose of insuring that it is duly recorded in the public records of the county in which the right-of-way easement is located. No guarantee is given by the Owner of permission from property owners, municipalities, or others for the use of its Poles by the Licensee.
- B. The Owner shall, when constructing a new Joint Use Pole line, clear a right-of-way sufficient for both Parties. Subsequent trimming shall be the responsibility of the Party requiring the trimming. The Parties may develop, by mutual agreement, arrangements for sharing costs of subsequent trimming and repetitive clearing to insure safe access to the poles and facilities of each Party.

**ARTICLE VIII  
MAINTENANCE OF POLES AND ATTACHMENTS**

- A. The Owner shall, at its own expense, maintain its Joint Use Poles in a safe and serviceable condition, in accordance with Article III, Specifications, and shall Replace, reinforce or repair Poles that, in the Owner's judgment, become defective.
- B. Whenever it is necessary to Replace or Relocate a Joint Use Pole, the Owner shall, before making such Replacement or Relocation give reasonable notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed Replacement or Relocation and the Licensee shall at the time so specified Transfer its Attachments to the new or Relocated Joint Use Pole.
- C. An alternate method of notification (as opposed to the above described written method of notification) may be used when mutually agreed upon by both Parties. The electronic notification system of pole transfer request, provided by the National Joint Utilities Notification System ("NJUNS"), may be used as the notification required by



this article. As a prerequisite for use of this system, both Parties shall have and utilize the necessary electronic equipment required by NJUNS for this system.

- D. Should the Licensee fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all Owner responsible Transfers have been accomplished), the Owner may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If the Owner so elects, such old pole shall thereupon, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. In instances where the Electrical Distributor is the Owner of such pole, the unused portion of the Pole above the Licensee's Attachments shall be cut off and removed by the Owner before relinquishing ownership, if the pole remains in structural conflict with the power route. Licensee shall reimburse Owner for the costs incurred in removal of the "unused portion of the Pole."
- E. Should the Licensee fail to Transfer its Attachments to the new Joint Pole after the date specified for such Transfer of Attachments and after all Third Party and Owner responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if the Owner does not elect to relinquish the ownership of the old Pole from which it has removed its Attachments, the cost incurred by the Owner to return to the job site and remove the old pole will be paid by the Licensee. In the event the Licensee notifies the Owner that the Transfer has been accomplished and the Owner returns to the job site to remove the old Pole and discovers that the Transfer has not been made, then the Licensee will pay the Owner's cost of the trip to and from the job site. The intent of this paragraph is to ensure timely Transfers and minimize situations of two or more Poles needlessly remaining at the same location for extended periods of time.
- F. When Replacing a Joint Use Pole, the new Pole will be installed as closely as possible to the existing Pole unless special conditions make it necessary to set it in a different location.
- G. In the event of termination of the rights of the Parties to attach to additional Joint Use Poles, the Parties may continue to place additional Attachments on existing Joint Use Poles, subject to the normal permitting processes as provided for in Article V, Establishing Joint Use of Poles, and to maintain their existing Attachments.



ARTICLE IX  
DIVISION OF COSTS

- A. The cost of establishing a new Joint Use Pole line shall be borne by the Parties in accordance with the following:
1. A Standard Joint Use Pole, or smaller, shall be erected at the sole expense of the Owner.
  2. In the case of a Pole larger than the Standard Joint Use Pole required by either Party, the Party requiring the extra height and/or class shall pay for the additional reasonable costs in excess of a Standard Joint Use Pole. If Owner adds features or betterments not required by Licensee, Owner shall pay the costs associated with such features or betterments.
- B. The cost of establishing joint use on existing Pole lines or modifying existing Joint Use Pole lines shall be borne by the Parties in accordance with the following:
1. For Placement of intermediate Poles or Replacement of non-defective Poles for the Licensee, the Licensee shall pay the total reasonable cost of the intermediate Pole or the Replacement Pole and the Owner's costs to Transfer its facilities and the cost of removal of the old pole, less salvage. Licensee shall be responsible for Transferring its own facilities.
  2. For Replacement of existing defective Poles with a new Pole of the same size or class shall be done at the expense of the Owner. Each Party shall be responsible for Transferring its own facilities.
- C. Except as otherwise specifically provided in this Agreement, each Party shall bear the costs of placement, Transfer, and Rearrangement of its own Attachments, place guys and Anchors to sustain any unbalanced loads caused by its Attachments, and perform any tree trimming or cutting incident thereto.
1. Licensee is prohibited from using Owner's existing anchors without the express written consent of Owner. If such use of Owner's anchor is requested by Licensee, or found existing in the field, Licensee will pay OWNER for any costs incurred in evaluating the overall holding capacity of the existing anchor as a result of imposition of Licensee's load on said anchor. If the anchor is sufficient to support the existing and proposed loads, and if such use is approved by Owner, Licensee shall pay to Owner a fee equal to one half the current installed cost of such anchor.
  2. Notwithstanding the foregoing, where one Party provides, at the request of the other Party, double thimble anchor rods and anchors for the use of

both Parties, the Party requesting the double thimble anchor rods and anchors shall pay to the Party placing the double anchor rods and anchors a sum equal to one-half the cost of the anchor rods and anchors in place.

3. In cases where existing anchor rods and anchors are adequate for the needs of only one Party, the Party desiring additional guys and anchors may install anchors and anchor rods at no expense to the other Party; or, in case of right-of-way restrictions, may provide a double thimble anchor rod and anchor to which the other Party can Transfer its existing guy at its own expense.
- D. In the case of a Pole larger than the Standard Joint Use Pole where the additional height and/or strength required is for the purpose of both Parties, the reasonable cost of the increase above a standard Joint Use Pole shall be shared equally by both Parties, with Owner being responsible for the cost of a Standard Joint Use Pole and Licensee being responsible for one half of the reasonable expense of the additional height or strength.
  - E. When less costly Rearrangements can be performed by either Party which would defer the cost of Replacing a Pole, the Parties shall work together to attempt to minimize costs with the Owner retaining the right to replace its Poles when it deems appropriate.
  - F. Any payments made by the Licensee under the foregoing provisions of this Article shall not entitle the Licensee to ownership of any part of said Pole.
  - G. Each Party shall bear the actual reasonable cost of repairing damages to the other Party's facilities occasioned by its improper construction practices, its negligence, or the negligence of others acting on its behalf.
  - H. Either Party may request reasonable documentation supporting any demand for payment.

#### **ARTICLE X CHANGE IN THE CHARACTER OF CIRCUITS**

When either Party desires to change or upgrade its system which causes it to exceed its Allocated Space and to Replace pole(s) in a joint use route, it shall give the other Party sixty (60) days' written notice of such contemplated change. Within thirty (30) days of receipt of such notice given by the Party making the change, the other Party shall respond in writing whether it agrees to joint use with the proposed changes. In any event, the work shall proceed in accordance with the provisions below:



1. The parties hereto shall work together in good faith to determine which facilities shall be removed from existing points on the Joint Use Poles involved and the cost of establishing such changes in a new position on such poles, or in a new location elsewhere, so that the Party not requiring the change can continue to furnish the same service that existed before the changes were proposed.
2. If the Party requesting the upgrade ("the Requesting Party") is the Owner, the Requesting Party shall be responsible for the costs associated with the pole replacements in the manner set forth below, and its own transfer costs. If the project involves 20 poles or less, the Licensee shall bear the costs of transferring its facilities. If the project involves more than 20 poles, the Owner shall pay a pro-rata share of the Licensee's transfer costs based on the following percentage: the numerator shall be the total number of poles in the project less 20 and the denominator shall be the total number of poles (including the first 20). The Licensee is responsible for paying the remainder of its transfer costs. Notwithstanding the foregoing, if the replacement poles are not suitable for joint use and, as a result, Licensee is prohibited from relocating its facilities to the new poles, the Requesting Party shall be responsible for reimbursement of the costs incurred by Licensee to make changes so that the Licensee can continue to meet its service requirements.
3. If the Requesting Party is the Licensee, the Requesting Party shall pay the Owner the difference between the in-place cost of the taller/stronger poles and the in-place cost of the Standard Joint Use Pole, as well as the then in-place value of the poles replaced. The Requesting party shall also be responsible for the costs incurred by both parties to transfer their facilities to the new poles.
4. In either case, ownership of any new Poles placed pursuant to this Article shall remain with the Owner of the poles that were replaced, unless otherwise agreed to by the Parties in writing.

A party shall not attempt to circumvent subsection (2) of the Article by dividing a project into smaller segments.

#### ARTICLE XI ABANDONMENT

- A. If the Owner decides at any time to abandon any Joint Use Pole, it shall give the Licensee notice in writing or by electronic means at least sixty (60) days prior to the date on which it intends to abandon such Pole. If at the expiration of said period, the Owner and any Third Parties have no Attachments on such Pole but the Licensee shall not have Relocated or removed all of its Attachments therefrom, the Owner may send Licensee written notice that Owner intends to transfer ownership of the Pole to Licensee. If Licensee does not remove its Attachments from the Pole within ten (10) days of receipt of Owner's notice of intent to transfer ownership, Owner may transfer

ownership of the Pole to Licensee by sending Licensee written notice of the transfer of ownership. Upon receipt of Owner's notice of transfer of ownership, the Pole shall then become the property of Licensee and Licensee shall save harmless the former Owner from all obligations, liabilities, damages, costs, expenses or charges incurred thereafter arising out of the presence, location or condition of such Pole or any of Licensee's Attachments thereon, unless such liabilities or damages arise from the negligence or intentional acts or omissions of the former Owner.

- B. If Licensee decides to Transfer its Attachments after Pole ownership has been transferred, Licensee may do so, but Licensee will be responsible for the pulling and disposal of the old Pole(s).
- C. This Article may not be used to circumvent the procedures set forth in this Agreement regarding Transfers.

## ARTICLE XII RENTALS

- A. Rental. The rental rate for 2005 shall be \$18.52 paid by the Telephone Company and \$24.08 paid by the Electric Company.
  - 1. Beginning January 1, 2006, the effective rate to be charged shall be adjusted annually based on the percentage increase or decrease in the Handy Whitman Index for the category of Poles, Towers, and Fixtures for the South Atlantic Region (the "HWI") during the currently available previous 12 month period.
  - 2. Should, in the future, the Handy Whitman Index fail to be published, the rental rate for each year thereafter shall be adjusted by the amount of any increase in the Consumer Price Index for all Urban Consumers CPI-U (1982-1984 = 100), U. S. City Average All Items for the twelve month period ending September 30 of the year to which the rate adjustment is being made.
- B. Netting. Rather than Electric Company and Telephone Company issuing separate bills, the Party owning the greater number of Joint Use Poles shall calculate the amounts due for each party and reduce the amount billed by the rental due the other Party, so that a net bill is issued. After the netting process, the predominant pole owner will prepare and forward either an invoice or a payment, whichever is appropriate.
- C. Annually on or before December 31, the Parties acting in cooperation shall subject to the provisions of this Article, tabulate the total number of Joint Use Poles in accordance with procedures agreed upon by the respective Parties.



- D. For the purpose of computing the total annual rental fee due hereunder, the total fee shall be based upon the number of Joint Use Poles determined by the current physical Pole inventory plus any additional Poles brought under this Agreement, or minus any Poles deleted from this Agreement.
- E. At intervals of not less than five (5) years and at the written request of a Party, an actual physical inventory of Joint Use Poles, may be made jointly by the Parties. When a third-party is to perform the inventory, each Party to this Agreement shall provide a list of their approved contractors to participate in a bid. The Parties shall cooperate in the selection of the contractor, and if one can be agreed upon, the Parties shall share equally the costs of the inventory. If the Parties cannot agree upon a contractor, each Party shall select their own representative to conduct an inventory, with the cost of such representative to be borne by the Party employing them. If any difference in the number of Joint Use Poles is found between the actual physical inventory and the previous inventory adjusted by any Attachments added or Attachments removed since the last inventory, the differential will be prorated as if the subject Attachments were placed in equal numbers over the years that have elapsed since the prior inventory and shall be billed and paid at the then appropriate rate in effect.

#### ARTICLE XIII PERIODICAL ADJUSTMENT OF RENTALS

For the year ending 2008 and at intervals of not less than every four (4) years thereafter, the rental rates applicable under this Agreement shall be subject to joint review and revision upon the written request of either Party. Such written request shall be made at least 90 days prior to January 1 of the year the new rental rates will be effective. If any such request is made, the Parties shall negotiate in good faith to reach a mutually satisfactory rental rate, taking into consideration the allocation of space and the historical cost of bare Poles.

#### ARTICLE XIV THIRD PARTY RIGHTS

- A. If either Party hereto had, prior to the execution of this Agreement, conferred upon Third Parties, by contract or otherwise, rights or privileges to occupy any Poles covered by this Agreement, nothing contained herein shall be construed as affecting such existing rights and privileges.
- B. Following the Effective Date of this Agreement, an Owner shall have the right, by contract or otherwise, to grant permission to Third Parties to occupy Poles covered by this Agreement. To the extent allowed by law, such future Attachments shall not be located within the Allocated Space of the other joint use Party unless that other Party agrees in writing to such occupancy, and such agreement, if any, shall in no way

waive that other Party's right to occupy its Allocated Space in the future as long as that Party has Reserved the space subject to all other provisions of this Agreement, including Article XII, Rentals.

- C. With respect to any rights and privileges granted under this Article to Third Parties, Licensee shall not have to Transfer or Rearrange its Attachments to provide space for a Third Party until the Third Party pays for Licensee's associated costs so long as Licensee's Attachments have been made in accordance with terms of this Agreement. The Third Party shall be given 30 days to make payment for costs of Rearrangements to Licensee, and upon receipt of said payment, Licensee will, within 30 days, make all necessary changes to accommodate the Third Party facilities.

#### ARTICLE XV ASSIGNMENT OF RIGHTS

Except as otherwise provided in this Agreement, neither Party shall assign or otherwise dispose of this Agreement or any of its rights, obligations or interests hereunder, to any firm, corporation, individual, or other entity, without the written consent of the other Party, which consent shall not be unreasonably withheld. Provided, however, that nothing herein contained shall prevent or limit the right of either Party to mortgage any or all of its property, rights, privileges and franchises, or to lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such Party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of such lease, transfer, merger or consolidation, such Party shall cause its rights and obligations hereunder to pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be and such Party shall give notice of the event to the other party not later than the effective date of such lease, transfer, merger or consolidation.

#### ARTICLE XVI FORCE MAJEURE

Deadlines for completing work and providing notice under this Agreement shall be suspended for a reasonable period upon the occurrence of a Force Majeure event. These Force Majeure events include, but are not limited to, the following:

1. Hurricanes or other severe weather conditions;
2. Act of war, terrorism, or civil unrest; and
3. Federal embargos, priority orders, or other restrictions imposed by the federal government.



ARTICLE XVII  
PAYMENT OF TAXES

Each Party shall pay all taxes and assessments lawfully levied on its property upon said Joint Use Poles, and the taxes and assessments which are levied on said Joint Use Poles shall be paid by the respective Owners thereof.

ARTICLE XVIII  
INSURANCE

Each party to this Agreement shall take out and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

- A. Workers' compensation insurance covering all of the Party's employees, as required by law.
- B. Public liability and property damage liability insurance covering all operations under this Agreement with limits of at least \$1,000,000 for bodily injury or death and \$1,000,000 aggregate coverage during the policy period. Failure to maintain the required insurance coverage will not relieve a Party from liability provided for herein should a loss occur. Similarly, if a loss for which a Party is liable exceeds the insurance policy limits a Party will not be relieved from liability provided for herein.
- C. Automobile liability insurance of not less than \$1,000,000 for personal or property damage stemming from the use of all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired.
- D. Each Party shall furnish to the other Party, upon request, a certificate evidencing compliance with the foregoing requirements. This certificate will list the other Party as additional insured and will note specific cancellation language as follows: "In the event of cancellation of any of the said policies, the insuring company shall give the party to whom this certificate is issued thirty (30) days prior notice of such cancellation."
- E. In lieu of paragraphs A-D above, the Parties may self-insure for the above-referenced coverages. Licensee shall present valid proof of self-insurance upon Owner's request.

ARTICLE XIX  
INDEMNIFICATION

Each party to this Agreement shall, to the extent allowed by law, indemnify, protect, save, defend and hold harmless the other party from and against any and all loss, cost, damage, injury, claim, demand, action, suit, judgment, reasonable expenses, reasonable attorney's fees and reasonable court costs, including, but not limited to, any and all

claims for damages to property and injury to or death of persons and claims made under any Workers' Compensation Law, caused by, or arising out of, the sole negligence or intentional acts/omissions of the indemnifying Party, its employees, contractors or agents. If the indemnifying party is obligated to defend the indemnitee in a legal proceeding, the indemnitee may choose its own counsel, provided that the fees charged by such counsel are reasonable in the venue where the incident occurred.

## ARTICLE XX BILLS AND PAYMENT

- A. Upon completion of any work done by one Party for which payment is due from the other Party, the Party performing the work shall present to the other Party, within ninety (90) days after the completion of the work, a bill showing the amount due and a breakdown of the cost. The Parties will cooperate to ensure that both are provided the necessary information to certify that said bills are correct.
- B. If the owing Party disputes the bill or any portion thereof, it must do so through electronic or written means within thirty (30) days after receipt thereof. Further, the owing Party must pay any undisputed amount due. The disputed amount shall be addressed through the Dispute Resolution process set forth in Article XXII.
- C. Any amounts billed hereunder shall be due within forty-five (45) days of the date of the invoice detailing the amount owed. Any amount not timely paid shall accrue interest at the rate of 1.5% per month beginning forty-five (45) days after the date of the invoice and continuing until paid unless the amount is disputed. In case of any disputed amount, the party disputing the amount owed shall timely pay the undisputed amount.

## ARTICLE XXI DEFAULTS

- A. If either Party shall default on its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other Party, the Party not in default may suspend the rights of the defaulting Party to attach additional Joint Use Attachments by sending the defaulting Party written notice of the suspension. If such default shall continue for a period of sixty (60) days from the defaulting Party's receipt of notice of such suspension, the Party not in default may terminate the right of both Parties to attach to additional Poles of the other Party by sending written notice to the defaulting Party. Any such termination of the right of both Parties to attach to additional Poles shall not terminate the right of either Party to attach to existing Joint Use Poles or to maintain existing Attachments on Joint Use Poles. All such Attachments shall continue to be installed and maintained pursuant to the terms of this Agreement, which Agreement shall, so long as such Attachments are continued in use, remain in force and effect solely for the purpose of governing and



controlling the rights and obligations of the Parties with respect to such Attachments, including, but not limited to, charges for such Attachments.

- B. In the event the Parties dispute the existence of a default, the suspension provisions of paragraph A, above, shall not apply, and the Parties shall employ the dispute resolution procedures set forth in Article XXII.

## ARTICLE XXII DISPUTE RESOLUTION

- A. Prior to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through escalation to upper management. Good faith participation in these procedures shall be a condition precedent to any litigation. Upon notice that all subsequent discussions and negotiations between the Parties are intended to be an effort to compromise and settle matters between the Parties, all subsequent discussions, meetings, and negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Georgia's rules of evidence.
- B. Enforcement. The Parties regard the aforesaid obligation to escalate matters in controversy to upper management as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

## ARTICLE XXIII INTERPRETATION AND JURISDICTION

This Agreement shall be interpreted under applicable federal and state laws and shall be construed in its entirety according to its plain meaning. Any action relating to this Agreement or arising out of its terms and conditions shall be instituted and litigated in a court of competent jurisdiction.

## ARTICLE XXIV 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 XXV  
NO JOINT VENTURE

It is agreed by and between the Parties that none of the obligations and undertakings herein creates a partnership or joint venture between the Electric Company and the Telephone Company.

ARTICLE XXVI  
NOTICES

- A. Whenever notice is required to be given under the provisions of Articles XIII (Periodical Adjustment of Rates & Costs), XV (Assignment of Rights), XVIII (Insurance), XIX (Liability), XXI (Defaults), XXII (Dispute Resolution), XXVII (Term of Agreement), or paragraph (c) of this Article XXVI (for change of addresses), such notice shall be in writing, sent certified or registered mail, return receipt required or by a carrier providing proof of delivery, and shall be sent to the following addresses:

The Electric Company  
Official/Legal Notices:

General Manager  
City of Calhoun  
Address: 120 N. Louise Avenue  
P.O. Box 248  
Calhoun, Georgia 30703  
Phone Number: (706) 629-4701

Operational Notices:

Electric Superintendent  
City of Calhoun  
Address: 120 N. Louise Avenue  
P.O. Box 248  
Calhoun, Georgia 30703  
Phone Number: (706) 602-6127  
Emergency Phone Number: (706) 629-2758

The Telephone Company:

Operational Notices:

BellSouth Telecommunications, Inc.

Area Manager  
Address: 8 Westside Industrial Blvd., NW  
Rome, Georgia 30165  
Phone Number: (706) 236-3901  
Emergency Phone Number: 611

Official/Legal Notices:

BellSouth Telecommunications, Inc.  
Attn: Legal Department  
Address: 1025 Lenox Park Boulevard  
Suite 6C01  
Atlanta, Georgia 30319  
Phone Number: (404) 986-1718

- B. Any other notice to be given under the terms of this Agreement shall be given by mail, facsimile to the above addresses, or by electronic means using the National Joint Use Notification System.
- C. Either Party may change the address for notice pursuant to paragraph (a) above by written notice to the other Party.

ARTICLE XXVII  
TERM OF AGREEMENT

Subject to Article XXI, Defaults, this Agreement shall remain in effect for five (5) years from the date hereof. Unless either Party terminates the rights of the Parties to attach to additional Joint Use Poles by providing at least one year's written notice prior to the end of the five (5) year term, this Agreement shall continue thereafter for two (2) year intervals. A Party may thereafter terminate the rights of the Parties to attach to additional Joint Use Poles by providing at least one year's written notice; however, termination will not be effective until the end of the two (2) year period. Termination of the rights of the Parties to attach to additional Joint Use Poles, by any means, shall not abrogate or terminate the right of either Party to attach to existing Joint Use Poles subject to all the terms and conditions of this Agreement or to maintain existing Attachments. All such Attachments shall continue thereafter to be maintained pursuant to this Agreement. This Agreement shall remain in full force and effect, so long as the Attachments are continued in use, solely for the purpose of governing and controlling the rights and obligations of the Parties with respect to such Attachments, including, but not limited to, the rights and obligations of the Parties with respect to charges related to such Attachments.

ARTICLE XXVIII  
EFFECTIVE DATE AND PRE-EXISTING AGREEMENTS

This Agreement shall supersede any prior agreements entered by and between the Parties for Joint Use Poles within the territory covered by this Agreement. Nevertheless, with regard to Poles existing prior to the Effective Date of this Agreement, the Owner shall not be required to replace any such Poles with a Standard Joint Use Pole as defined in Article II(U) of this Agreement unless the Licensee pays all reasonable costs of Replacement and all costs of Transfers or modifications relating to such Replacement as provided for in this Agreement.

ARTICLE XXIX  
SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing in the foregoing shall preclude the Parties to this Agreement from preparing such supplemental agreements, operating routines or working practices as they mutually agree, in writing, to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE XXX  
CHANGE OF LAW

In the event that any legislative, regulatory, judicial, or other action which would materially affect any of the terms of this Agreement becomes effective, then either Party may, upon thirty (30) days written notice, require that such terms be renegotiated, and the Parties expressly agree that they shall renegotiate in good faith such mutually agreeable new terms. In the event that the Parties are unable to agree upon such new terms within a reasonable time period, then either Party may file an action with a court of competent jurisdiction seeking appropriate relief.

ARTICLE XXXI  
MISCELLANEOUS

- A. This Agreement was prepared jointly by the Parties and not by one Party to the exclusion of the other Party.
- B. No amendment or modification of this Agreement shall be valid unless in writing and executed by both Parties.



IN WITNESS WHEREOF, the Parties hereto, have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized as of the effective date of this Agreement.

BellSouth Telecommunications, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

City of Calhoun

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

665501



**EXHIBIT A**

**APPLICATION AND PERMIT FOR USE OF POLES**

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

In accordance with the General Agreement for Joint Use of Poles between the City of \_\_\_\_\_ and BellSouth Telecommunications, Inc., dated January 1, 2007, application is made for a permit to attach to the following poles:

Pole Number

Pole Location

**LICENSEE:**

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

Permission for construction granted on \_\_\_\_\_, \_\_\_\_\_.

**OWNER:**

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



**EXHIBIT B**

State of Georgia  
County of \_\_\_\_\_

Preparer's name and address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Easement**

For and in consideration of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the undersigned Owner(s) of the premises described below, hereinafter referred to as Grantor, do(es) hereby grant to \_\_\_\_\_, its licensees, agents, successors, assigns, and allied and associated companies, hereinafter referred to as Grantee, an easement to construct, operate, maintain, add, and/or remove such systems of communications or electric power transmission or distribution, facilities, stand by generators and associated fuel supply systems as a means of providing uninterrupted service during power outages, or related services as the Grantee may from time to time require upon, over, and under a portion of the lands described in Deed Book \_\_\_\_\_, page \_\_\_\_\_, \_\_\_\_\_ County, Georgia Records, and, to the fullest extent the Grantor has the power to grant, upon, over, along, and under the roads, streets, or highways adjoining or through said property. The said easement is more particularly described as follows:

All that tract or parcel of land lying in Land Lot(s) \_\_\_\_\_, (Land District) (GMD) \_\_\_\_\_ County, State of Georgia, consisting of a (strip)(parcel) of Land

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following rights are also granted: the exclusive right to allow any other person, firm, or corporation to attach wires or lay cable or conduit or other appurtenances upon, over and under said easement for communications or electric power transmission or distribution; ingress to and egress from said easement at all times; the right, but not the obligation, to clear the easement and keep it cleared of all trees, undergrowth, or other obstructions; the right, but not the obligation, to trim and cut and keep trimmed and cut all dead, weak, leaning, or dangerous trees or limbs outside the easement which might interfere with or fall upon the line or systems or power transmission or distribution; the right to relocate said facilities, systems, or related services on said lands to conform to any future highway relocation, widening, or improvements; the right to conduct site evaluations and/or other above and below ground tests and surveys deemed necessary by Grantee, the right to test and maintain generators and associated equipment; and the right to allow any other person, firm, or corporation to provide for fuel/energy distribution to equipment placed on the site.

To have and to hold the above granted easement unto \_\_\_\_\_ its licensees, agents, successors, assigns, and allied and associated companies forever and in perpetuity.



Grantor warrants that Grantor is the true Owner of the above-described land on which the aforesaid easement is granted.

**SPECIAL STIPULATION OR COMMENTS:**

The following special stipulations shall control in the event of conflict with any of the foregoing easement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In witness whereof, the undersigned has/have caused this instrument to be executed on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name of Grantor

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

\_\_\_\_\_  
Witness

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

State of Georgia, County of \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally came before me this day and executed the forgoing instrument. If the Grantor is a business entity, he (or she) has represented to me that he (or she) is \_\_\_\_\_ (print title) of \_\_\_\_\_ (print name of business entity), and that he (or she) is authorized to sign this instrument on behalf of the Grantor.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Grantor's Address

Grantee's Address:

\_\_\_\_\_  
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