

ORDINANCE NO. 2007-02-07

**ORDINANCE GRANTING FRANCHISE
To**

GEORGIA POWER COMPANY

By

CITY OF SANDY SPRINGS, GEORGIA

On

_____, 2007

The within franchise accepted on

_____, 2007.

GEORGIA POWER COMPANY

**By: _____
President**

ORDINANCE GRANTING PERMISSION AND CONSENT to Georgia Power Company and its successors, lessees, and assigns (hereinafter referred to collectively as the "Company") to occupy the streets and public places of the City of Sandy Springs, Georgia (hereinafter referred to as the "City") in constructing, maintaining, operating, and extending poles, lines, cables, equipment, and other apparatus for transmitting and distributing electricity and for other purposes.

SECTION I. Be it ordained by the governing authority of the City that the authority, right, permission, and consent are hereby granted to the Company, for a period of thirty-five (35) years from the date of the Company's acceptance hereof, to occupy and use the streets, alleys, and public places of the City within the present and future corporate limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation, and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections, and other apparatus (hereinafter referred to collectively as the "Company's Facilities") for the business and purpose of transmitting, conveying, conducting, using, supplying, and distributing electricity for light, heat, power, and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys, and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to insure safe and efficient service.

SECTION II. Be it further ordained that the rights, permission, and consents herein contained are granted for the following considerations and upon the following terms and conditions:

1. The Company shall pay into the treasury of the City (a) on or before the first day of March in each year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following the granting of this franchise and ending on December 31 thereafter and (b) on or before the first day of March of each year thereafter during the term of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential, commercial, and industrial rate schedules (as so prescribed) within the corporate limits of the City during the preceding calendar year, on condition that in the event the City shall grant to any other entity the right to use and occupy the City's streets for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

2. The amount, if any, of any tax, fee, charge, or imposition of any kind required, demanded, or exacted by the City on any account, other than ad valorem taxes on property, shall operate to reduce to that extent the amount due from the percentage of gross sales provided for in paragraph 1 of this Section II.

3. The Company shall fully protect, indemnify, and save harmless the City and its agents and contractors from all damages to persons or property caused by the construction, maintenance, operation, or extension of the Company's Facilities, or conditions of streets, alleys, or public places resulting therefrom, for which the City would otherwise be liable.

4. The Company shall, in constructing, maintaining, operating, and extending the Company's Facilities, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.

5. For purposes of paragraph 6 of this Section II, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of this ordinance) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following: (i) electric transmission lines with a design operating voltage of forty-six (46) kilovolts or greater (hereinafter referred to as "Transmission Lines"); (ii) poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures"); (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v) network underground facilities.

6. In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this paragraph 6 shall apply without regard to whether the Company has acquired, or claims to have acquired, an easement or other property right with respect to such Distribution Facilities and shall not affect the amounts paid or to be paid to the City under the provisions of paragraph 1 of this Section II. Notwithstanding the foregoing provisions of this paragraph 6, the Company shall not be obligated to relocate, at its expense, any of the following: (i) Distribution Facilities that are located on private property at the time relocation is requested or demanded; (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) Distribution Facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

7. The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to, (i) both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).

8. With regard to each streetscape project undertaken by or on behalf of the City, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's

Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project. For each streetscape project, the Company shall estimate in good faith the amount of incremental base revenue, if any, that the Company will realize as a result of new customer load or expansion of existing customer load attributable to such project; and such estimate shall be based on tariffs in effect at the time that construction of such project begins and shall not include fuel recovery charges, non-electric service billings, or taxes. If such estimate indicates that the Company will realize incremental base revenue, the Company shall do one of the following, whichever results in greater cost savings to the City: (i) reduce the City's advance payment to the Company for relocation costs by ten percent (10%); or (ii) where the City has developed a bona fide marketing plan within twelve (12) months after construction of such project begins, either refund the amount of the Company's incremental base revenue during such twelve-month period to the City or credit such amount against any future payment due from the City to the Company. The City and the Company acknowledge and agree that the amount of any refund or credit calculated pursuant to clause (ii) of the foregoing sentence of this paragraph 8 shall not exceed the amount of the City's advance payment to the Company for relocation costs associated with such project.

SECTION III. Be it further ordained that nothing contained in this ordinance shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

SECTION IV. Be it further ordained that from time to time after the approval of this ordinance, the Company and the City may enter into such additional agreements as the Company and the City deem reasonable and appropriate; provided, however, that such agreements shall not be inconsistent with the terms and conditions of the franchise granted in this ordinance, shall not exceed the term of the franchise, and shall be enforceable separate and apart from the franchise.

SECTION V. Be it further ordained that the Company shall, within thirty (30) days from the approval of this ordinance, file the Company's written acceptance of the franchise granted in this ordinance with the Clerk of the City, so as to form a contract between the Company and the City.

SECTION VI. Be it further ordained that upon such acceptance all laws and ordinances, and all agreements between the Company and the City with respect to the Company's use of the City's streets, alleys, and public places, in conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.

Adopted by the Council of the City of Sandy Springs, Georgia, at a meeting held on

February 6, 2007.

Approved: February 6, 2007.

Eva Calabrese
Mayor

I, Christina Rowland, Clerk of the City of Sandy Springs, Georgia, hereby certify that I was present at the meeting of the Mayor and Council of the City of Sandy Springs, Georgia, held on February 6, 2007, which meeting was duly and legally called and held, and at which a quorum was present, and that an ordinance, a true and correct copy of which I hereby certify the foregoing to be, was duly passed and adopted by the Mayor and Council of the City of Sandy Springs, Georgia, at said meeting.

IN WITNESS WHEREOF, I hereunto set my hand and the corporate seal of the City of Sandy Springs, County of Fulton, State of Georgia, this 6 day of February, 2007.

Christina Rowland
Clerk

LETTER AGREEMENT

The City of Sandy Springs, Georgia (hereinafter referred to as the "City") and Georgia Power Company (hereinafter referred to as "Georgia Power") hereby enter into this Letter Agreement effective as of _____, 2007, as a supplement to that certain 2007 Ordinance Granting Franchise by which the City has granted to Georgia Power certain rights on such terms and conditions as are set forth therein (hereinafter referred to the "Franchise Agreement"). (The City and Georgia Power are sometimes hereinafter referred to collectively as the "Parties.")

In conjunction with the Franchise Agreement, the Parties have agreed as follows:

1. Georgia Power shall conduct all tree-trimming activity within the City's rights-of-way in accordance with the procedures set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.
2. Georgia Power, in conducting its activities within the City's rights-of-way, shall comply with all applicable requirements set forth in that certain Utility Accommodation Policy and Standards of the State of Georgia Department of Transportation (hereinafter referred to as the "DOT Standards"), as existing at the time of this Letter Agreement or as hereafter amended; provided, however that where the terms of the DOT Standards and the Franchise Agreement conflict, the terms of the Franchise Agreement shall prevail.
3. Georgia Power shall coordinate all non-emergency work within the City's rights-of-way by submitting to the City, prior to the commencement of non-emergency work being undertaken by Georgia Power, a written notice in a form mutually agreed upon by the Parties.
4. Georgia Power shall use reasonable efforts, except in case of emergency, not to obstruct or impede traffic on the major and secondary arterial roads set forth on Exhibit "B," which is attached hereto and incorporated herein by reference, between the hours of 6:30 a.m. and 9:30a.m. and the hours of 4:30 p.m. to 6:30 p.m., weekends and holidays excluded. The Parties agree that as traffic conditions evolve in the City, the City may add roads to or delete roads from Exhibit "B" upon prior written notice of the same to Georgia Power.
5. Georgia Power and the City agree that the City may in the future, if deemed appropriate by the Mayor and Council, ask that the Franchise Agreement be amended to incorporate other terms. In such case, Georgia Power agrees to negotiate in good faith to determine if a mutually agreeable amendment can be reached; provided, however, that neither the City nor Georgia Power is obligated to agree to any amendment. In no instance shall any amendment be inconsistent with Georgia Power's electric service tariffs.
6. The Parties acknowledge and agree that for purposes of clarifying paragraph 6 of Section II of the Franchise Agreement and clause (ii) of said paragraph 6, the following provisions shall apply: (a) the phrase "public project or improvement" shall be deemed to include the paving or repaving of public roads and the installation of curbs and gutters on public roads; (b) sidewalk improvements related to or associated with such projects, so long as they are undertaken by the City for a valid public purpose, shall be included within the scope of the parenthetical in said clause (ii) ("unless such sidewalk improvements ..."); and (c) Georgia Power shall be obligated to relocate, at its expense, Distribution Facilities (as defined in the

Franchise Agreement) affected by sidewalk improvements related to or associated with such projects.

GEORGIA POWER COMPANY

By: _____

Its: _____

CITY OF SANDY SPRINGS, GEORGIA

By: Eva Galambos

Eva Galambos
Mayor

Attest: Christina P. Bond

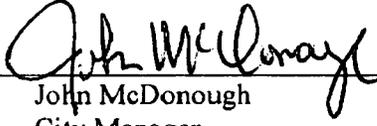
Exhibit "A"

The Mayor and Council of the City of Sandy Springs, Georgia recognize that we all depend on the benefits made possible by safe, clean, and reliable electricity. They also have recognized that we are a community that values our quality of life, nature, and especially trees. Trees purify the air we breathe. They provide shade for our homes, habitat for wildlife as well as provide us with a sense of place, permanency, and longevity.

Georgia Power embraces these concepts. Reliable service, public safety, and customer satisfaction are very important to Georgia Power as a supplier of electricity to the City of Sandy Springs. As such, Georgia Power will provide the following to the City of Sandy Springs and its citizens in order to help preserve and protect a safe and healthy urban forest:

- 1) Submit an annual plan of work to the City Arborist outlining Georgia Power's anticipated areas of maintenance pruning. Georgia Power will notify the City Arborist with current locations of work in progress.
- 2) Georgia Power will conduct their maintenance pruning to ensure appropriate pruning cycles are utilized. The pruning cycles will be outlined in Georgia Power's annual plan of work and will be cycles of no longer than 4 years. These pruning cycles will reflect the pruning necessary to prevent the tree limbs from growing into the conductor prior to the next pruning cycle. In the southeastern United States, the native species and growing conditions would necessitate a pruning cycle of three to four years.
- 3) Georgia Power will work to ensure that all line clearing activities (planned and emergency) will be performed in accordance with current, or as amended, ANSI standards (A300 – tree care standard and Z133.1 – worker safety standard) and under the general direction of a certified arborist. Georgia Power's work specifications mandate that all pruning will be done to accepted industry standards (ANSI A300) to minimize adverse impacts to tree health. These standards are recognized by the International Society of Arboriculture, the National Arbor Day Foundation, the National Arborist Association, and other professional and trade organizations.

David Scago
Region Manager
Georgia Power Company



John McDonough
City Manager
City of Sandy Springs, Georgia

Exhibit "B"

Road Name

Abernathy Road
Barfield Road
Dalrymple Road
Dunwoody Club Drive
Dunwoody Place
Glenlake Parkway
Glenridge Connector
Glenridge Drive
Hammond Drive
Heards Ferry Road
High Point Road
Interstate North Parkway
Jett Road
Johnson Ferry Road
Lake Forrest Drive
Long Island Drive
Mount Vernon Highway
New Northside Drive
Northland Drive
Northridge Road
Northside Drive
Peachtree Dunwoody Road
Perimeter Center West
Pitts Road
Powers Ferry Road
River Valley Road
Riverside Drive
Roberts Drive
Roswell Road
Sandy Springs Circle
Spalding Drive
Windsor Parkway
Winters Chapel Road