
CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: September 27, 2012

FROM: Wendell Willard, City Attorney

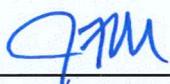
AGENDA ITEM: Utility Relocation on Morgan Falls Road

MEETING DATE: For Submission onto the October 2, 2012, City Council Work Session Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Agreements
Map

APPROVAL BY CITY MANAGER:  APPROVED

PLACED ON AGENDA FOR: 10/2/2012

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: 

REMARKS:

TO: John McDonough, City Manager

FROM: Kevin J. Walter, P.E., Public Works Director

DATE: September 26, 2012, for Submission onto the Work Session Agenda of the October 2, 2012, City Council Meeting

ITEM: Discussion of a Georgia Power Relocation Agreements for the Morgan Falls Road Improvement Project (CIP T-0034)

Discussion:

Public Works staff is asking for the approval by the City Council for the Mayor to execute two relocation agreements with Georgia Power for the relocation of aerial power utilities along Morgan Falls Road (CIP T-0034) subsequent to Legal and Finance Department approval.

After negotiations between staff and Georgia Power representatives regarding utility relocation work, a tentative agreement has been reached. The total construction estimate provided by Georgia Power to relocate the existing facilities which are all currently overhead and attached to wooden poles is \$1.4 million. This fee will be covered by Georgia Power at no cost to the City (covered by the attached agreement number one.)

As part of the negotiations, Georgia Power has agreed to relocate the existing overhead utilities to underground for the section of the project from the Overlook Park to just before the existing Georgia Power substation location at no cost to the City. From this point, the power lines would again move to be aerial and would be attached to standard wooden poles.

Georgia Power has presented the option and a relocation agreement (covered by attached agreement number two) for the use of concrete poles which would allow for increased height of the poles as well as greater distance between poles. If concrete poles are used, the aesthetic site lines would be improved because of the increased height of the utilities, and the overall number of poles needed for the work could be reduced thereby reducing the amount of clutter on the road shoulder. Georgia Power has asked that the City agree to fund the upcharge of the material type from wooden to concrete material for this overhead section of the relocations. The amount of the material cost is \$300,000.

Background:

Morgan Falls Road is located just south of City Hall and connects Roswell Road to Morgan Falls Dam. The road also is the only access to three City Parks: Morgan Falls Athletic Fields, Overlook, and the temporary dog park. The Morgan Falls Road improvement project will upgrade the existing roadway and will construct a multi-use path.

Public Works Recommendation:

Staff recommends the approval of the agreements.

Financial Impact:

By executing the relocation agreements, the City will agree to pay \$300,000 to Georgia Power for the upcharge of utilizing concrete power poles instead of the standard wooden type. The City could choose to utilize existing Capital Improvement Element (CIE) funds to cover the fees associated with this construction.

Attachments:

1. Relocation Agreement for Distribution Facilities
2. Relocation Agreement for Concrete Poles
3. Morgan Falls Road Graphic

BIN 39066
829 Jefferson Street
Atlanta, Georgia 30318

August 9, 2012



Allen Shariett
Utility Coordinator
Public Works
7840 Roswell Rd, Bldg 500
Sandy Springs, GA 30350

City of Sandy Springs

Re: PI# L4375-Morgan Falls Road Improvement Project T-0034

Dear Mr. Shariett:

The estimated cost for the relocation of the Distribution Facilities associated with the above referenced project is \$ **1,397,826.00**. Per the Franchise Agreement and subsequent Amendment between Georgia Power Company and the City of Sandy Springs these facilities will be relocated at Georgia Power Company's expense, provided that these facilities are located on the City's property. Please provide, for our records, reasonable evidence that the city owns the property where our facilities are located. Fee simple title, condemnation records or evidence of the acceptance of an expressed dedication are acceptable.

In the event that all or some of our Distribution Facilities are not located on the City's property, we will prorate the relocation charges upon receipt of evidence of ownership. In the event that our Distribution Facilities are not located on the City's property please sign and return the enclosed Relocation Agreement. Upon receipt of the signed Relocation Agreement, we will move forward with the relocation of our facilities.

Please be advised that we reserve the right to revise the estimated cost if the relocation work has not started within one year from the date of this letter.

If you have any questions, please call Chad Marlow at 404-218-5210 or me at 404-506-4487.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Bailey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rachel Bailey
404-506-4487
racbaile@southernco.com

Enclosure

UTILITY RELOCATION AGREEMENT
City of Sandy Springs
"Morgan Falls Road Improvement Project T-0034"
DISTRIBUTION FACILITY RELOCATION

This AGREEMENT, made and entered into as of the _____ day of _____, 20____, by and between the City of Sandy Springs, State of Georgia (hereinafter referred to as the "City"), and GEORGIA POWER COMPANY (hereinafter referred to as the "Company"). This Agreement may refer to either City or Company, or both, as a "Party" or "Parties."

W I T N E S S E T H:

WHEREAS, the City proposes under the above written Project to construct the "Morgan Falls Road Improvement Project T-0034" (hereinafter referred to as the "Project"); and

WHEREAS, due to the construction of this Project, it will become necessary for the Company to remove, relocate, or make certain adjustments to the Company's existing facilities (facilities includes electrical and communications facilities and is referred to herein collectively as the "Facilities" or the "Facility"), in accordance with the estimate of ONE MILLION, THREE HUNDRED NINETY SEVEN THOUSAND, EIGHT HUNDRED TWENTY NINE Dollars (\$1,397,829.00) (the "Estimate"), a copy of which estimate is attached hereto, and incorporated into this Agreement as Exhibit "A". The Estimate is limited: (a) to the costs of removing, relocating or adjusting those Facilities, which are physically in place and in conflict with the proposed construction and/or maintenance, (b) where replacement is necessary, to the costs of replacement in kind and such cost excludes the proportion of the costs representing improvement or betterment in a Facility, except to the extent that such improvement or betterment is made necessary by the construction and/or maintenance, and (c) to the costs incurred in acquiring additional easements or private rights of way, including, without limitation, easements for lines, access, tree trimming, guy wires, anchors and other devices, appliances and other equipment, and any and all other such easements and property rights as may be reasonably necessary for the Company's installation, operation and maintenance of its Facilities. The proportion of the costs representing improvement or betterment in a Facility while excluded from the Estimate, except to the extent that such improvement or betterment is made necessary by the construction and/or maintenance, shall be shown on the Estimate; and

WHEREAS, the Company has presented evidence to the City that it contends supports its claim that it acquired property interests and utilized such property interests for the placement of its Facilities prior in time to acquisition of the road right of way(s), all as involved in said Project; and

WHEREAS, the City agrees to bear ONE HUNDRED percent (100%) of the actual costs of said relocation expenses, which is estimated to be ONE MILLION, THREE HUNDRED NINETY SEVEN THOUSAND, EIGHT HUNDRED TWENTY NINE Dollars (\$1,397,829.00), subject to the City's reasonable approval (not to be unreasonably withheld) of the evidence presented by the Company supporting its claim for prior rights, which may include any documents or information demonstrating the location of the Facilities in relationship to those property interests, the relationship of those property interests to current and previous road right-of-way, and any other information or documents reasonably required by the City to verify the Company's claim, and subject to further City's reasonable approval (not to be unreasonably withheld) should actual expenses exceed the Estimate; and

WHEREAS, the City will use its best efforts to make a determination regarding the Company's claim for prior rights prior to the Company being required to commence the removal, relocation, or adjustment of its Facilities, and shall provide its determination in writing along with the written support for any such determination. If the City determines that the Company's presented information is insufficient to make a determination, the City will provide the Company the basis for such insufficiency, and request that the Company provide additional information. If a determination, however, cannot be made prior to the time the Company's Facilities need to be removed, relocated, or adjusted in order for the Project not to be delayed (provided that the City certifies in writing to the Company that such Project is time-sensitive due to construction scheduling with the possibility of damages for delay, safety concerns, or critical funding deadlines), the Company will remove, relocate, or adjust its Facilities without a determination having been made and neither Party's rights, claims, or defenses with regard to the issue of property interests, compensable interest or prior rights will be waived or affected in any manner. In such instance,

the City will make such determination regarding the Company's claim for prior rights no later than six (6) months from the date of City's receipt of information sufficient for the City to make a determination (which determination shall be in writing accompanied by written support) or otherwise the Company's claim for prior rights will be deemed approved by the City.

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the Parties, it is agreed:

Section 1. The Company, with its regular construction or maintenance crews and personnel, at its standard schedule of wages and working hours (as may be applicable from time to time during this Agreement), and working in accordance with the terms of its agreements with such employees, will make such changes in its Facilities as previously agreed upon with the City. The Company may elect to contract any portion of the work contemplated.

Section 2. Prior to the Company commencing any of its removal, relocation or adjustment work, including obtaining any easements, City will provide written assurances (including information on the property rights acquired) to Company that it has acquired the necessary new road right-of-way.

Section 3. Upon the completion by the Company of the work contemplated herein, the City will pay the Company a sum equal to the lesser of ONE HUNDRED percent (100%) of: (a) the Company's actual cost of the total Project relocation expenses or (b) the Estimate, subject to the reasonable acceptance by the City (not to be unreasonably withheld) of the evidence presented by the Company supporting its claim for prior rights. Pursuant to the Franchise Agreement (as defined below), in particular its Sections 4 and 8, the Company will exercise its rights to have the City pay the Company its relocation costs associated with this Project.

Section 4. The City will neither be bound to pay any costs related to the Facilities' removal, relocation, or adjustment which are in excess of the reimbursable portion of the Estimate, nor for any items of relocation work not provided for in said Estimate, except as shall be specifically approved in writing by the City. In the event there is a change in the Project, including, without limitation, a change in scope, design, plans, service, property interests to be acquired or engineering, due to events or circumstances beyond Company's reasonable control, Company will notify City of such change and the Parties will negotiate in good faith a mutually agreeable agreement or amendment to this Agreement to address such change.

Section 5. The recitals set forth in the Whereas clauses 5 of this Agreement are a material part of this Agreement and binding upon the Parties hereto.

Section 6. The Company shall make a reasonable effort to provide signing and other traffic control measures during construction as contemplated under this Agreement in accordance with PART VI of the U. S. Department of Transportation Manual on Uniform Traffic Control Devices, current edition, all at the expense of the City.

Section 7. The covenants herein contained, including the covenants contained in the "Whereas" clauses hereto, shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the Parties hereto.

Section 8. It is mutually agreed between the Parties hereto that this Agreement shall be deemed to have been executed in Georgia.

Section 9.

9.1 The Parties agree they will in good faith share information with each other related to the issue of prior rights. Should the Company disagree with the City's determination with regard to the Company's claim for prior rights and if the Parties are unable to settle the issue through informal negotiations, then, at the request of either Party, the Parties agree to escalate the matter pursuant to Section 9.2 below.

9.2 Except as otherwise set forth in this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled: (a) first, by good faith efforts to reach mutual agreement of the Parties; and (b) second, if mutual agreement is not reached within thirty (30) calendar days of a written request by a Party to resolve the controversy or claim, each of the Parties will appoint a designated representative who has authority to settle the dispute (or who has authority to recommend to the governing body a settlement of the dispute) and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem

necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives provided, however, that all reasonable requests for relevant information made by one Party to the other Party will be honored if such information is reasonably available. If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of designated representatives or City's City Council fails to approve any tentative agreement reached, the Parties agree to participate in non-binding mediation pursuant to Section 9.3 below. It being understood, however, that nothing herein will diminish or relieve either Party of its rights or obligations under this Section 9.

- 9.3 If the Parties are unable to resolve a dispute through informal negotiations or pursuant to Section 9.2, the Parties agree to participate in non-binding mediation by an impartial, third party mediator mutually agreed upon by the Parties, at a mutually convenient location, with each Party being responsible for its own attorneys' fees and expenses and for providing its own information and documentation applicable to the dispute to such mediator. The Parties agree that a potential mediator's experience in prior rights and real estate law will be relevant factors in selecting a mediator. All other agreed upon costs of the mediation will be apportioned equally to each Party. Any dispute not so resolved by negotiation, escalation or mediation may then be submitted to a court of competent jurisdiction, and either Party may invoke any remedies at law or in equity. (Nothing contained herein, however, will preclude the Parties from first seeking temporary injunctive or other equitable relief).

Section 10.

- 10.1 If the Company chooses to submit progress payments, the City will pay them within thirty (30) days from receipt of the invoice, subject to Verification (as defined below) thereof by the City. Upon completion of the work, the Company shall submit a final bill to the City and the City shall make a final payment within thirty (30) days from receipt of the final bill, subject to Verification of the final bill by the City.
- 10.2 For purposes of this Section 10.1, "Verification" means that the City has reasonably determined that there is a material discrepancy between the Company's invoiced charges and the City's calculation of charges owed, which invoiced charges are subject to a bona fide dispute; provided, however, City agrees to provide the Company with written notice, including supporting documentation, illustrating the basis for such bona fide dispute, within sixty (60) days of receipt of the invoice in dispute. Should the City fail to provide such documentation within the specified time period, the City must pay the disputed amount. The City must pay any undisputed portion of the invoice total within thirty (30) days after its receipt of the invoice. The City must pay any disputed portion of the invoice total within thirty (30) days of the date the dispute is resolved, to the extent the dispute is resolved in favor of the Company.
- 10.3 At any time within thirty-six (36) months after the date of the final payment, the City, at its sole expense, may audit the cost records, support documentation, and accounts of the Company pertaining to this Project to solely assess the accuracy of the invoices submitted by the Company and notify the Company of any amount of any unallowable expenditure made in the final payment of this Agreement, or, if no unallowable expenditure is found, notify the Company of that fact in writing. Any such audit will be conducted by representatives of the City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, after reasonable advance written notice to the Company and during regular business hours at the offices of the Company in a manner that does not unreasonably interfere with the Company's business activities and subject to the Company's reasonable security requirements. As a prerequisite to conducting such audit, City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, will sign the Company's Nondisclosure Agreement. The Company may redact from its records provided to City information that is confidential and irrelevant to the purposes of the audit. The Company will reasonably cooperate in any such audit, providing access to the Company records that are reasonably necessary to enable the City to test the accuracy of the invoices to which the audit pertains, provided that the City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, may only review, but not copy, such records. If the Company agrees with the audit results and does not pay any such bill within ninety (90) days of receipt of the bill from the City (based on the mutually agreed upon audit results), the City may set off the amount of such bill against the amounts owed the Company on any then-current contract between the Company and the City. If, following the audit, the Parties are unable to resolve any dispute concerning the results of the audit through informal negotiation, the provisions of Sections 9.2 and 9.3 will govern the resolution of the dispute. The City may not perform an audit pursuant to this Agreement more frequently than once per calendar year and may not conduct audits twice within any six (6) months.

Section 11. Duplicate originals of this Agreement will be executed, each of which will be deemed an original but both of which together will constitute one and the same instrument. This Agreement may be modified only by an

amendment executed in writing by a duly authorized representative for each Party. This Agreement contains the entire agreement of the Parties and there are no oral or written representations, understandings or agreements between the Parties respecting the subject matter hereof which are not fully expressed herein. This Agreement *neither* will supersede *nor* is in conflict with that certain Ordinance Granting Franchise (the "Franchise Agreement"). This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this instrument has been and is executed on behalf of the DEPARTMENT OF TRANSPORTATION and on behalf of the CITY OF SANDY SPRINGS being duly authorized to do so by their authorized representatives. The parties to those present have executed this Contract in two (2) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

DEPARTMENT OF TRANSPORTATION

CITY OF SANDY SPRINGS

BY: _____
COMMISSIONER

BY: _____ (SEAL)
MAYOR

Signed, sealed and delivered this day
of _____, 20__ in the presence of

ATTEST:

Treasurer

NOTARY PUBLIC

ATTEST:

MUNICIPAL CLERK

APPROVED AS TO FORM:



City Attorney

FEIN _____

[Signatures continue onto next page.]

GEORGIA POWER COMPANY

By: _____ (SEAL)
JEFF GOOLSBY

Title: Distribution Resource Manager

Date: _____

ATTEST:

By: _____

Title: _____(SEAL)

Witness: _____

Notary: _____(SEAL)

Give proper title of each person executing Agreement. Attach seal as required.

Project Number: L4375

August 24, 2012

Allen Shariett
Utility Coordinator
Public Works
7840 Roswell Rd, Bldg 500
Sandy Springs, GA 30350

RE: PI# L4375-Morgan Falls Road Improvement Project T-0034 – Concrete Poles

Attached are two (2) copies of the Relocation Agreement between Georgia Power Company and City of Sandy Springs for the above referenced project.

Please sign and return both copies to the address below:

Georgia Power Company
Attn: Rachel Bailey
829 Jefferson Street
BIN 39066
Atlanta, GA 30318

After they have been executed by Georgia Power Company we will mail you a copy.

Please be advised that we reserve the right to revise the estimated cost if the relocation work has not started within one year from the date of this letter.

If you have any questions, please contact Chad Marlow at 404-218-5210

Sincerely,



Rachel Bailey
404-506-4487
racbaile@southernco.com

STIPULATED SUM AGREEMENT FOR CONCRETE POLES

City of Sandy Springs

L4375 –Morgan Falls Road Improvement Project

THIS AGREEMENT is made and entered into as of the ____ day of August, 2012, by and between CITY OF SANDY SPRINGS, STATE OF GEORGIA (hereinafter referred to as the “City”), and GEORGIA POWER COMPANY (hereinafter referred to as the “Company”).

WITNESSETH:

WHEREAS, City has undertaken that certain project identified as L4375 - Morgan Falls Road Improvement Project T-0034 (hereinafter called the “Project”). In connection therewith, City has requested that Company make certain adjustments to Company’s facilities to facilitate City’s completion of the Project;

WHEREAS, in connection with said adjustments, City has requested that Company install certain concrete poles (hereinafter called the “Work”) at City’s expense;

WHEREAS, City has agreed to make payment to Company for the Work, and Company has agreed to perform the Work, on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the parties hereinafter set forth and other good and valuable consideration, the parties hereto hereby agree as follows:

1. Work and Payment.

As part of Company’s adjustments to its facilities in connection with the Project, Company, with its regular construction or maintenance crews and personnel, at its standard schedule of wages and working hours (as may be applicable from time to time during the term of this Agreement), and working in accordance with the terms of its agreements with such employees, agrees to install eighteen (18) concrete poles in accordance with the Scope of Work set forth on Exhibit “A” attached hereto, incorporated herein by this reference and made a part hereof (the “Estimate”). Upon completion by Company of the Work, City will promptly pay Company a sum equal to **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)** as payment for the Work.

2. Change in Scope.

In the event there is a change to the Work, including without limitation a change in scope, design, plans, service, property interests to be acquired, engineering or costs, due to either (a) events or circumstances beyond Company’s reasonable control, or (b) City’s request, City agrees to enter into an agreement or amendment to this Agreement, in writing, to address such change and any increase in costs above those set forth in the Estimate.

3. Conditions.

This Agreement is being entered into solely in connection with the Work and shall not be applicable to any other work performed or to be performed by Company in connection with the Project. Company shall have no obligation to commence the Work until Company and City have reached agreement on the adjustments to Company’s facilities made necessary by the Project, and Company has commenced such adjustments. Further, Company shall have no obligation to commence the Work unless City has authorized commencement of the Work prior to October 1, 2012. Finally, in the event City fails to execute and return this Agreement to Company before October 1, 2012, this Agreement shall be void and of no effect whatsoever.

4. Miscellaneous Provisions.

Duplicate originals of this Agreement may be executed, each of which shall be deemed an original but both of which together will constitute one and the same instrument. This Agreement, including Exhibits hereto, contains the entire agreement of the Parties with respect to the Work, and all prior oral agreements are superseded and integrated into this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia. This Agreement shall accrue to the benefit of and be binding upon the successors and assigns of the parties. The parties agree that this Agreement shall be deemed to have been executed in Georgia.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered as of the date set forth below.

COMPANY:

GEORGIA POWER COMPANY

By: _____

Name: Jeff Goolsby

Title: Distribution Resource Manager I

(SEAL)

Date: _____

Witness

Notary Public

(SEAL)

CITY:

CITY OF SANDY SPRINGS, GEORGIA

By: _____

(SEAL)

ATTEST:

By: _____

Title: _____

Date: _____

Witness: _____

Notary: _____ (SEAL)

Approved as to Form by:

City Attorney

