

10-R-1481

(Do Not Write Above This Line)

**A RESOLUTION BY
CITY UTILITIES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A UTILITY RELOCATION AGREEMENT BETWEEN THE CITY OF ATLANTA AND GEORGIA POWER COMPANY FOR THE REMOVAL, RELOCATION AND ADJUSTING OF ELECTRICAL AND COMMUNICATION FACILITIES OWNED BY THE GEORGIA POWER COMPANY FOR THE COMPLETION OF THE PEACHTREE CORRIDOR PROJECT IN AN AMOUNT NOT TO EXCEED TWO HUNDRED FIFTY NINE THOUSAND TWO HUNDRED FIFTY EIGHT DOLLARS (\$259,258.00) WITH ALL CONTRACTED WORK BEING CHARGED TO AND PAID FROM THE FUND DEPARTMENT ORGANIZATION AND ACCOUNT/PTAEO NUMBERS; AND FOR OTHER PURPOSES.

ADOPTED BY

SEP 07 2010

- CONSENT REFER
- REGULAR REPORT REFER **COUNCIL**
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

City Utilities Committee

AUG. 31, 2010 Date

Walter E. Kelly Chair

Action
 Fav, Adv, Hold (see rev. side)
 Other

Members
Madrian
[Signature]
Carla Smith
[Signature]

Refer To _____

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other _____

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other _____

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action
Fav, Adv, Hold (see rev. side)
Other _____

Members _____

Refer To _____

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED
SEP 07 2010
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
SEP 07 2010
Ronda Daughin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

SEP 16 2010

WITHOUT SIGNATURE
BY OPERATION OF LAW



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WHEREAS, the City of Atlanta ("City") has represented to the Georgia Power Company ("Georgia Power") a desire to remove and relocate facilities in conflict with the Peachtree Corridor Project ("Project"); and

WHEREAS, the relocation costs are not a part of the City's Franchise Agreement with Georgia Power; and

WHEREAS, the City agrees to fund 100% of the actual costs for relocation of said facilities; and

WHEREAS, 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 in the amount of \$259,258.00 and may be found in the Relocation Agreement (heretofore attached as Exhibit "A").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor, or his designee, is authorized to execute a Utility Relocation Agreement with the Georgia Power Company for the removal, relocation, and adjusting of electrical and communication facilities owned by Georgia Power for the completion of the Peachtree Corridor Project in an amount not to exceed Two Hundred Fifty Nine Thousand Two Hundred Fifty Eight Dollars (\$259,258.00).

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare an appropriate Agreement for execution by the Mayor.

BE IT FURTHER RESOLVED, that this Agreement will not become binding on the City and the City will incur no liability or obligation under it until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to the Georgia Power Company.

BE IT FINALLY RESOLVED, that all contracted work will be charged to and paid from Fund 3127 (2004 Quality of Life Bond) 3138 (2008 Quality of Life Bond) Department Organization



130308 (DPW Transportation Design) 130302 (DPW Traffic Engineering) Account Number
5414002 (Facilities Other than Buildings/Infrastructure) and PTAE0 Funding Source 131*****
1** 313821776 5414002 COA, 13***** 1** ***** 5414002/5312301 COA.

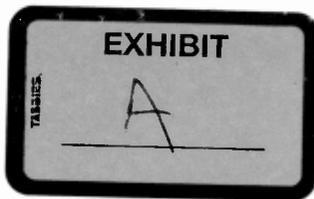
A true copy,

Rhonda Daughin Johnson
Municipal Clerk

ADOPTED by the Atlanta City Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

SEP 07, 2010

SEP 16, 2010



UTILITY RELOCATION AGREEMENT

PROJECT NAME: Peachtree Corridor
PROJECT NUMBER:
GDOT PROJECT NUMBER: 0006683

This AGREEMENT, made and entered into as of the _____ day of _____, 2010, by and between CITY OF ATLANTA, 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."

WITNESSETH:

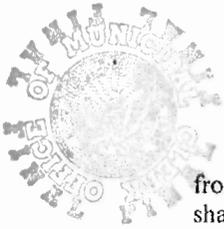
WHEREAS, the City proposes under the above written Project to construct: Peachtree Corridor. (hereinafter referred to as the "Project"); and

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 Two Hundred Fifty Nine Thousand, Two Hundred Fifty Eight Dollars (\$259,258.00) (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 Two Hundred Fifty Nine Thousand, Two Hundred Fifty Eight Dollars (\$259,258.00), 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.

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 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 of Sandy Springs's Board of Commissioners 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 Nine (99) 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 will be governed by and construed in accordance with the laws of the State of Georgia.

[SIGNATURES ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, 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.

CITY OF ATLANTA

BY : _____ (SEAL)
MAYOR KASIM REED

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

NOTARY PUBLIC

ATTEST:

MUNICIPAL CLERK

APPROVED AS TO FORM:

City Attorney

FEIN 58-6000511

RECOMMENDED:

Chief Financial Officer

Commissioner, Department of Public Works

[Signatures continue onto next page.]



GEORGIA POWER COMPANY

By: _____ (SEAL)

Title: _____

Date: _____

ATTEST:

By: _____

Title: _____ (SEAL)

Witness: _____

Notary: _____ (SEAL)

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

Project Number: 0006683

RCS# 523
9/07/10
2:48 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

10-R-1577

ADOPT EXCEPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 0

Y Smith	NV Archibong	Y Moore	Y Bond
NV Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

RCS# 523
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Atlanta City Council

REGULAR SESSION

CONSENT I

10-R-1577

ADOPT EXCEPT

YEAS: 12
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Y Young	Y Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I