

GENERAL AGREEMENT FOR JOINT USE OF POLES

PREAMBLE

THIS AGREEMENT, effective this 16th day of December, 2013 (the "Effective Date"), by and between the Town of Huntersville, a Municipal Corporation organized under the laws of the State of North Carolina (hereinafter called the "Electric Company"), and BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina, 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 North Carolina, 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 North Carolina served by both Parties, Joint Use of certain Poles is currently governed by the terms of a Joint Use Contract, dated the seventh of September, 1940, and any subsequent amendments thereto, between the Electric Company and Southern Bell Telephone and Telegraph Company, a predecessor of BellSouth Telecommunications, LLC ("Joint Use Contract"); 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 Joint Use Contract, dated 9/7/1940, 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 in the State of North Carolina, and shall cover 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 point of Attachment 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.
- 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. A pedestal that is adjacent to a Joint Use Pole, but not affixed to the Pole, shall not be considered an Attachment.
- 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.
- 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, 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.

- M. Place or Placement means the installation of a Pole suitable for Attachments.
- N. Pole or Poles include the singular and plural.
- O. Rearrange is to move Attachments from one position to another on a Pole.
- P. 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.
- Q. Replace is to install a new Pole in close proximity to an existing Pole and removing the existing Pole.
- R. Reserved, as applied to space on a Pole, means unoccupied space provided, and maintained by Owner to the extent allowed by law, either for its own use or for Licensee's use.
- S. Right-of-Way is the legal right to use the property of another.
- T. Standard Joint Use Pole means a forty-five (45) foot class five (5) wood Pole as classified by the Pole classification tables of the American National Standards Institute.
- U. Standard Space Allocation means the Allocated Space for the Electric Company and the Telephone Company (see Exhibit B).
- V. Third Party means a person or entity that is not a signatory to this Agreement.
- W. Transfer is the removal of Attachments from one Pole and placing them upon another.
- X. 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, and with such additional requirements as may be mutually authorized by both Parties.
- B. As long as the provisions of Code 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 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. Allocated Space may be used by the Party to which it is not allocated if the proposed use is authorized by the requirements of the Code and such use does not preclude the use of the space by the Party to which such space is allocated.
- B. If the Allocated Space is subsequently needed and the Code provisions 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 change out when necessary in order to accommodate the Party having the Allocated Space.
- C. So long as the provisions of the Code are met, Unallocated Space may be used for vertical runs and/or the mounting of equipment or Attachments by either Party. If the Code provisions cannot subsequently be met, then billing for any required modification will be in accordance with Article IX, Division of Costs.

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. 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. 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 and in accordance with Exhibit A.
- 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) 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 have 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) remove any Attachments made to poles which are excluded from Joint Use and (2) complete permit application for such all unreported Attachments made to Joint Use Poles. 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; 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 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. 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.

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. For Transfers resulting from or caused by attachments of Third Parties to this Agreement, are subject to the terms in Article XIV C.
- E. 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, including those of Third Parties), 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, 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; and shall pay the Owner a sum equal to the then value in place of the abandoned pole, as listed in Exhibit C. 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."
- F. 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.
- G. 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. If the Joint Use Pole will not be place in the same or next to the hole of the Pole being replace, prior to the new Pole being placed the Parties will meet to agree on the new hole location.
- H. Unless otherwise provided herein, each Party shall be responsible for the Transfer or Rearrangement of its Attachments and the costs associated therewith.

- I. 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 in accordance with the attached Exhibit C. 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.
- 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. In the case of a Pole larger or stronger than the Standard Joint Use Pole, where height or strength is necessary in order to meet the requirements of the Code, a public authority or property owners, the cost of the excess height or strength shall be paid by the Owner.

- F. 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.
- G. 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.
- H. 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.
- I. Either Party may request reasonable documentation supporting any demand for payment.

ARTICLE X CHANGE IN THE CHARACTER OF CIRCUITS

When a Party (hereinafter the "Requesting Party") desires to change or upgrade its facilities which causes it to exceed its Standard Space Allocation such that the Standard Space Allocation of the other Party cannot be provided on the existing poles throughout a Joint Use route, the Requesting Party shall give the other Party sixty (60) days' written notice of such contemplated change. Within thirty (30) days of receipt of such notice, the other Party shall respond in writing whether it agrees to Joint Use with the changes proposed by the Requesting Party. If the other Party agrees to the proposed changes, Joint Use of such poles shall be continued with the Requesting Party bearing all costs related to such changes in construction, including pole Replacement and the Transferring and/or Rearranging of both Parties' facilities. If the other Party does not agree to the Requesting Party's changes, then:

- (1) The Parties hereto shall work together in good faith to determine which circuits shall be removed from existing points on the Joint Use Poles involved and the net cost of establishing such circuits or lines in a new position on such poles, or in a new location elsewhere, so that the Party who did not agree to the changes can continue to furnish the same service that existed before the changes were proposed, and;
- (2) The responsibility for the costs associated with any pole placement and Rearranging or Transferring both Parties' facilities shall be at the expense of the Requesting Party.

Ownership of any new poles placed pursuant to this Section shall remain with the owner of the poles that were Replaced, unless otherwise agreed to by the Parties in writing.

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, including Transfers regarding Third Parties, as noted in Article XIV C.

ARTICLE XII RENTALS

- A. Rental. The annual per-Pole rental fee applicable to each party under this Agreement for the year 2011 and thereafter, unless amended, shall be as follows: The Telephone Company as Licensee shall pay an annual per-Pole rental of \$15.00 in arrears to the Electric Company, and the Electric Company as Licensee shall pay an annual per-Pole rental of \$17.00 in arrears to the Telephone Company.
- B. Netting. Rather than Electric Company and Telephone Company issuing separate bills, after the rental amounts due each Party are calculated, the Party owed the greater amount will issue to the other Party an invoice for the net amount owed.
- 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 from a previous actual physical inventory of Joint Use Poles ("Pole Inventory"), a Party may make a written request of the other Party to conduct a Pole Inventory and upon such written request a Pole Inventory shall be jointly conducted by the Parties or through a third party as provided herein. If the Parties agree to employ a third party to conduct the Pole Inventory, the Parties shall cooperate in the selection of the contractor. If one contractor can be agreed upon, the Parties shall share equally the costs of the Pole Inventory. If the Parties cannot agree upon a contractor, each Party shall select and pay the costs of its own contractor or representative to conduct a Pole Inventory. If the two resulting Pole Inventories reach different findings, the Parties shall cooperate to

mutually agree on a reconciled version of the Pole Inventory. If any difference in the number of Joint Use Poles is found between a then current Pole Inventory and the previous Pole Inventory, as a result of the number of Attachments added or removed since the previous Pole Inventory, the differential (1) will be prorated as if the subject Attachments were placed in equal numbers over the years that have elapsed since the prior Pole Inventory ("Look Back Period"), provided however that a given Look Back Period shall be no more than ten (10) years and (2) shall be billed and paid at the then appropriate rate in effect for each year of the Look Back Period.

ARTICLE XIII PERIODICAL ADJUSTMENT OF RENTALS

At any time after five (5) years from the date of this Agreement and at intervals of not less than five (5) years thereafter, the rental rates applicable under this Agreement are subject to joint review and revision upon the written request of either Party. The existing rates shall remain in effect until new rates are revised by agreement. In case of revision of the rental rates, the new rates shall apply starting with the annual bill next rendered and shall continue until again revised. Rates shall be based on 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.
- 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

If the Electric Company is not prohibited or limited by law from indemnifying the Telephone Company as provided in this Article, then 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. If the Electric Company is prohibited or limited by law from indemnifying the Telephone Company as provided in this Article, then this Article shall be null and void and the Telephone Company shall have no indemnification obligation under this Article.

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 applicable rules including without limitation the Federal Rules of Evidence, except to the extent that disclosure is mandated by the North Carolina Open Records laws.

- 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 North Carolina 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 provided that unless otherwise mandated by applicable law (such as, without limitation, NCGS 62-350, if and where applicable) the sole venue for any litigation shall be a state court of competent jurisdiction sitting in Mecklenburg County, North Carolina or federal court of competent jurisdiction sitting in the Western District of North Carolina.

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 (Indemnification), 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:
11316 Sam Furr Road, Huntersville, NC 28078
PO Box 2819, Huntersville, NC 28070-2819
(704) 948-0550
Attention: Manager

The Telephone Company:

Operational Notices:

AT&T
Engineering Area Manager
304 N Ashe Ave, Room 214
Newton, NC 28658
(828) 465-7501
Emergency Phone Number: 611

Official/Legal Notices:

AT&T
Attn: Legal Department
150 Fayetteville St Mall, Room 800
Raleigh, NC 27601
(919) 835-1543

- 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 as stated in Article VIII C.
- 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 in accordance with Article IX.

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

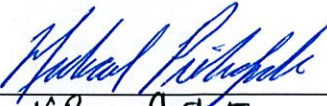
- A. This Agreement was prepared jointly by the Parties and not by one Party to the exclusion of the other Party.
- B. No amendment or modification of this Agreement shall be valid unless in writing and executed by both Parties.

ARTICLE XXXII SEVERABILITY

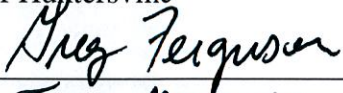
Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal.

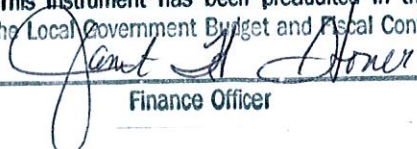
IN WITNESS WHEREOF, the Parties hereto, have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized as of the effective date of this Agreement.

BellSouth Telecommunications, LLC,
d/b/a AT&T North Carolina

By: 
Title: VP CPE
Date: 2-7-14

Town of Huntersville

By: 
Title: Town Manager
Date: 12/31/2013

This instrument has been preaudited in the manner required by
the Local Government Budget and Fiscal Control Act.
 1/3/14
Finance Officer Date

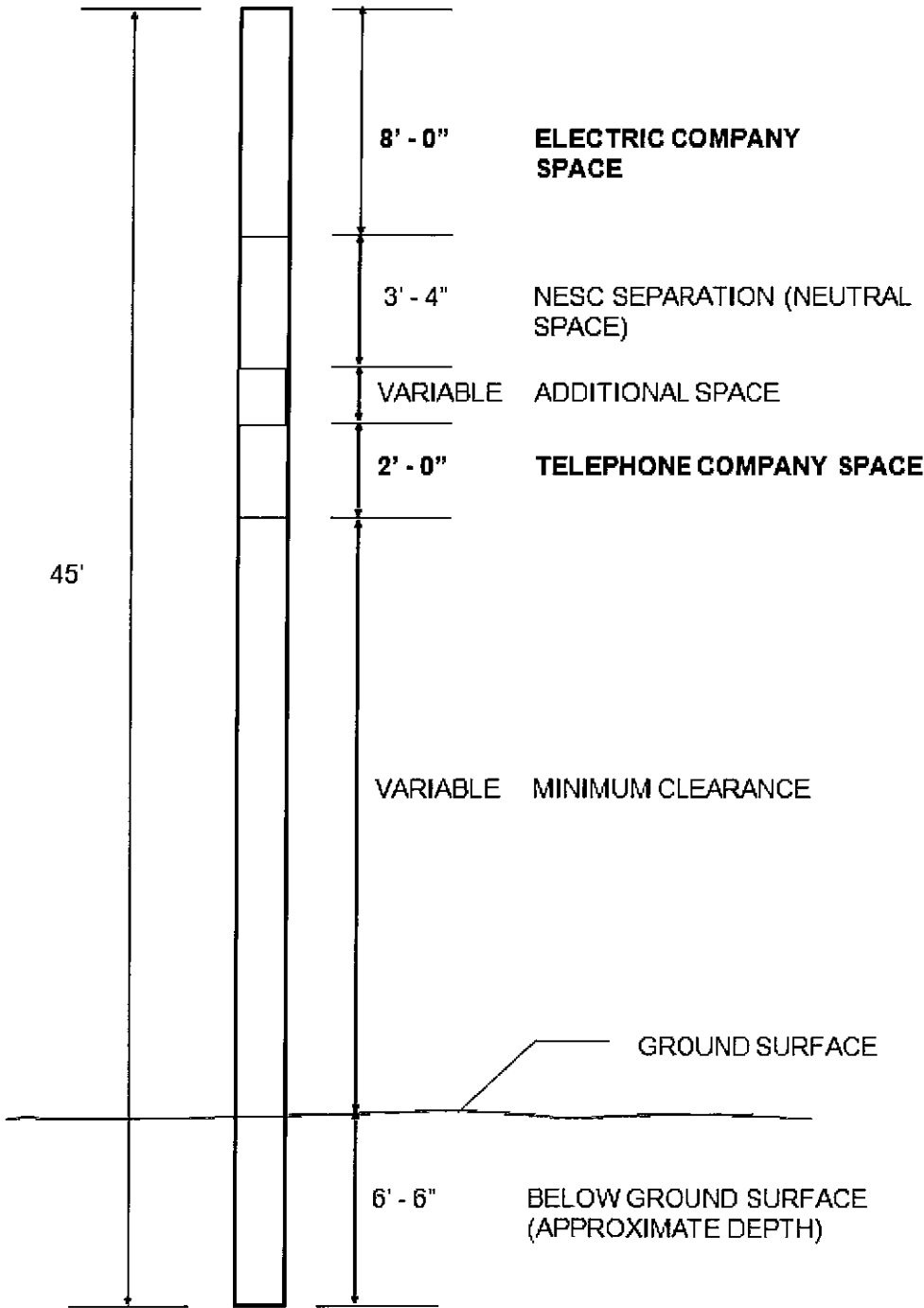
Pole Attachment Application**Date:** _____**Project Location:** _____
(street / intersection, subdivision, etc)**LICENSEE:** _____ **Name:** _____**Address** _____ **Tel. Number:** __________ **Fax Number:** __________ **Email:** _____**Signature** _____ **Make-Ready Needed? (Y / N)** _____

| # | Pole # | Address or Location | Remarks |
|---|--------|---------------------|---------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

Permission for attachment is granted:**Pole Owner:** _____ **Date:** _____**Signature:** _____**Print Name:** _____ **Title:** _____**Make-Ready Cost Sheet attached -** _____

STANDARD JOINT USE POLE

SPACE ALLOCATION 45'- CLASS 4
(Not to scale)



IN PLACE VALUE OF EXISTING POLES (Dollars)

| <u>Age of Pole</u> | <u>30 ft.</u> | <u>35 ft.</u> | <u>40 ft.</u> | <u>45 ft.</u> | <u>50 ft.</u> | <u>55 ft.</u> |
|--------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| 0-5 | \$170.00 | \$322.00 | \$433.00 | \$500.00 | \$837.00 | \$890.00 |
| 6-10 | \$85.00 | \$167.00 | \$244.00 | \$294.00 | \$461.00 | \$581.00 |
| 11-15 | \$42.00 | \$84.00 | \$120.00 | \$139.00 | \$231.00 | \$289.00 |
| Over 15 | \$13.00 | \$21.00 | \$36.00 | \$38.00 | \$59.00 | \$77.00 |



675 West Peachtree St., 34U16
Atlanta, GA 30375

AT&T Network Services

Johnny Richards
ROW/JU/RR Manager, GA/SC
404 927-0880 - Ofc
404 522-7665 - Fax

February 10, 2014

Kathy Moyer
ElectriCities of NC, Inc.
POB 2819
Huntersville, NC 28070-2819

Re: Joint Use Agreement – BellSouth and the City of Huntersville

Dear Ms. Moyer:

Enclosed is the fully executed Joint Use Agreement between BellSouth and the City of Huntersville.

Thanks you for working with us on this Agreement. If there are any questions regarding this please call me @ 404-927-0880.

Sincerely,

A handwritten signature in cursive script that reads "Johnny Richards".

Johnny Richards

cc: Lisa Hurley, AT&T North Carolina



January 24, 2014

Mr. Johnny Richards
Sr. Contract Manager
AT&T Southeast
675 West Peachtree St, 34U16
Atlanta, GA 30308

Mr. Richards,

See the enclosed two signed copies of the Agreement with the Town of Huntersville. Once you have signed, please send one copy back to me for our records. If using US Postal service please mail to:

Attention Kathy Moyer
ElectriCities of NC, Inc.
P. O. Box 2819
Huntersville, NC 28070-2819

If using FedEx or UPS please send to:

Attention Kathy Moyer
ElectriCities of NC, Inc.
11316 Sam Furr Road
Huntersville, NC 28078

I look forward to working with you.

Thank you,

A handwritten signature in blue ink that reads "Kathy Moyer".

Kathy Moyer
Electric Systems Manager
ElectriCities of NC, Inc.

Enclosed: Agreement (2)