

AGREEMENT FOR JOINT USE OF WOOD POLES  
BETWEEN  
CITY OF HOGANSVILLE, GEORGIA  
AND  
DIVERSE POWER INC., an ELECTRIC MEMBERSHIP CORPORATION

DATED \_\_\_\_\_

**Table of Contents**

PREAMBLE.....	3
ARTICLE I SCOPE OF AGREEMENT.....	3
ARTICLE II EXPLANATION OF TERMS.....	3
ARTICLE III SPECIFICATIONS.....	5
ARTICLE IV ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE .....	6
ARTICLE V PLACEMENT OF NEW POLES.....	8
ARTICLE VI RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS .....	9
ARTICLE VII MAINTENANCE OF POLES AND ATTACHMENTS .....	9
ARTICLE VIII DIVISION OF COSTS.....	11
ARTICLE IX UNAUTHORIZED ATTACHMENTS.....	15
ARTICLE X ABANDONMENT OF JOINT USE POLES.....	15
ARTICLE XI ADJUSTMENT PAYMENTS.....	16
ARTICLE XII DEFAULTS .....	17
ARTICLE XIII RIGHTS OF OTHER PARTIES.....	18
ARTICLE XIV ASSIGNMENTS OF RIGHTS .....	19
ARTICLE XV WAIVER OF TERMS OR CONDITIONS.....	19
ARTICLE XVI PAYMENT OF TAXES .....	19
ARTICLE XVII BILLS AND PAYMENT FOR WORK .....	20
ARTICLE XVIII NOTICES .....	20
ARTICLE XIX RESOLUTION OF CERTAIN DISPUTES .....	21
ARTICLE XX TERM OF AGREEMENT .....	23
ARTICLE XXI EXISTING CONTRACTS .....	23
ARTICLE XXII LIABILITY .....	23
ARTICLE XXIII CONSTRUCTION .....	24
ARTICLE XXIV REMEDIES CUMULATIVE .....	25
APPENDIX A	

## JOINT USE OF WOOD POLES

### PREAMBLE

City of Hogansville, a municipality organized under the laws of the State of Georgia, (hereinafter called "Hogansville"), and Diverse Power Inc., an Electric Membership Corporation, a corporation organized under the laws of the State of Georgia (hereinafter called "Diverse"), desiring to cooperate in the joint use of their respective poles, erected or to be erected within the areas in which both parties render service in the State of Georgia, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective \_\_\_\_\_ ("Effective Date"):

### ARTICLE I

#### SCOPE OF AGREEMENT

- A. This Agreement shall be in effect in the areas in which both of the parties render service in the State of Georgia, and shall cover all wood poles now existing or hereafter erected in the above territories when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.
- B. Each party reserves the right for good cause to exclude from joint use any of its facilities.
- C. The use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing of the economics of joint use, which the parties agree is effectuated pursuant to the terms of this Agreement.

### ARTICLE II

#### EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

- A. "Actual Inventory" is defined in Section XI.A.
- B. "Attachment" is any cable, wire, strand, circuit, service drop, overlashing, appurtenance, equipment, pedestal or apparatus of any type attached to the pole.
- C. "Contact Person" is defined in Section XIX.B.
- D. "Cost in Place" is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.
- E. "Joint Pole" is a pole for which joint use is established or continued pursuant to the terms of this Agreement.
- F. "Licensee" is the party having the right under this Agreement to make and maintain Attachments on a Joint Pole that the other party owns.

G. "Licensee Transfer Date" is defined in Section VII.C.2.

H. "Make-ready" is all work necessary or appropriate to make space for or otherwise accommodate new or changed Attachments, including, if necessary or appropriate, Rearrangements, removal and replacement of the pole, Transfers and other work incident thereto.

I. "NESC" is defined in Article III.

J. A "Non-guyed Service Drop" is a Service Drop that requires no guys under the Licensee's design standards or the applicable specifications of Article III. (If, atypically, a wire used to connect to a customer's location were to require guying under the Licensee's design standards or the applicable specifications of Article III, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.)

K. "Normal Pole" is a pole which is just tall enough to provide Normal Space, as Normal Space is hereinafter defined, for the respective parties and just strong enough to meet the requirements of the specifications mentioned in Article III for the Attachments ordinarily placed by the parties in their respective Normal Spaces. Such pole for the purpose of this Agreement shall be a 40 foot class 5 wood pole as classified by the pole classification tables of the American National Standards Institute. The foregoing definition of "Normal Pole" is not intended to preclude the use of Joint Poles shorter or of less strength than the Normal Pole in locations where such poles will meet the requirements of the parties hereto.

L. "Normal Space" is the following described space:

1. For Hogansville the uppermost 6-1/2 feet, measured from top of pole on 35 foot poles and 9 feet from top of pole on 40 foot poles.

2. For Diverse a space of 2 feet on both 35 foot and 40 foot poles at a sufficient distance below the space of Hogansville to provide at all times the minimum clearance required by the specifications mentioned in Article III and at a sufficient height above ground to provide the proper vertical clearance above ground or track rails for the lowest horizontally run line wires or cables attached in such space. When practicable, Diverse will, after the Effective Date, make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is the midpoint of its Normal Space.

3. In the event the pole owner installs a pole larger than the Normal Pole solely in anticipation of owner's future requirements or additions, the Normal Space for the owner, as defined above, for that pole shall be increased to include the additional above ground space provided by the owner.

M. "Rearrangement" is the moving of Attachments from one position to another on a pole.

N. "Referee" is defined in Section XIX.B.

O. "Service Drop" means a wire used to connect to a customer's location. A Service Drop may run directly from a pole used to service many customers to a specific customer's location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer's location.

P. "Space" is the linear portion of a joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for in this Article and the specifications mentioned in Article III which in certain instances permit the making of certain Attachments by one party in the space reserved for the other party).

Q. "Specified Percentage" is defined in Article XI.B.

R. "Transfer" is the removal of Attachments from one pole and the placement of them or substantially identical Attachments upon another.

S. "Unauthorized Attachment" is defined in Article IX.

T. "Effective Date" is defined in the Preamble.

U. "Hogansville" is defined in the Preamble.

V. "Old Joint Use Agreement" is defined in Article XXI.

W. "Outside Party" is defined in Section XIII.A.

X. "Diverse" is defined in the Preamble.

### ARTICLE III

#### SPECIFICATIONS

Except as otherwise provided in Section F of Article VII, referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the joint use of the poles covered by This Agreement shall at all times be in conformity with all applicable (1) accepted published modern methods; (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); and (3) lawful requirements of public authorities. It is understood by both parties that the requirements of the NESC are minimum requirements and that additional requirements for height and strength may be required for good practice for the given local conditions.

Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles, which acceptance shall not be unreasonably withheld.

Neither the owner nor Licensee may have greater than 4,000 attachments on the other parties poles under this agreement but this agreement may suffice as a model agreement for attachments greater than 4,000 should such agreement be needed in the future.

## ARTICLE IV

### ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE

A. Before either party shall make use of the poles of the other party under this Agreement, it shall comply with the requirements set forth herein. Appendix A or B shall be sent either (i) by electronic mail with electronic mail "read" receipt obtained, or (ii) by certified mail with return receipt obtained, or (iii) by delivery with signature of recipient obtained.

B. APPENDIX A PROCEDURE. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; or (v) Transfers required by the pole owner, whenever either party desires to place an Attachment on any pole of the other that is not then in joint use (including road improvement projects and reconstruction of pole lines) or where existing joint use consists solely of one or more Non-guyed Service Drops, it shall submit a completed written application therefore on the form attached hereto and identified as Appendix A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix A. 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 as provided in this Agreement. If the owner rejects the application in whole or in part, the owner will specify the reason(s). The application shall be rejected only for good cause. Upon receipt of notice from the owner that the application has been approved or in the absence of rejection of the application within fifteen (15) business days from the receipt of the completed application, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's Attachments on such poles, including any necessary pole replacements, the applicant shall have the right as Licensee hereunder to place such Attachments on such poles in accordance with the terms of the application and of this Agreement (including Article III).

C. APPENDIX A PROCEDURE 2. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) the vertical use of the unused space on a pole as provided in Section IV.E below; (vi) Rearrangements; or (vii) Transfers required by the pole owner, whenever the Licensee desires to modify its existing Attachments or place one or more additional Attachments on a Joint Pole, the Licensee shall submit a completed written application therefore on the form attached hereto and identified as Appendix A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix A. However, if the existing joint use consists solely of one or more Non-guyed Service Drops, then the Licensee must follow the Appendix A procedure set forth in Article IV.B above before making any additional Attachments other than Non-guyed Service Drops. Unless the owner rejects the completed Appendix A form within ten (10) business days from the date of receipt, the Licensee may proceed with making such Attachments or changes as are identified in the Appendix B form in accordance with the terms of the application and this Agreement (including Article III). If the owner rejects the application in whole or in part, the owner will specify the reason(s). The application shall be rejected only for good cause. If the owner determines that any such Attachments do not comply with the terms of this Agreement (including the provisions of Article III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and

replacement of the pole and all Transfers or other work incident thereto.

D. Any Non-guyed Service Drop that is placed by one party on the other party's pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of one or more Non-Guyed Service Drops shall not alone and without more create Normal Space.

E. Either party, without following the Appendix A procedure, may utilize vertical unused space below its Normal Space as defined in Article II for street lighting, terminals, risers or other vertical Attachments if the existing joint use of such pole is authorized, such use does not interfere with the other party's operations, and such use complies with the terms of this Agreement (including the provisions of Article III). Any such Attachment and pole will be subject to all other provisions of this Agreement, including the adjustment payment provisions of Article XI.

F. Each party shall place, transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

G. Wherever practicable, double thimble anchor rods and anchors of sufficient holding power to sustain any unbalanced loads of the two parties shall be installed and used jointly. The ownership of the double thimble anchor rods and anchors will be vested in the owner of the pole. In any case, where one party provides at the request of the other party double thimble anchor rods and anchors for the use of both parties the party requesting the double thimble anchor rods and anchors shall pay to the party placing the double thimble anchor rods and anchors a sum equal to half of the cost of the anchors and anchor rods in place. In cases where the existing anchors are adequate for the needs of both parties, and where mutually acceptable to both parties, the party desiring additional guys may, where necessary, install an adapter at its own expense. In cases where existing anchor rods and anchors are adequate for the needs of only one party the party desiring additional guys and anchors may install anchors and anchor rods at no expense to the other party or in case of right-of-way restrictions may provide a double thimble anchor rod and anchor in place of the existing anchor rod and anchor to which the other party can attach its existing guy at its own expense.

H. The cost of establishing the joint use of existing poles as provided herein, including the making of any necessary pole replacements, shall be borne by the parties hereto in the manner provided in Article VIII - Division of Costs.

I. Joint use of a pole shall automatically be continued under the terms of this Agreement if anyone of the following circumstances applies:

1. The pole was a Joint Pole under the Old Joint Use Agreement as of the Effective Date.
2. Both parties had Attachments on the pole - the pole was actually in joint use - as of the Effective Date.

J. Both before and after any termination of the right to place Attachments on additional poles, the Licensee shall have the right to Transfer its Attachments from an existing pole to a

new pole installed as part of a road widening project and to continue joint use on such pole. If the Licensee is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the owner may terminate the Licensee's rights under this Section IV.J. Furthermore, after any termination of the right to make Attachments to additional poles, the owner may terminate the Licensee's rights under this Section IV.J if three or more Unauthorized Attachments (as defined in Article IX) are found within any 12 month period. The owner may reinstate the Licensee's rights under this Section IV.J if the owner deems it appropriate.

K. To facilitate the implementation of this Agreement, each party will share with the other party information about its future pole line projects, as appropriate to facilitate the other party's planning and budgeting. To facilitate any preparation of Appendix A, the parties' representatives will, as reasonably necessary and appropriate and if requested by a party, discuss with one another the matters that are the subject of Appendix A.

## ARTICLE V

### PLACEMENT OF NEW POLES

A. Whenever either party hereto requires new pole facilities for any reason, including an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it may promptly notify the other party to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new poles and the character of circuits it intends to use thereon and indicating whether or not such pole facilities will be, in the estimation of the party proposing to construct the new pole facilities, suitable for joint use. In case of emergency verbal notice, the other party will preliminarily respond verbally on an expedited basis that it does or does not want to seek initial joint use of the new poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the other party will submit an Appendix A if required by Article IV above, and the provisions of Article IV will govern. Initial joint use of the poles will not be established and, if the other party subsequently desires joint use of the poles, the provisions of Article IV and of Article VIII.I will apply anew to such poles, if either of the following occurs: (1) the other party does not, if required, submit an Appendix A as provided above; or (2) the other party does not, within one year after the later of the receipt of such written notice or construction of the pole, commence the placement of Attachments on such pole.

B. In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, and the party proposing to construct the new pole facilities already owns more than its proportionate share of Joint Poles, the parties shall take into consideration the desirability of having the new pole facilities owned by the party owning less than its proportionate share of Joint Poles so as to work towards such a division of ownership of the Joint Poles that neither party shall be obligated to pay to the other any adjustment payments because of their respective use of Joint Poles owned by the other. The parties agree to negotiate in good faith to attempt to enter into a pole setting agreement, if requested by either party, but the terms and enforceability of this Agreement are not conditioned on the entry of such an agreement. Except as might be provided in any such pole setting agreement, there is no requirement that the parties will own an equal number of poles.



C. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments except as otherwise provided under Article IV, Section G. The party owning the pole line shall provide initial right-of-way clearance 15 feet on each side of the center line to the extent practicable, all right-of-way in excess of this 30 foot swath to be borne by the party requiring the additional width. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

## ARTICLE VI

### RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

While the owner and Licensee will cooperate as far as may be practicable in obtaining rights-of way for both parties on Joint Poles, the owner does not warrant or assure to the Licensee any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Licensee shall at any time be prevented from placing or maintaining its Attachments on the owner's poles, no liability on account thereof shall attach to the owner of the poles.

## ARTICLE VII

### MAINTENANCE OF POLES AND ATTACHMENTS

A The owner shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace, reinforce or repair such of these poles as become defective. In case of emergency, with the giving of verbal notice, Licensee may replace Joint Poles, anchors and guys as may be considered necessary for public safety or the restoration of Licensee's service, in which case the Licensee shall be reimbursed by the owner in the full amount of the cost of labor and materials plus any applicable overhead expenses.

B, When replacing a Joint Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location, Replacement poles where risers (dips) are installed should be set as close as possible to the existing pole, The Owner will make reasonable effort to conduct a joint field review or otherwise coordinate with Licensee to determine the location of the proposed pole, Reasonable effort will be made to coordinate locations of risers and Non-Guyed Service Drops with the locations of the power facilities serving the customer.

C, Whenever it is necessary to replace or relocate a Joint 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 Pole.

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.

1. Should the Licensee fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all owner responsible Transfers have been accomplished), the owner may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If the owner so elects, such old pole shall thereupon, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless the former owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. In instances where Hogansville 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.

2. Should the Licensee fail to Transfer its Attachments to the new Joint Pole after the date specified for such Transfer of Attachments and after all third party and owner responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if the owner does not elect to relinquish the ownership of the old pole from which it has removed its Attachments, the parties will have the following rights, in addition to any other rights and remedies available under this Agreement: The Licensee shall pay the owner the following amounts until the Licensee has Transferred its Attachments and notified the owner in writing or through NJUNS that the Transfer has been accomplished: (a) \$5.00 per pole per month beginning with the 61<sup>st</sup> day after the Licensee Transfer Date and through and including the 240<sup>th</sup> day after the Licensee

Transfer Date, (b) \$10.00 per pole per month (instead of \$5.00) beginning with the 241<sup>st</sup> day after the Licensee Transfer Date. In addition, the cost incurred by the owner to return to the job site and remove the old pole will be paid by the Licensee. In the event the Licensee notifies the owner that the Transfer has been accomplished, and the owner returns to the job site to remove the old pole and discovers that the Transfer has not been made, then the Licensee will pay the owner's cost of the trip to and from the job site. The intent of this paragraph is to ensure timely Transfers and minimize situations of two or more poles needlessly remaining at the same location for extended periods of time. The aforementioned provisions of this paragraph will only apply when poles are installed in a manner consistent with Section VII.B.

D. Each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in Article III and shall keep them in safe condition and in thorough repair.

E. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

F. Any existing joint use construction of the parties hereto which does not conform to the specifications mentioned in Article III shall be brought into conformity therewith as soon as

practicable. When such existing construction shall have been brought into conformity with said specification, it shall at all times thereafter be maintained as provided in Sections A and D of this Article.

G. The cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in this Agreement.

H. Where one party owns existing poles, and different, new or replacement poles are needed in substantially the same place to accommodate the other party's desired additional Attachments or desired new joint use, then, if joint use is established or to be established as provided in this Agreement, the party seeking attachment to the existing poles will construct and own the new poles, and the costs will be paid as provided in Article VIII. This section addresses overbuilding of existing poles by the party not owning such poles.

I. The owner of a Joint Pole shall have the right to require the Licensee, within 120 days after the Licensee Transfer Date (as defined in Article VII), either (a) To Transfer its Attachments from an existing pole to a new pole that is erected to carry the same or a similar service or Attachments that are on the existing pole, or (b) to remove its Attachments from the existing pole and terminate joint use as to the existing pole, and the choice of option (a) Or (b) will be the Licensee's. Or, if neither the owner nor the Licensee desires a Transfer, the owner may elect to abandon the existing pole to the Licensee as provided in Section VII.C.I. In the case of any such Transfer, the costs of transferring the Licensee's Attachments will be paid by the Licensee.

## ARTICLE VIII

### DIVISION OF COSTS

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST: If joint use is established pursuant to Section V.A above, the cost of erecting new Joint Poles coming under this Agreement, to construct new pole lines, or to make extensions to existing pole lines shall be borne by the parties as set forth in this Section VIII.A. If joint use is not established pursuant to Section V.A above, the provisions of Section VIII.I below will control.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the owner.

2. A pole larger than the Normal Pole, the extra height or strength of which is due wholly to the owner's requirements including owner's requirements for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the owner's wires clear of trees shall be erected at the sole expense of the owner.

3. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the Licensee's wires clear of trees, the Owner shall pay all costs associated with the construction of a Normal Pole and the Licensee shall pay to the Owner the remaining costs of erecting the larger than Normal Pole. If in connection with the construction of a pole the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to its Space on such pole even if the pole does not at that time

become a Joint Pole; provided, however, if the Licensee does not attach to the pole within three years from the date the pole was set, then the Licensee shall no longer be entitled to its Space on such pole.

4. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due to the requirements of both parties for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Licensee and the owner, the rest of the cost of erecting such pole to be borne by the owner.

5. A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and the Licensee, which it would have been unnecessary to erect if joint use had not been undertaken, shall be erected and owned at the sole expense of the Licensee.

**B. PAYMENTS DO NOT AFFECT OWNERSHIP.** Only payments for poles made by the Licensee under the provisions of A.5 and C.3 of this Article shall entitle the Licensee to the ownership of any part of said poles for which it has contributed in whole or in part.

**C. REPLACEMENT OF EXISTING JOINT POLES:** Where an existing Joint Pole is replaced for reasons other than maintenance by a new one, the cost shall be divided as specified below. The replaced pole shall be removed and retained by the owner of the new pole.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the owner; provided, however, that the owner's obligation to pay such expenses shall apply only if the Licensee notifies the owner in a timely manner prior to installation of Licensee's Attachments that such pole is insufficient for joint use. If without giving such advance notice the Licensee places one or more Attachments on a pole and thereby creates a violation of Article III or otherwise renders the pole unsuitable for joint use, then the Licensee must pay the full cost of removing and replacing the pole with a pole of sufficient size to remedy the violation or render the pole suitable for joint use, plus the cost of all Transfers and other work incident thereto.

2. A pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the owner's requirements including owner's requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the owner's wires clear of trees shall be erected at the sole expense of the owner. The owner shall bear the full expense of replacing or transferring all the owner's Attachments and the Licensee shall bear the full expense of replacing or transferring all the Licensee's Attachments.

3. In the case of a pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee's requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the Licensee's wires clear of trees, the Licensee shall install and own the new pole and the owner and Licensee shall replace or Transfer all Attachments at their own expense.

4. In the case of a pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength which is due to the requirements of both parties

for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Licensee and the owner, the rest of the cost of erecting such pole to be borne by the owner. The owner and Licensee shall replace or Transfer all Attachments at their own expense.

5. For purposes of this Section C, any pole on which the Licensee has placed or places an Attachment shall be deemed satisfactory to the Licensee and deemed a Normal Pole whether or not the terms of this Agreement, including the space provisions of Article II, have been satisfied.

D. RESPONSIBILITY FOR OWN ATTACHMENTS. Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. MAINTENANCE AND REPLACEMENT COSTS. The expense of maintaining Joint Poles shall be borne by the owner thereof except that the cost of replacing poles shall be borne by the parties hereto in the manner provided elsewhere in this Agreement.

F. SERVICE DROPS. Where Service Drops of one party crossing over or under lines of the other party are attached in the other party's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.
2. Where an existing pole is replaced by a taller one to provide the necessary clearance for the Service Drop, the party owning the Service Drop shall replace the old pole with a new pole owning such new pole and paying for the transfer of the original owner. The owner of the new pole shall remove and retain the old pole.

G. PAYMENT BASIS. Payments made by either party to the other under the provisions of this Article may be based on the estimated or actual cost as mutually agreed upon (including overhead) of making such changes but in no event, however, shall either party be required to pay for such changes more than 120% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

#### H. CORRECTIVE MEASURES

1. If any Attachment of the Licensee is found to be in violation of the terms of this Agreement (including the provisions of Articles II.L and III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.
2. If any Attachment of the owner is found to be in violation of the terms of this Agreement (including the provisions of Articles II.L and III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the owner shall be

responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

3. If there exists a violation of the terms of this Agreement (including the provisions of Articles II.L and III), and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all parties and Outside Parties whose Attachment may have caused such violation will share equally in such costs; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

4. If one or more Outside Party attachees caused the violation, then such Outside Party attachee(s) will pay the corrective costs incurred by all who have Attachments on the pole, including for the Licensee, owner and any other attachees; and the pole Owner will make reasonable effort to cause the Outside Party to make such payment.

#### I. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.

1. If an existing pole not in joint use was constructed before the Effective Date and becomes a Joint Pole, the Licensee shall pay all Make-ready costs associated with the Licensee attaching to the pole.

2. If an existing pole not in joint use was constructed after the Effective Date and becomes a Joint Pole, then –

a. The Licensee shall pay all Make-ready costs associated with the Licensee attaching to the pole if (i) the owner gave notice pursuant to Section V.A but (a) the Licensee did not, if required, submit an Appendix A as provided in Article IV and, if applicable, Section V.A or (b) did not, within one year after the later of the receipt of the written notice provided for in Article V or construction of the pole, commence placement of Attachments on such pole; or (ii) both (a) the pole is a Normal Pole or larger and (b) was constructed in connection with a project involving three or fewer poles.

b. If (i) the owner did not give notice pursuant to Section V.A. with respect to the pole and (ii) either (a) the pole is smaller than a Normal Pole or (b) the pole was constructed in connection with a project involving four or more poles, then the owner shall pay all Make-ready costs associated with the Licensee attaching to the pole.

J. BUILDING DOWN. If one party installs Attachments that encroach or needs to install Attachments that would encroach upon the other party's use of its own Normal Space (sometimes known as "building down"), the party installing or needing to install such Attachments must pay the Make-ready costs necessary to permit the other party to use its own Normal Space.

K. MAKE-READY WHEN APPENDIX A NOT REQUIRED. Except as provided in Section VIII.J above, the Owner shall not be obligated to pay Make-ready costs for any initial or additional Licensee Attachment for which an Appendix A or Appendix B is not required.

## ARTICLE IX

### UNAUTHORIZED ATTACHMENTS

If any Attachment made after the Effective Date of this Agreement is identified for which the Appendix A or Appendix B requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), then the Licensee shall pay to the owner a one-time fee of \$0.00 per pole plus a sum equal to the adjustment payments that would have been payable from and after the date the Attachment was first placed on the owner's pole as determined from Licensee's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the adjustment payments that would have been payable from and after the date the last Actual Inventory of Joint Poles was conducted. In addition, the owner may, without prejudice to its other rights or remedies under this Agreement, require the Licensee to submit within fifteen (15) business days of written notice from the owner an Appendix A or Appendix B, as appropriate, along with supporting engineering design data for each such Attachment, and upon review of such information, owner may require the Licensee to (1) make or pay for such modifications as may be specified by mutual consent of the parties or, if the parties in good faith cannot agree, as determined by a Referee pursuant to Article XIX to comply with applicable safety codes and the terms of this Agreement or (2) if the Licensee has placed during the past twelve (12) months Unauthorized Attachments at three or more different pole line locations or if non-approval of Appendix A or Appendix B is justified, remove the Unauthorized Attachment at Licensee's expense within 180 days after receipt of written notice from the owner; provided, however, that if the Licensee has failed to remove such Unauthorized Attachments within 180 days after receipt of written notice from the owner, with a receipt obtained, then the owner may remove such Attachments at the Licensee's expense and with no liability to owner. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with Article III.

## ARTICLE X

### ABANDONMENT OF JOINT USE POLES

A. If the owner desires at any time to abandon any Joint Pole, it shall, except as provided in Article VII, Section C.I, give the Licensee notice in writing to that effect at least 60 days prior to the date on which it intends to abandon such pole. If at the expiration of said period the owner shall have no Attachments thereon, but Licensee has not removed its Attachments, such 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 the then depreciated value in place of the pole to the owner. The former owner shall further evidence transfer of title to the pole by appropriate means. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article VIII - Division of Costs, when the pole was originally set, provided the Licensee furnished proof of such payment.

B. The Licensee may at any time abandon the use of a joint pole by removing there from any and all Attachments it may have thereon and by giving written notice thereof.

## ARTICLE XI

### ADJUSTMENT PAYMENTS

A. At intervals of five (5) years, unless otherwise mutually agreed by the parties, an actual inventory of Joint Poles shall be made by representatives of the parties (the "Actual Inventory"). At the request of either party, an Actual Inventory shall be initiated within a year of the Effective Date and be promptly completed as the parties may more particularly agree. For the purpose of such Actual Inventory, any pole used by the Licensee for the sole purpose of attaching wires or cables thereto, either directly or by means of a pole top extension fixture, in order to provide clearance between the facilities of the two parties as distinguished from providing support for such wires or cables, shall not be considered as a Joint Pole, but all other poles of the owner on which the Licensee has an Attachment shall be considered Joint Poles. Each party shall share equally the net cost of making the Actual Inventory.

B. For a year in which there is no Actual Inventory, the number of Joint Poles used in calculating the adjustment payments provided for herein shall be the "Specified Percentage" of the number of Joint Poles used in calculating the adjustment payment in the previous year. The Specified Percentage shall be 102% until the next Actual Inventory. After each Actual Inventory beginning with the next Actual Inventory, the Specified Percentage shall be the average yearly percentage increase during the years since the previous Actual Inventory.

C. For a year for which there is an Actual Inventory, the adjustment payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in the next section.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Joint Poles found by the Actual Inventory for the year in question and the number of Joint Poles found by the previous Actual Inventory, whenever conducted, including any Actual Inventory conducted prior to the Effective Date of this Agreement, shall be prorated evenly based on the assumption that such poles were added evenly over the years between the Actual Inventories in order to calculate, on the basis of such proration, a prorated number of poles for each year between the year of the previous Actual Inventory and the year of the present Actual Inventory.

2. The adjustment payment applicable to such prorated number of poles will be calculated as follows: For the years 2018 and beyond, Section F below shall apply on such prorated number of poles.

3. If the adjustment payment so calculated pursuant to this section is greater than the adjustment payment that was actually made, the difference shall constitute an additional amount owed by the Licensee to the owner; if less, the difference shall constitute an amount owed by the owner or a credit to the Licensee.



E. The applicable computation of payments and calculations as provided shall be made on or about December 1st of each year, each party acting in cooperation with the other.

F. Adjustment payments per pole due from one party as Licensee to the other party as owner shall be as indicated in the table below. Hogansville shall pay the amounts in Column "A" for each Joint Pole owned by Diverse and Diverse shall pay the amounts in Column "B" for each Joint Pole owned by Hogansville. The smaller total sum shall be deducted from the larger and Hogansville or Diverse, as the case may be, shall pay to the other the difference between such amounts. The adjustment payment herein provided shall be paid within thirty (30) days after the bill has been submitted.

ANNUAL ADJUSTMENT PAYMENT PER POLE (or "RATE")

Duration	A Amount Payable by Hogansville	B Amount Payable by Diverse
Jan. 1, 2019 - Dec. 31, 2019	\$0.00	\$0.00

G. The parties acknowledge and agree that the above rates, and some of the terms and conditions of this Agreement, are the result of a settlement between the parties. These rates are not necessarily a reflection of the actual costs of joint use to the parties.

H. If there is provision under a separate agreement between Diverse and Hogansville for facilities associated with power line carrier systems, the adjustment payment provisions of the Agreement of which this Article forms a part shall apply for poles on which both types of facilities are present and no other adjustment payments shall apply. The adjustment payment provisions of this Agreement shall not apply, however, where only those facilities directly associated with the power line carrier systems are involved.

ARTICLE XII

DEFAULTS

A. If either party shall default in any of 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 party in default insofar as concerns the granting of future joint use and if such default shall continue for a period of 90 days after such suspension, the party not in default may forthwith terminate this Agreement as far as concerns the future granting of joint use.

B. If after reasonable notice either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such a payment within 30 days upon presentation of bills therefore shall, at the election of the other party, constitute a default under Section A of this Article.

## ARTICLE XIII

### RIGHTS OF OTHER PARTIES

A. If either of the parties hereto has, prior to the execution of this Agreement, conferred upon others, not parties of this Agreement ("Outside Parties"), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of Section B below, except where such Outside Parties have by agreements entered into prior to the execution of this agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. Owner shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon others not parties to this agreement (Outside Parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of Article III, and (2) such Attachments shall not be located within the space allocation of Licensee. Owner shall derive all of the revenue accruing from such Outside Parties.

C. For purposes of this Agreement, all Attachments of any such Outside Party shall be treated as attachments belonging to the owner, and the rights, obligations and liabilities hereunder of owner in respect to such Attachments shall be the same as if it were the actual owner thereof.

D. With respect to any rights and privileges granted under this Article to others not parties hereto, owner shall reimburse Licensee's cost for transferring and rearranging Licensee's Attachments to provide space for initial Attachments for such Outside Parties.

E. If the Licensee is not the incumbent provider of its services in an area, then the Licensee shall not have a right to use Normal Space in a manner that is inconsistent with any contract between the Owner and an incumbent provider of the Licensee's services in the area. However, the Licensee shall otherwise have rights to joint use consistent with the terms of this Agreement; but, if the pole is not suitable for joint use with the Licensee's Attachments, then the Licensee must pay the full cost of rendering the pole suitable for Licensee's Attachments, including as necessary rearrangements or removing and replacing the pole with a pole of sufficient size and strength to accommodate Licensee's Attachments, plus the cost of all Transfers and other work incident thereto.

F. The Owner will make good faith efforts to have the Licensee paid by an Outside Party in connection with Outside Party Make-ready.

## ARTICLE XIV

### ASSIGNMENTS OF RIGHTS

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; 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 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 lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it or associated or affiliated with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such pole by the permission as aforesaid of either party herein shall be considered as the Attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

## ARTICLE XV

### 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 XVI

### PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said Joint Poles, and the taxes and the assessments which are levied on said Joint Poles shall be paid by the owner thereof, but any tax, fee, or charge levied on owner's poles solely because of their use by the Licensee shall be paid by the Licensee.

ARTICLE XVII

BILLS AND PAYMENT FOR WORK

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within 90 days after the completion of such work an itemized statement of the costs and such other party shall within 30 days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within thirty (30) days after the invoice date. Except as provided in Section XVII.C below, any payment not made within thirty (30) days from the due date shall bear interest at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If a party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within 30 days of receipt of substantiation and determination of the correct amount.

ARTICLE XVIII

NOTICES

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Diverse Power Incorporated:

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

City of Hogansville:

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

B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in Section A above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent

to that person as to such matter(s) and area(s).

C. Response to any notice or Appendix A or Appendix B shall be made to the sender rather than to the person designated in Section A or B above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable electronic means, such as email or facsimile.

E. A second copy of any notice given under Article XII or Article XX shall be given to the following persons, who may from time to time be changed by written notice:

Diverse Power Incorporated:

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

City of Hogansville:

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

F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

## ARTICLE XIX

### RESOLUTION OF CERTAIN DISPUTES

A. In the event of a dispute regarding any compliance or non-compliance with the provisions of Articles II.L and III or a dispute under the last paragraph of Article III of this Agreement, including which party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the parties shall each arrange for a representative to make a joint field visit to the pole location to investigate whether a violation exists and if so, any corrective action needed and the party or parties responsible. The parties will make a diligent and good faith effort to resolve such disputes at the local level by the parties' respective local engineers and local managers.

B. If the parties are unable to resolve any such dispute at the local level, then either party may submit the matter for resolution to a "Referee" for binding resolution. A matter will be submitted to the Referee by sending a letter (by mail, hand-delivery or facsimile) to the Referee, with a copy provided to the other party's representative who was involved in the attempt to resolve the dispute and the other party's representative designated pursuant to Section XVIII.A or B before or concurrently with the transmission of the letter to the Referee. The letter will include a summary of the dispute and will designate the party's "Contact Person" for the dispute. The other party will promptly respond with a letter similarly sent and copied that provides such party's summary of the dispute and designates such party's Contact Person for the dispute.

C. If the parties mutually agree to do so, instead of proceeding under Section B above, the parties may submit any dispute to the Referee by jointly sending the Referee a letter that includes a summary of the dispute and designates each party's Contact Person for the dispute.

D. The Referee will make such investigation as deemed appropriate in his or her discretion, which will include hearing from each party's Contact Person. The Referee may, but is not required to, engage in such other procedures or hearing as the Referee deems appropriate. The parties will cooperate with the Referee.

E. The Referee will promptly issue a binding decision in writing to the parties, from which there will be no appeal. The party whose position is not upheld by the Referee (which determination may be made by the Referee if requested to do so) will be required to pay for the Referee's fees and expenses. If both parties' positions are upheld in part, they will share the Referee's fees and expenses equally. The parties agree to be bound to pay the Referee's fees and expenses as provided herein.

F. The Referee will be appointed as follows:

1. Each party will appoint an outside engineer and these two engineers will appoint a third outside engineer or other qualified person to serve as the Referee.

2. In the event that the two engineers so appointed are unable within **14** days to agree upon a third outside engineer or other qualified person who is willing and able to serve as the Referee, then the Referee will be appointed as follows: Three names will be blindly drawn from the list of persons then comprising the NESC committee whose work is most closely related to the dispute (e.g., Clearances Committee or Strength and Loading Committee), or such other group as may be mutually agreed upon. Each party will strike one such name and the remaining person will serve as the Referee. If the parties strike the same name, then the Referee will be selected from the remaining two names by coin toss. If the NESC committee member so selected is unwilling or unable to serve as Referee, then this procedure will be repeated (starting with the blind drawing of three different names as provided above) as necessary until a Referee is selected who is willing and able to serve as Referee. If all committee member names of the NESC committee first selected are exhausted without a Referee being appointed who is willing and able to serve as Referee, then the parties will repeat the above-described procedure with the next NESC committee whose work is most closely related to the dispute, and so on until a Referee is selected who is willing and able to serve as Referee.

G. Nothing herein shall preclude the parties from entering into any other mutually agreeable dispute resolution procedure or from changing by mutual written agreement any aspect of the foregoing procedure. Without limiting the generality of the foregoing, the parties may by mutual written agreement remove, replace or appoint a Referee at any time.

H. The parties agree, that if any dispute or problem in connection with the administration of this Agreement cannot be resolved at lower levels, communications between the following will be permitted and engaged in, in good faith on an expedited basis: Between the City Manager of the City of Hogansville and a Vice President of Diverse Power. If either the Hogansville or Diverse reorganizes or changes titles, the equivalent person for such party shall perform the above functions.

## ARTICLE XX

### TERM OF AGREEMENT

This Agreement shall continue in full force and effect until terminated, insofar as the making of Attachments to additional poles is concerned, by either party giving to the other six months' notice in writing of intention to terminate the right of making Attachments to additional poles. Such six-month notice may not be given earlier than three years after the Effective Date. Any such termination of the right to make Attachments to additional poles shall not, however, abrogate or terminate the right of either party to maintain the Attachments theretofore made on the poles of the other or additional Attachments to such poles, and all such Attachments shall continue thereafter to be maintained, pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said Attachments.

## ARTICLE XXI

### EXISTING CONTRACTS

All existing agreements for Joint Use of Wood Poles between the parties, and all amendments thereto (hereinafter "Old Joint Use Agreement") are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## ARTICLE XXII

### LIABILITY

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or to the property of either party, or for injuries to other persons or their property arising out of the joint use of poles under this Agreement, or due to the proximity of the parties' wires and fixtures attached to such Joint Poles, the liability for such damages as between the parties hereto shall be as follows:

- A. Each party shall be solely responsible for all injuries to persons or damage to property caused solely by said party's negligence, or solely by its failure to comply at any time with the applicable edition of the NESC.
- B. Each party shall be solely responsible for all injuries to its own employees or damage to its own property that is caused by the concurrent negligence of both parties hereto, or that is due to causes which cannot be traced to the sole negligence of either party.
- C. Each party shall be responsible for not more than one-half of all injuries to persons other than employees of any party hereto and for not more than one-half of all damage to property not belonging to either party that is caused by the concurrent negligence of both parties hereto or that

is due to causes which cannot be traced to the sole negligence of either party.

D. Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to its injured employee or to his relatives or representatives in conformity with (a) the provision of any Workers' Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employees' disability benefits or employees' death benefits now established or hereafter adopted by the parties hereto, or either of them, such payments shall be construed to be damages or injuries within the terms of the preceding paragraphs numbered A and B and shall be paid by the parties hereto accordingly.

E. Each party's processing and defense of claims and lawsuits which are asserted against or affect the parties hereto jointly shall be coordinated by the parties. If, however, a claimant desires to settle upon terms acceptable to one party (the "Settling Party") hereto, but not the other party, the Settling Party may, without waiver of, or prejudice to its rights under this Article, pay to the other party (the "Non-Settling Party"), one-half (1/2) of the amount for which such settlement could be effected (the total amount for which settlement could be effected being called the "Settlement Amount"). The Non-Settling Party shall thereupon be bound to protect and indemnify the Settling Party from all further liability and expense on account of such claim. PROVIDED, however, that should a final resolution or adjudication of the matter result in the Non-Settling Party incurring liability and expenses less than the Settlement Amount, an adjustment shall be made between the parties. The Non-Settling Party shall refund a portion of the aforesaid payment made to it by the Settling Party equal to one-half of the aforesaid Settlement Amount previously paid, less one-half of the total claims cost (exclusive of attorney's fees) incurred by the Non-Settling Party in the defense and/or final settlement of the claim. One half of the total claims cost shall equal the gross amount actually paid by the Non-Settling Party to claimant upon final disposition of the claim, plus the direct out of pocket expenses incurred by the Non-Settling Party in the defense of the claim, exclusive of attorney's fees divided by two.

#### ARTICLE XXIII

#### CONSTRUCTION

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement nor prior drafts of this Agreement nor the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.



ARTICLE XXIV

REMEDIES CUMULATIVE

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto, have caused these presents to be executed in two counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

City of Hogansville

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

(SEAL)

Attest: \_\_\_\_\_  
Clerk

Diverse Power Incorporated, an Electric  
Membership Corporation

By: \_\_\_\_\_  
Wayne Livingston, President/CEO

(SEAL)

Attest: \_\_\_\_\_  
Lisa Booth, Assistant Secretary

**APPENDIX A - ATTACHMENT REQUEST FORM**

Licensee hereby requests permission pursuant to its Pole Attachment License Agreement to make new Attachment(s) to poles, remove Attachment(s) to poles and/or Overlash cables affixed to poles, all as shown on the attached construction plans and drawings. The attached plans and drawings show the Poles Licensee desires to attach to or Overlash, the number and character of Attachments proposed, any Rearrangements requested with respect to existing wires, fixtures or apparatus, any relocations or replacements of existing Poles requested, the heights of all points of attachment, all mid-span clearances, and any new Pole placement requested. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Licensee will provide such information. Licensee certifies that all rights-of-way, easements, permits, and consents have been obtained from the owner(s) of the property(ies) on which the Poles being attached to are currently located or will be located. The table below provides detailed information regarding this request.

LICENSEE				
Company		Poles with Attachments	Added	
Project			Removed	
Request #			Overlashed	
Request Date		Estimated Construction Dates	Start	
Name			Completion	
Signature				
Phone				
Fax				
Email				

Please advise Licensee as to whether or not these Attachments will be permitted and if necessary provide an estimate for any additional costs that Licensee may be required to pay as Make Ready Work. If Make Ready Work is required, upon receipt of the Pole Owner supplied Make Ready Estimate the Licensee shall provide notice to Pole Owner of either approval of the cost estimate or that Licensee will not undertake to make these Attachments. Upon receipt by the Pole Owner of Licensee's notice of estimate approval of Make Ready Costs, the Pole Owner will proceed with Make Ready Work.

Pole Owner				
Response Date		Pole Owner Make Ready Construction Required?	Yes	
Name			No	
Signature		Pole Owner Make Ready Construction Estimate	\$	
Phone				
Fax		Permit #		
Email				
Request Response	Approved	Reason for denial		
	Denied			