

# **GEORGIA, Murray County**

## **MINUTES**

**The Murray County Commissioner held a public meeting Tuesday, June 7, 2011 at 7:00 p.m. at the Veterans Memorial Park located at 651 Hyden Tyler Road in the Robert Ensley Meeting Room.**

**Interim Commissioner Starnes called the meeting to order and welcomed those in attendance.**

**By signature and execution the minutes of May 2011 were approved.**

**With an addition of items (G) and (H),(I) and (J); (G) Utility Relocation Agreement between Georgia Power Company and Murray County to the agenda, Interim Commissioner Starnes adopted the agenda as presented, (H) Capital Purchase: Five (5) 2011 Ford Crown Victorians for Sheriff's Department from Chatsworth Ford. (I) Recognition of Lady's Auxillary Projects, (J) Recognition of David McDaniel's completion of Georgia Economic Development Academy**

**Under new business the following items were addressed and approved.**

**A. Resolution: Reaffirmation E911 \$1.50 Surcharge for Wireless Lines**

### **RESOLUTION**

#### **REAFFIRMATION OF IMPOSING A WIRELESS ENHANCED “911” CHARGE ON WIRELESS TELECOMMUNICATIONS CONNECTIONS WITHIN MURRAY COUNTY, GEORGIA**

**WHEREAS, Part 4 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, as amended by Act No. 881, Georgia Laws 1998, authorizes local governments to impose a wireless enhanced 911 charge upon each wireless telecommunications connection subscribed to by subscribers whose billing address is within the jurisdiction of the local government; and**

**WHEREAS, such charges may be imposed at a rate of up to \$1.50 per month per wireless connection; and,**

**WHEREAS, such charges may be imposed by any local government that operated or contracts for the operation of an emergency “911” system which is capable of providing automatic number identification of wireless telecommunications connections and the location of the base station and cell site; and**

**WHEREAS, Murray County, Georgia operates or has contracted for the operation of an emergency “911” system which is capable of providing automatic number identification of wireless telecommunications connections and the location of the base station cell site; and,**

**WHEREAS, a public hearing was held on the question of imposing wireless enhanced “911” charge in Murray, Georgia on August 7, 1998.**

**WHEREAS, this Resolution and the continued collection of the monthly wireless Emergency Telephone Number “911” charge as provided in this Resolution are hereby affirmed; and,**

**NOW, THEREFORE, BE IT RESOLVED** by the governing authority of Murray County, Georgia that a wireless enhanced “911” charge be imposed upon each wireless telecommunications connection subscribers whose billing address is within the jurisdictions of Murray County, Georgia at the rate of \$1.50 per month per wireless connections provided to each telephone subscriber.

**BE IF FURTHER RESOLVED** that said wireless charge shall be imposed on the first day of the month January of 1999.

**BE IF FURTHER RESOLVED** that a copy of the Resolution shall be forwarded to each wireless service supplier providing service in Murray County, Georgia.

**IN WITNESS WHEREOF, this Resolution has been duly adopted by the governing authority of Murray County, Georgia on the 1<sup>st</sup> day of September 1998.**

**B. Resolution: Reaffirmation E911 \$1.50 Surcharge for Wire Lines**

**RESOLUTION**

**A RESOLUTION OF MURRAY COUNTY, GEORGIA TO RAFFIRM A MONTHLY EMERGENCY TELEPHONE NUMBER “911” CHARGE UPON EACH EXCHANGE ACCESS FACILITY SUBSCRIBED TO BY TELEPHONE SUBSCRIBERS WHOSE EXCHANGE ACCESS LINES ARE IN THE AREA SERVED BY THE EMERGENCY TELEPHONE NUMBER “911” SYSTEM.**

**WHEREAS, on October 11, 1990 at 7:00 p.m., Murray County Georgia, held a public hearing pursuant to Official Code of Georgia Annotated Section 46-5-133(b) (1) (B) concerning the implementation of an Emergency Telephone Number “911” System in Murray County, Georgia; and**

**WHEREAS, the public hearing resulted in a unanimous vote in favor of the implementation of an Emergency Telephone Number “911” system;**

**WHEREAS, it has proven to be in the best interest of the public safety of the citizens of Murray County, Georgia, to implement and maintain an Emergency Telephone Number “911” system;**

**NOW, THEREFORE, BE IT RESOLVED, as follows:**

**Section I. Murray County, Georgia, has implemented an Emergency Telephone number “911” System.**

**Section II. There is hereby affirmed a need for a monthly Emergency Telephone Number “911” charge to be imposed upon each exchange access facility subscribed to by telephone subscribers whose exchange access lines are in the areas which are served by the Emergency Telephone “911” Service. The said “911” charge is uniform and does not vary according to the type of exchange access facility used, and said “911” charge will not exceed \$1.50 per month per exchange access facility provided to the telephone subscriber.**

**Section III. All acts and doings of the officers of Murray County, Georgia which are in conformity with the purposes ad intents of this Resolution and in furtherance of the implementation of the Emergency Telephone Number “911” System shall be, and the same hereby are, in all respects approved and confirmed.**

**Section IV. If any one or more of the agreements or provisions herein contained shall be held contrary to any express provisions of law, or against public policy, or shall for any reason whatsoever be held invalid then such covenants, agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof.**

**Section V. All resolutions of parts thereof of Murray County, Georgia in conflict with the provisions herein contained, are to the extent of such conflict, hereby superseded and repealed.**

**SECTION VI. This Resolution and the continued collection of the monthly Emergency Telephone Number “911” charge as provided in this Resolution are hereby affirmed.**

**C. Intergovernmental Agreement: Between Murray County and Chatsworth Water Commission for relocation of utilities for grade separation on Old Federal Road at CSX Crossing**

**City of Chatsworth  
Water Works Commission**

**Board of Commissioners**

Ben Wilson

Chairman

Milton Clarke

Jerry Luffman

620 S 2<sup>nd</sup> Avenue

PO Box 100

Chatsworth, Georgia 30705

Phone (706)695-3132

**Tom Martin**

General Manager

Renda Stafford

Clerk & Treasurer

**INTERGOVERNMENTAL AGREEMENT**

**MURRAY COUNTY GOVERNMENT AND CHATSWORTH WATER COMMISSION**

**The Murray County Government desires to have utility relocation for sewer and water infrastructure necessary for the construction of a bridge separation over CSX Railroad located on Old Federal Road.**

**The Chatsworth Water Commission is willing to manage and coordinate the relocation of the infrastructure by contracting all work elements related to the sewer and water.**

**The Georgia Department of Transportation will be responsible for bidding and contracting for all bridge construction phases.**

**By this Agreement, Murray County Government agrees to provide 85% of funding for the relocation of sewer and water infrastructure related to the project. The Chatsworth Water Commission agrees to fund 15% of the project costs, which would be classified as betterment of infrastructure. The project is presently estimated at \$240,000, but final costs could vary depending on bids and materials costs.**

**The Chatsworth Water Commission will front all construction costs during the project's construction. Murray County Government agrees to reimburse the Chatsworth Water Commission 85% of the total project costs by December 31, 2011 in partial payments or lump sum. The Chatsworth Water Commission will provide detailed project costs at the completion of all work elements related to the relocation of the sewer and water infrastructure.**

**In the event that the final bid and material costs exceeds the estimated cost by more than 10%, Murray County may ask the Chatsworth Water Commission to extend the repayment terms of agreement to a term not to exceed 12 months from the date of execution of this agreement.**

**By execution of this Agreement, Murray County Government acknowledges that this purchase of service agreement will provide a valued improvement to its infrastructure and also provide better access and safety to the citizens of Murray County.**

**D. Re-Appointment: Tim Howard to Chatsworth-Murray County  
Library Board**

**Chatsworth-Murray County  
Library Board**

**Georgia, Murray County  
Board Re-Appointment**

Mr. Tim Howard  
329 Hwy 225 South

**Term**  
**July 1, 2011 – June 30, 2015**

**Date Appointed**  
**July 7, 2011**

**Chatsworth, GA 30705**

- E. **Beautification Awards: Keep Chatsworth-Murray Beautiful**
- F. **DNR Scrap Tire Program: Keep Chatsworth-Murray Beautiful**
- G. **Agreement: Utility Relocation between Georgia Power Company and Murray County** RE: PI# 642370  
Old Federal Rd @ CSX RR

## UTILITY RELOCATION AGREEMENT

## **PROJECT NAME: CR 19/OLD FEDERAL ROAD GRADE SEPARATION**

## AT CSX RAILROAD

**PROJECT NUMBER: 642370-**

**GDOT PROJECT NUMBER:** STP-213(13)

This AGREEMENT, made and entered into as of the 7<sup>th</sup> day of June 2011, by and between MURRAY County, State of Georgia (hereinafter referred to as the "County"), and GEORGIA POWER COMPANY (hereinafter referred to as the "Company"). This Agreement may refer to either County or Company, or both, as a "Party" or "Parties."

**WITNESSTH:**

WHEREAS, the County proposes under the above written Project to construct: CR19/OLD FEDERAL ROAD SEPARATION AT CSX RAILROAD (hereinafter referred to as the "Project"); and

WHEREAS, due to the construction of this Project, it will become necessary for the Company to remove, relocate, or make certain adjustments to the Company's existing facilities (facilities includes electrical and communications, facilities and is referred to herein collectively as the "Facilities" or the "Facility"), in accordance with the estimate of **ONE HUNDRED EIGHTY FIVE THOUSAND EIGHT HUNDRED SIXTY THREE Dollars (\$185,863.00)** (the "Estimate"), a copy of which estimate is attached hereto, and incorporated into this Agreement as Exhibit "A". The Estimate is limited: (a) to the costs of removing, relocating or adjusting those Facilities, which are physically in place and in conflict with the proposed construction and/or maintenance, (b) where replacement is necessary, to the costs of replacement in kind and such cost excludes the proportion of the costs representing improvement or betterment in a Facility, except to the extent that such improvement or betterment is made necessary by the construction and/or maintenance, and (c) to the costs incurred in acquiring additional easements or private rights of way, including, without limitation, easements for lines, access, tree trimming, guy wires, anchors and other devices, appliances and other equipment, and any and all other such easements and property rights as may be reasonably necessary for the Company's installation, operation and maintenance of its Facilities. The proportion of the costs representing improvement or betterment in a Facility while excluded from the Estimate, except to the extent that such improvement or betterment is made necessary by the construction and/or maintenance, shall be shown on the Estimate; and

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

**WHEREAS**, the County agrees to bear ONE HUNDRED percent (100%) of the actual costs of said relocation expenses, which is estimated to be ONE HUNDRED EIGHTY FIVE THOUSAND EIGHT HUNDRED SIXTY THREE Dollars (\$185,863.00), subject to the County's reasonable approval (not to be unreasonably withheld) of the evidence presented by the Company supporting its claim or prior rights, which may include any documents or information demonstrating the location of the Facilities in relationship to those property interests, the relationship of those property interests to current and previous road right-of-way, and any other information or documents reasonably required by the County to verify the Company's claim, and subject to further County's reasonable approval (not to be unreasonably withheld) should actual expenses exceed the Estimate; and

**WHEREAS**, the County will use its best efforts to make a determination regarding the Company's claim for prior rights prior to the Company being required to commence the removal, relocation, or adjustment of its Facilities, and shall provide its determination in writing along with the written support for any such determination. If the County determines that the Company's presented information is insufficient to make a determination, the County will provide the Company the basis for such insufficiency, and request that the Company provide additional information. If a determination, however, cannot be made prior to the time the Company's Facilities need to be removed, relocated, or adjusted in order for the Project not to be delayed (provided that the County certifies in writing to the Company that such Project is time-sensitive due to construction scheduling with the possibility of damages for delay, safety concerns, or critical funding deadlines), the Company will remove, relocate, or adjust its Facilities without a determination having been made and neither Party's rights, claims, or defenses with regard to the issue of property interests, compensable interest or prior rights will be waived or affected in any manner. In such instance, the County will make such determination regarding the Company's claim for prior rights no later than six (6) months from the date of County's receipt of information sufficient for the County to make a determination (which determination shall be in writing accompanied by written support) or otherwise the Company's claim for prior rights will be deemed approved by the County.

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

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

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

**Section 3. Upon the completion by the Company of the work contemplated herein, the County will pay the Company a sum equal to the lesser of ONE HUNDRED percent (100%) of: (a) the Company's actual cost of the total Project relocation expenses or (B) the Estimate, subject to the reasonable acceptance by the County (Not to be unreasonably withheld) of the evidence presented by the Company supporting its claim for prior rights.**

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

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

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

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

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

## **Section 9.**

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

**9.2 Except as otherwise set forth in this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled: (a) first, by good faith efforts to reach mutual agreement of the Parties; and (b) second, if mutual agreement is not reached within thirty (30) calendar days of a written request by a Party to resolve the controversy or claim, each of the Parties will appoint a designated representative who has authority to settle the dispute (or who has authority to recommend to the governing body a settlement of the dispute) and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives provided, however, that all reasonable requests for relevant information made by one Party to the other Party will be honored if such information is reasonably available. If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of designated representatives or County's Commissioner fails to approve any tentative agreement reached, the Parties agree to participate in non-binding mediation pursuant to Section 9.3 below. It being understood, however, that nothing herein will diminish or relieve either Party of its rights or obligations under this Section 9.**

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

## **Section 10.**

**10.1 If the Company chooses to submit progress payments, the County will pay them within thirty (30) days from receipt of the invoice, subject to Verification (as defined below) thereof by the County. Upon completion of the work, the Company shall submit a final bill to the County and the County shall make a final payment within thirty (30) days from receipt of the final bill, subject to Verification of the final bill by the County.**

**10.2 For purposes of this Section 10.1. "Verification" means that the County has reasonably determined that there is a material discrepancy between the Company's invoiced charges and the County's calculation of charges owed, which invoiced charges are subject to a bona fide dispute; provided, however, County agrees to provide the Company with written notice, including supporting documentation, illustrating the basis for such bona fide dispute, within sixty (60) days of receipt of the invoice in dispute. Should the County fail to provide such documentation within the specified time period, the County must pay the disputed amount. The County must pay any undisputed portion of the invoice total within thirty (30) days after its receipt of the invoice. The County must pay any disputed portion of the invoice total within thirty (30) days of the date the dispute is resolved, to the extent the dispute is resolved in favor of the Company.**

**10.3 At any time within thirty-six (36) months after the date of the final payment, the County, at its sole expense, may audit the cost records, support documentation, and accounts of the Company pertaining to this Project to solely assess the accuracy of the invoices submitted by the Company and notify the Company of any amount of any unallowable expenditure made in the final payment of this Agreement, or, if no unallowable expenditure is found, notify the Company of that fact in writing. Any such audit will be conducted by representatives of the County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, after reasonable advance written notice to the Company and during regular business hours at the offices of the Company in a manner that does not unreasonably interfere with the Company's business activities and subject to the Company's reasonable security requirements. As a prerequisite to conducting such audit, County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, will sign the Company's Nondisclosure Agreement. The Company may redact from its records provided to County information that is confidential and irrelevant to the purposes of the audit. The Company will reasonably cooperate in any such audit, providing access to the Company records that are reasonably necessary to enable the County to test the accuracy of the invoices to which the audit pertains, provided that the County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, may only review, but not copy, such records. If the Company agrees with the audit results and does not pay any such bill within ninety (90) days of receipt of the bill from the County (based on the mutually agreed upon audit results), the County may set off the amount of such bill against the amounts owed the Company on any then-current contract between the Company and the County.**

If, following the audit, the Parties are unable to resolve any dispute concerning the results of the audit through informal negotiation, the provisions of Sections 9.2 and 9.3 will govern the resolution of the dispute. The County may not perform an audit pursuant to this Agreement more frequently than once per calendar year and may not conduct audits twice within any six (6) months.

**Section 11. Duplicate originals of this Agreement will be executed, each of which will be deemed an original but both of which together will constitute one and the same instrument. This Agreement may be modified only by an amendment executed in writing by a duly authorized representative for each Party. This Agreement contains the entire agreement of the Parties and there are no oral or written representations, understandings or agreements between the Parties respecting the subject matter hereof which are not fully expressed herein. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.**

## **H. Capital Vehicle Purchases**

**Purchased Five (5) Ford Crown Victorians from Chatsworth Ford, PO Box 1228, Chatsworth, Georgia 30705 \$20933.00 each  
For: Sheriff Department at a total cost of \$104,665.00 to be paid from the Splost 2007 Fund.**

## I. Recognition of Lady's Auxillary Projects

**J. Recognition of David McDaniel's completion of Georgia Economic Development Academy**

**Documents are located in the auxiliary file.**

## ADJOURNMENT

This 7<sup>th</sup> day of June, 2011.

**ATTEST:**

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**Tommy Parker, Interim Co Clerk**      **Tom Starnes, Interim Co Commissioner**

**In Attendance: Tommy Parker, Tom Starnes, Wendy Hunt, Louise Childers, Phyllis Boyd, Steve Angela, Johnny Stove, Frank Adams, Emily Cogburn, Pat Ausmus, Shirley Brindle, Shelby Rymer, Mariann Martin, Edward Dunn, Steve Richards, Lori Harrison, Dwayne Parker, Leo Worley, Brittany Pittman, Jason Griffin and Mark Millican**