

**POLE ATTACHMENT AGREEMENT BETWEEN THE
CITY OF BUSHNELL AND THE BOARD OF COUNTY
COMMISSIONERS OF SUMTER COUNTY, FLORIDA**

THIS POLE ATTACHMENT AGREEMENT (hereinafter the "Agreement") is made and entered into this _____ day of _____, 2011, by and between the City of Bushnell, hereinafter referred to as "City", and the Board of County Commissioners of Sumter County, Florida, hereinafter referred to as "Sumter County". City and Sumter County may be collectively referred to from time to time in this Agreement as the "Parties".

WITNESSETH:

WHEREAS, Sumter County desires to furnish communication service to areas of Sumter County now being served by City, and will need to erect and maintain aerial cables, wire and associated appurtenances throughout the area to be served, and further desires to attach such cables, wires and appurtenances to utility or service poles belonging to, and located within the municipal boundaries of City; and,

WHEREAS, City is willing to permit, to the extent it is lawfully able to do so, the attachment of said cables, wires and appurtenances to its solely owned utility or service poles, where, in its judgment, such use will not interfere with its own service requirements, including considerations of economy, health and safety; and,

WHEREAS, Sumter County is willing to deed certain real property to City in exchange for, and in consideration of, permitting the attachment and maintenance of said cables, wires and appurtenances to City's utility or service poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

**ARTICLE I
SCOPE OF AGREEMENT**

I. EXCLUSIONS

A. The City reserves the right to exclude the following utility or service poles "Poles" from joint use:

1. Poles which, in the City's judgment are necessary for its own sole and exclusive use;
2. Poles which in the City's reasonable judgment, would be unsuitable for use by Sumter County; or,
3. Poles previously designated for and/or involved in joint use, which are later determined by City, in City's judgment, to impair the proper rendering of City's service, now or in the future. If City later determines that a Pole(s) previously designated and/or involved in joint use, is/are no longer suitable for joint use, City shall notify Sumter County at least sixty (60) days written notice prior to requesting Sumter County to relocate any cables, wires and appurtenances attached to said Poles.

B. Nothing contained in this Agreement shall be construed to compel City to maintain any of the Poles in question for a period longer than demanded by its own service requirements.

II. AGREEMENT NOT EXCLUSIVE

This Agreement is not exclusive. City expressly reserves the right to grant rights or franchises to other persons or entities, as well as the right in its own name as a municipality, to use the streets for similar or different purposes allowed to Sumter County hereunder, by franchise, permit or otherwise.

III. NOT JOINT- VENTURE OR PRINCIPAL-AGENT RELATIONSHIP

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither Party is authorized to, nor shall either Party act toward third persons or the public in any manner which would indicate any such relationship with the other.

Use of City’s Poles under this Agreement shall not create or vest in Sumter County, any ownership or property rights in said Poles, but Sumter County’s right therein shall be and remain a mere license.

IV: INSURANCE AND INDEMNIFICATION

A. Insurance. Sixty (60) days after the effective date of this Agreement, and thereafter, continuously throughout the duration of this Agreement, and any extensions or renewals thereof, Sumter County shall furnish to the City Certificates of Insurance for all types of insurance required under this Section, up to the limits of Sovereign Immunity set forth in the laws of the State of Florida. Specifically, Sumter County shall maintain, by its acceptance of this Agreement general liability insurance insuring Sumter County in the following areas:

- 1. Property damage per occurrence;
- 2. Property damage aggregate;
- 3. Personal bodily injury to any one person; and
- 4. Bodily injury aggregate per single accident or occurrence.

B. Indemnification.

1. Sumter County, by its acceptance of this Agreement, specifically agrees that it will pay all direct damages and penalties which the City may legally be required to pay as a result of negligent acts, omissions, or willful misconduct of Sumter County or its breach of this agreement, up to the limits of Sovereign Immunity set forth by the laws of the State of Florida. These include damages arising out of installation, operation, or maintenance of Sumter County’s system authorized herein, whether or not any act or omission was authorized, allowed or prohibited by this agreement.

2. Sumter County, by its acceptance of this agreement, specifically agrees that it will pay all expenses incurred by the City in defending itself with respect to all damages and penalties mentioned in subsection (I) above, up to the limits of Sovereign Immunity set forth by the laws of the State of Florida.

V. USE OF STREET AND PUBLIC GROUNDS

A. Priority of Use. In exercising its rights established pursuant to this Agreement, Sumter County agrees that it shall not interfere with any installations of the City or any public utility serving the City, or any other person permitted to use the streets and public grounds. Sumter County further agrees that it shall not unnecessarily hinder or obstruct the use of the streets and public grounds. The

grant of this Agreement does not establish priority for use over other present or future permits or Franchise holders, or the City's own use of the streets and public grounds. The City Council for the City shall at all times control the distribution of space in, above, under or across all streets or public grounds occupied by the facilities.

B. City's Rights. Nothing in this Agreement shall be in hindrance to the right of the City or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the County's system in any way interfere with the construction, maintenance or repair of any such public works or public improvements, Sumter County shall, at its own cost and expense, protect or relocate its facilities, or any part thereof, as may reasonably be directed by the City officials or any governmental authority.

C. Relocation of Equipment. City shall have the authority, at any time, to order and require Sumter County to remove or relocate any wires, cables or structure that is unnecessarily dangerous to life or property. This shall include any Pole, to the extent the Pole was installed by Sumter County. In the event that Sumter County, after notice, fails or refuses to comply with City's request to remove or relocate any wire(s), cable(s) or structure(s) within a reasonable time, City shall have the authority to remove or relocate the same without incurring any liability, at the sole cost and expense of Sumter County. City acknowledges that it shall be liable for damages caused by its negligent acts, omissions or willful misconduct in its removal or relocation of Sumter County's wires, cables or structures.

D. Removal of Equipment. Upon termination of this Agreement as described herein, Sumter County shall remove its supporting wires, cables, structures and poles (to the extent said poles were installed by Sumter County), transmission and distribution systems, and all other appurtenances from the streets and public grounds, and shall restore those areas to as good a condition as they were in at the time of the execution of this Agreement or better. Such removal shall be made so as not to conflict with public health, safety or convenience. Removal shall be completed within twelve (12) months after such termination. At that time, the City may deem any property not removed as having been abandoned. Such property may then be removed at the option of the City and at Sumter County's expense, less any recoverable salvage value.

E. Private Property. Sumter County shall be subject to all laws, ordinances or regulations regarding private property in the course of constructing, installing, operating or maintaining any wires cables or structures installed pursuant to this Agreement. Sumter County shall promptly repair or replace all private property, both real and personal, which it has caused to be damaged or destroyed as a result of the construction, installation, operation or maintenance of the facilities at its sole cost and expense.

F. Vegetation. Sumter County may trim trees or other vegetation owned by the City to prevent branches, leaves or roots from touching or otherwise interfering with its wires, cables, or other structures with the prior approval of City.

G. Damage to Municipal Structures. In the event any damages occur to the City's water, sewage or drainage system, or to any pavement, curbing or sidewalk, or to any other municipal structures in the right-of-ways, caused solely by Sumter County as the result of the construction, operation, or maintenance of any wires, cables or structures installed pursuant to this Agreement, the sole cost of such repairs including all labor, materials and equipment, will be billed to Sumter County. These charges shall be paid within sixty (60) days of receipt of invoice, or the City may foreclose on performance bonds or invoke other appropriate sanctions provided for in this Agreement. Nothing in this section shall be construed to be a waiver or limitation of Sumter County's Sovereign Immunity rights.

H. Raising or Lowering Wires. Sumter County shall temporarily raise or lower its wires or other equipment upon the reasonable request of any person or entity, including, without limitation, a person holding a building or moving permit, issued by county, state or local authority. The expense of such raising or lowering shall be paid by the person requesting the same, and Sumter County shall have the authority to require such payment in advance. This provision shall not apply to requests by the City for City purposes.

I. Accuracy of Maps. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing structures in public right-of-ways. Where necessary, the location shall be verified by excavation.

J. Notice. Sumter County shall give appropriate notice to the City, and affected residents, within a reasonable period of time, of proposed construction, excavation, laying, or stringing of under streets or on poles, but in no event shall such notice be given less than seven (7) days before such commencement.

K. Codes and Standards. The construction, installation, operation, maintenance and/or removal of any wires, cables or structures installed pursuant to this Agreement shall meet all of the following safety, construction, and technical specifications and codes and standards:

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REGULATIONS (OSHA)
NATIONAL ELECTRICAL CODE
NATIONAL ELECTRICAL SAFETY CODE (NESC)
ALL BUILDING AND ZONING CODES, AND ALL LAND USE RESTRICTIONS AND
THE SAME EXIST OR MAY BE AMENDED HEREAFTER.

L. Licenses. All contractors or subcontractors of Sumter County must be properly licensed under all applicable federal, state and local laws and regulations. Sumter County shall be responsible for all acts or omissions of any such contractor or subcontractor in the construction, installation, maintenance or operation of Sumter County's system. Nothing in this section shall be construed to be a limitation or waiver of Sumter County's Sovereign Immunity rights.

M. Construction Plan Approval.

1. Prior to the erection or installation by Sumter County of any towers, poles, underground conduits, wires, cables, structures required for the initial construction, as well as the rebuilding, upgrade or line extension of the system under this Agreement, Sumter County shall make available for City approval, a concise description of the facilities proposed to be erected or installed, including strand maps, if required, together with a map and plans indicating the proposed location of all such facilities. Approval by the City shall not be unreasonably withheld, and shall be completed in a timely manner.

2. No erection or installation of any tower, pole, underground conduit, wire, cable, structure or fixture pursuant to this Agreement, shall be commenced by any person until approval therefore has been received from the City, provided that such approval shall not be unreasonably withheld.

3. No Poles shall be erected by Sumter County without prior approval of City, with regard to location, height, types and any other pertinent aspects.

4. Where Poles already exist and are available for use by Sumter County, but Sumter County does not make arrangement for such use, the City may require Sumter County to use such Poles and structures if it determines that the public convenience would be enhanced thereby.

N. Inspection. The City or its designee shall have the right to inspect at any time, all construction or installation work performed pursuant to this Agreement.

VI. NORMAL JOINT USE POLE

A. Under this Agreement, a normal joint use Pole shall be a Pole which meets the requirements set forth in the Codes and Standards for support and clearance of electric supply and communication conductors under conditions existing at the time joint use is established, or as to be created under known plans of either Party. This Section is not intended to preclude the use of joint Poles shorter or of less strength in locations where such structures will meet the requirements of both Parties. A normal joint Pole for attachment purposes shall be;

- A 40 foot or higher Class 4 pole.
- For City use, the uppermost ten (10) feet. For Sumter County, a space of three (3) feet at a sufficient distance below the space of the City to provide for minimum required clearance.
- The space below Sumter County space may be used for additional attachments of either Party or other joint users, providing it does not require increasing the height of the pole.

VII. POLE ALTERNATIVE

A. If any Pole or Poles of City to which Sumter County desires to make attachments are inadequate to support the additional facilities in accordance with appropriate codes and standards, the City will indicate by appropriate sketches and estimates of costs, the changes necessary to provide adequate Poles and provide same to Sumter County. If Sumter County desires to make the attachment, the City will replace such inadequate Poles with suitable Poles and Sumter County will reimburse the City for the total cost of the replacement Pole, plus the cost of removal of the old Pole, along with the cost of transferring the City's facilities from the old to the new Pole, less the salvage value of the Pole removed. In the event the City elects to replace said Pole(s) with a Pole(s) of a height and class larger than those mentioned in Section VI above, it shall do so at its own cost and expense, with the understanding that Sumter County will be responsible for transferring its wires, cables or structures to the new Pole(s).

Where Sumter County's desired attachments can be accommodated on existing Poles of the City, by rearranging City's facilities thereon, Sumter County agrees to compensate City for the full expense incurred in completing such rearrangement(s). Sumter County also agrees to pay to City the amount necessary to reimburse City for any expense it incurs in transferring its facilities to other existing Poles. Any strengthening of Poles (guying) required to accommodate the attachments of Sumter County shall be provided by and at the expense of Sumter County.

B. Sumter County shall, at Sumter County's expense, make and maintain said attachments in safe condition as not to conflict with the use of said Poles by City, or by other authorized users of said Poles. Sumter County shall at all times, and at Sumter County's expense, upon notice by the City, relocate wires, cables or structures placed on said Poles, or transfer them to existing or substituted poles. However, in the event of an emergency, City may relocate, replace or remove Sumter County's attachments in order to maintain or replace City Poles, and Sumter County shall reimburse City for the expenses incurred. The determination as to whether an emergency exists shall be made solely by the City, and Sumter County shall be bound by such determination. City shall be liable for damages caused by its negligent acts or omissions, or willful misconduct in its removal or relocation of Sumter County's attachments.

VIII. TERMINATION OF AGREEMENT

A. Sumter County may, at any time, terminate this Agreement and remove its attachments from any Pole(s) of City as expressly set forth herein, and shall provide City with written notice of such intent to terminate this Agreement.

IX. TERMS AND CONDITIONS

A. Failure of City to enforce or insist upon strict 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.

B. In consideration of the perpetual use of City’s Poles for the purposes contemplated by this Agreement, Sumter County agrees to convey to City, that certain parcel of real property, more particularly described in the boundary survey attached hereto as Exhibit “A”, and incorporated herein, *in haec verba*.

C. Amendments to this Agreement, which may appear advisable to the Parties hereto, shall be effected by supplemental Agreements in writing, which upon execution of the Mayor of the City of Bushnell for the City and an authorized government official for Sumter County, shall thereupon become part of this Agreement.

X. BILLS AND PAYMENT FOR WORK

Bills for expenses and other charges under this Agreement, other than rentals, shall be payable within sixty (60) days after presentation. At City’s option, bills for any work under this Agreement may be submitted at intervals of thirty (30) days on City’s estimates of work completed. Non-payment of bills shall constitute a default of this Agreement.

XI. ENTIRE AGREEMENT

This Agreement and all attachments hereto represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, supersede all prior negotiations between the Parties, and can be amended, supplemented, modified, or changed only as provided herein.

IN WITNESSES WHEREOF, the parties here to have caused this Agreement to be executed as of the day and year first above written.

FOR SUMTER COUNTY:

ATTEST:

WITNESS:

SUMTER COUNTY, FLORIDA,

TITLE: _____

SEAL

FOR CITY:

ATTEST:

CITY OF BUSHNELL

TITLE: _____

SEAL