

ORDINANCE NO. 07-41

**AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH THE CITY OF SPRINGFIELD FOR ATTACHMENT
OF FIBER OPTICS TO VILLAGE POLES**

WHEREAS, the Village of Chatham, Illinois ("Village") and the City of Springfield ("City"), are units of government of the State of Illinois; and

WHEREAS, intergovernmental agreements are expressly allowed by Article VII, @10 of the Illinois Constitution of 1970 and by Section 5 of the Intergovernmental Cooperation Act, 5 ILCS 220/5; and

WHEREAS, the City and the Village have an electric interconnection at the Village's Main Street Substation and the Village is constructing a new Independence Substation; and

WHEREAS, it is desirable to establish telecommunications capabilities between the Village's two substations and the City is furnishing telecommunications transportation service to other telecommunications carriers and desires to construct and maintain Equipment attached to poles of the Village.

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, ILLINOIS, AS FOLLOWS:

SECTION 1: the Intergovernmental Agreement attached hereto, marked as Exhibit "A", is hereby approved and the appropriate officers are hereby authorized to execute said agreement.

SECTION 2: this Ordinance is effective upon its passage and approval as provided by law.

PASSED THIS 10TH DAY OF JULY, 2007

Thomas S Gray

Thomas S. Gray, President
Village of Chatham

ATTEST:

Pat Schad

Pat Schad, Village Clerk

AYES: 6 HERR REYNOLDS
6 BOYLE McGRATH KAVANAGH

PASSED: 7/10/07

NAYS: 0

APPROVED: 7/10/07

ABSENT: 1 SCHATTEMAN



TELECOMMUNICATIONS POLE LICENSE AGREEMENT

THIS AGREEMENT made the 10 day of JULY, 200~~6~~⁷, between the City of Springfield, Illinois, a municipal corporation of the State of Illinois, hereinafter called "City," and the Village of Chatham, a municipal corporation of the State of Illinois, hereinafter called "Village."

WITNESSETH:

WHEREAS, the City and the Village have an electric interconnection agreement dated June 20, 2001, pursuant to which the City's electric transmission system is connected to the Village's electric distribution system at the Village's Main Street Substation, and

WHEREAS, the Village plans to construct a new additional electric substation (Independence Substation), and

WHEREAS, it is desirable to establish telecommunications capabilities between the Village's two substations for purposes of protective relaying and supervisory control and data acquisition, and

WHEREAS, the City is furnishing telecommunications transportation service to other telecommunications carriers, and wholesale and retail switched local exchange services, direct internet access services and other advanced telecommunications services, and desires to construct and maintain Equipment in the Village and wishes to attach such Equipment to poles of the Village and to poles of the Village used jointly by the Village and other entities; and

WHEREAS, the Village is willing to permit, to the extent lawful, the attachment of said equipment to its poles where such use will not interfere with its own service requirements or the service requirements of other joint users,

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

ARTICLE I

DEFINITIONS

- 1.01 "Village's Poles" or "Poles" means poles solely owned by the Village or jointly owned by the Village.
- 1.02 "Equipment" means messengers, guy strands, aerial wires, cables, fiber optic lines, amplifiers, associated power supply Equipment and other transmission apparatus necessary for the proper operation of City's telecommunications system.
- 1.03 "Joint User" means (1) a company or municipality which together with the Village has a percentage ownership in a Pole, (2) a public utility company or municipality which has attachment privileges on the Village's Poles, or (3) a public utility company which owns Poles on which the Village has attachment privileges.

ARTICLE II

SCOPE OF AGREEMENT

- 2.01 The Village hereby agrees to permit the City to attach the City's Equipment to such of its Poles as are suitable for such attachments, subject to the conditions and limitations contained herein. The Village hereby grants the City a franchise to use the public streets, alleys and other public right of way of the Village for said Equipment.
- 2.02 The City agrees that its Equipment attached to the Village's Poles shall be installed for the purpose of providing telecommunications services to other telecommunications carriers, and wholesale and retail switched local exchange services, direct internet access services and other advanced telecommunications services.

- 2.03 The City agrees to secure any and all consents, permits or licenses that legally may be required for its operations hereunder.

ARTICLE III
UTILIZING VILLAGE POLES

- 3.01 The City shall have the right, subject to Article XII herein, to install, maintain and use its Equipment. Before commencing any such installation, the City shall notify the Village of the time when it proposes to do such work sufficiently in advance thereof so that the Village may arrange to have its representative present when such work is performed.
- 3.02 Where the Village is required to rearrange or replace its facilities in order to accommodate the City's Equipment and if the Village is willing to permit such attachments, then the Village shall, within forty-five (45) days of the date of the City requesting the Village to rearrange or replace its facilities, notify the City indicating the nature of the work involved and the estimated cost thereof. The City shall, within thirty (30) days, either notify the Village (1) of its acceptance of the work and costs or (2) of its cancellation of the request. Upon accepting the work and costs the City and make the payment provided for in Section 5.02, the Village shall, within sixty (60) days, make the changes and rearrangements, and notify the City when such work is completed.
- 3.03 It is understood that in the case of jointly-used Poles, permission to attach thereto shall be subject to the Village or the City obtaining approval from such Joint Users and/or owners whenever necessary.

ARTICLE IV
SPECIFICATIONS

4.01 The City, at its own cost and expense, shall construct, maintain and replace its Equipment on the Village's poles in accordance with (i) EEI Publication M12 entitled "Specifications for the Construction and Maintenance of Jointly Used Wood Pole Lines Carrying Supply and Communication Circuits," (ii) the requirements and specifications of the National Electrical Safety Code, current edition, and any amendments or revisions of said specifications or code, (iii) any rules or orders now in effect or that hereafter may be issued by any regulatory authority having jurisdiction, (iv) the requirements and specifications of revisions of the National Electrical Code, 1996 Edition and any amendments or revisions of said specifications or code, and (v) such requirements and specifications as the Village shall from time to time prescribe. In addition, all attachments of Equipment shall be made by the City in accordance with this Agreement.

ARTICLE V

INSTALLATION AND MAINTENANCE OF ATTACHMENTS AND POLES

5.01 The exact location of the City's attachments on Poles shall be determined from a joint survey to be made, at such times as shall be mutually agreed upon, by representatives of the parties hereto. The Village may inspect each new installation of the City on its Poles and in the vicinity of its lines or appliances and may make annual inspections of the City's Equipment.

5.02 Where the City's attachments can be accommodated on Poles of the Village by rearranging or changing the facilities of the Village or other previous Joint Users, the City agrees to pay Village in advance the reasonable cost of making such rearrangements or changes. Strengthening of Poles (guying) required to accommodate the attachments of the City shall be performed by the City at its risk and expense.

- 5.03 Upon written notice from the Village, the City within the time specified in Section 5.12 shall relocate or replace its Equipment attached to the Village's Poles, or transfer the same to substituted Poles, or perform any other work in connection with said Equipment that may be requested by the Village for the public benefit and/or welfare at the City's expense; provided, that such request shall not be for the benefit of any other private entity, including without limitation any company, person, or entity engaged in the offering of any telecommunications, Internet or cable television service; provided, however, that in cases of emergency the Village may, after oral notice subsequently confirmed in writing, at the City's expense, arrange to relocate or replace the facilities attached to said Poles at the City's expense, arrange to relocate or replace the facilities attached to said Poles by the City, transfer them to substituted Poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said Poles, the facilities thereon or the Equipment which may be placed thereon.
- 5.04 The Village agrees that it shall not grant any Joint User request for space on the Village's Poles that would require the City to relocate or replace its Equipment attached to the Village's Poles to accommodate such Joint User request, unless and until such Joint User has agreed with City in writing to assume full responsibility for all of the City's costs and expenses associated with such relocation or replacement.
- 5.05 All tree trimming required on account of the City's Equipment shall be done by the City at its risk and expense and in a manner reasonably satisfactory to the Village.
- 5.06 The City shall identify all attachments to the Village's Poles installed or replaced after the effective date of this Agreement by visibly tagging such attachments with either

City's generally recognized business name, an identifying business logo, an emergency telephone number, or some other mutually agreeable identification symbol or measure.

- 5.07 The Village reserves to itself the right to maintain its Poles and to operate its facilities thereon in such manner as will best enable it to fulfill its public service requirements. The Village shall not be liable to the City for any interruption to the service of the City or for interference with the operation of the Equipment of the City, or for any special, indirect, or consequential damages arising in any manner.
- 5.08 Nothing herein contained shall give to the City the right to place a crossarm on any Pole. If a crossarm is required to accommodate the facilities of the City, then the City shall advise the Village of the reasons therefor.
- 5.09 If the City should require the location of its Equipment upon any public thoroughfare or other public or private property in the conduct of its business in the service area and the Village shall not have Pole facilities so located to fulfill the City's requirements, the City shall notify the Village of its need for such Pole facilities in order that the Village may determine whether it wishes to place Pole facilities in such locations for the City's requirements. If within a reasonable time the Village so elects, the Village shall, at its expense, erect Pole facilities in such locations adequate to meet the service requirements of both the City and the Village, and the City shall be permitted to place its Equipment thereon as provided in this Agreement.
- 5.10 This Agreement shall not be construed unreasonably to obligate the Village to grant the City permission to use any particular Pole and the Village may decline permission to the City with respect to any particular Pole upon good and reasonable cause shown.

- 5.11 Whenever, pursuant to the provisions of this Agreement, the City shall be required to relocate its attachments from any Pole or replace its Equipment, such relocation or replacement shall be made, except as is otherwise mutually agreed upon, within thirty (30) days following the giving of notice to the City by the Village to so relocate or replace. Upon failure of the City to relocate or replace within such thirty (30) days or as otherwise agreed upon, the Village may relocate or replace and charge the reasonable costs associated with such relocation or replacement.
- 5.12 The City agrees that it shall not locate Poles or guys where they will interfere with access to the Village's Poles.

ARTICLE VI

COST OF POLE REPLACEMENTS

- 6.01 Whenever the City seeks to attach to a Pole that is insufficient in height or strength for accommodation of the City's attachments, or in the event that the Village or a prior Joint User of the Pole shall require the space occupied by the City's existing attachments, the Village shall notify the City of such fact and of the estimated cost to the City of replacing such Pole with a Pole which will accommodate the attachments of the City, the Village and any such prior Joint User. Within thirty (30) days of such notification, the City shall either notify the Village (i) of its approval of such replacement or (ii) of its cancellation of the request with respect to such Pole or (iii) in the case of existing attachments, of its election to relocate its attachments from the Pole.
- 6.02 In the event that any Poles, to which the City desires to make attachments are considered by the Village to be inadequate in height or strength to support the additional facilities, in accordance with the aforesaid specifications, the Village shall notify the City of such fact

and of the estimated reasonable cost to the City of replacing such Pole which will accommodate the attachments of the City, the Village and any such prior Joint User, in the manner prescribed in paragraph 3.03 hereof. After acceptance, or after completion of the work, the Village will present to the City a statement of the costs. The City will pay any balance due as shown by said statement. The City agrees to reimburse the Village for the entire cost and expenses of replacing such inadequate Poles with suitable Poles, including cost of removal less any salvage recovery and depreciation and the expenses of transferring the facilities of the Village and any other prior Joint User using such Poles from the old to the new Poles. The City will also, on demand, reimburse the owner or owners of other facilities attached to said Poles for any expenses incurred by it or them in transferring or rearranging said facilities.

ARTICLE VII

RIGHTS OF WAY, LEGAL AUTHORITY AND DEFAULT

- 7.01 Upon execution of this Agreement by the City, it shall secure any necessary franchise, license, permit, easements, or consent from Federal, State or Municipal authorities, and owners of property, required to construct and maintain such Equipment at the locations of Poles of the Village to which it desires to attach. In the event any such franchise, license, permit or consent is lawfully revoked, permission to attach to the Village's Poles shall terminate, and the City shall remove its Equipment from the Village's Poles and the Village, at its option, may terminate this Agreement.
- 7.02 Upon notice from the Village to the City that the cessation of the use of any Pole or Poles has been directed by Federal, State or Municipal authorities, permission to attach to such

Pole or Poles shall terminate and the City shall remove its Equipment therefrom within a reasonable time.

- 7.03 If the City shall fail to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from the Village to correct such default or noncompliance, the Village may revoke permission covering the Pole or Poles involved in such default or noncompliance. The City agrees and understands that upon such revocation the City shall remove its Equipment from the Village's pole(s). If the City fails to do so within thirty (30) days of the revocation, the Village is authorized to remove the City's Equipment and dispose of it as the Village sees fit.

ARTICLE VIII

TERM AND TERMINATION OF AGREEMENT

- 8.01 This Agreement, if not previously terminated in accordance with the provisions hereof, shall continue in effect for an initial term of twenty-five (25) years and thereafter on a yearly basis until terminated as provided herein. In addition to the rights of termination and revocation previously provided for in this Agreement, after the initial twenty-five (25) year term, each party has the right to terminate without cause by either party giving to the other party at least one hundred eighty (180) days written notice. Upon termination of the Agreement in accordance with any of its terms, the City shall remove its said Equipment from all Poles of the Village within one hundred eighty (180) days thereafter.
- 8.02 The City may at any time remove its Equipment attached to any Pole or Poles of the Village, but shall give the Village written notice of such removal in the form of Exhibit A attached hereto and made a part hereof.

ARTICLE IX

INDEMNITY

9.01 Liability and Indemnity.

The City shall indemnify, protect and hold harmless the Village, its officers and employees, and other Joint Users of said Poles from and against any and all loss, costs, claims, demands, damage and/or expense arising out of any demand, claim, suit or judgment for damages to property and injury to or death of persons, including the officers, and employees, and other Joint Users of said Poles from and against any and all loss, costs, claims, demands, damage and/or expense arising out of any demand, claim, suit or judgment for damages to property and including the officers, agents and employees of either party hereto and other Joint Users of said Poles, including payment made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the City's negligent erection, maintenance, use or removal of said Equipment or arising out of any negligent, willful, wanton or reckless act or omission of the City.

ARTICLE X

ABANDONMENT

10.01 If the Village, at any time, desires to abandon a Pole owned by the Village and jointly used by the Village and the City, the Village shall give the City at least thirty (30) days notice prior to the date on which it intends to abandon the use and ownership of such Pole. If the City is the only other User besides the Village, and the City desires to continue its use of such Pole, it shall, upon the removal of all of the attachments of the Village, assume sole ownership of such Pole, and shall thereafter save harmless the

Village from all obligation, liability, damages, costs, expenses or charges incurred because of the condition of such Pole or of any attachments thereon. The formula for the purchase by the City of an abandoned Pole is stated at Exhibit B which is attached hereto and incorporated herein by reference thereto. Evidence of the purchase shall be by Bill of Sale.

ARTICLE XI

GENERAL

- 11.01 The City shall not assign, transfer or sublet this Agreement, or any of the privileges hereby granted to it, without the prior written consent of the Village, but such consent shall not be unreasonably withheld or delayed.
- 11.02 No use, however extended, of the Village's Poles under this Agreement shall create or vest in City any ownership or property right in said Poles, except that the City's rights therein shall be a mere license. Nothing herein contained shall be construed to compel the Village to maintain any of its Poles for a period longer than that demanded by its own service requirements.
- 11.03 Nothing herein contained shall be construed as diminishing the rights or privileges previously conferred by the Village to others, by contract or otherwise, to use any Poles covered by this Agreement; the attachment privileges granted hereunder shall at all times be subject to such contracts and arrangements.
- 11.04 The Village acknowledges and agrees that it will treat the City on a competitively neutral and nondiscriminatory basis in accordance with all applicable state and Federal laws.

11.05 Failure 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 remain at all times in full force and effect.

11.06 Subject to the provisions of Paragraph 11.03 above, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XII

PAYMENT OF BILLS

12.01 All amounts payable by the City to the Village under the provisions of this Agreement shall, unless otherwise specified, be payable within thirty (30) days after presentation of bills therefor. Non-payment of any such amounts when due without good cause shall constitute a default under this Agreement.

ARTICLE XIII

NOTICE

13.01 Any notice provided in this Agreement to be given by either party hereto to the other shall be deemed to have been duly given when made in writing and deposited in the United States mail, postage prepaid, addressed as follows:

To Village:

To City: General Manager
 Office of Public Utilities
 800 East Monroe
 Municipal Center East
 Springfield, Illinois 62757

By notice complying with this Section either party shall have the right to change the address to which notice to such party may be sent.

ARTICLE XIV

JOINT ANCHORS

14.01 Whenever the City receives permission, according to the provisions of Article III, to attach its Equipment to a new or existing Village-owned anchor, the City shall pay an amount equal to fifty percent (50%) of the cost of the anchor and rod. The flat rate costs for patent anchors are listed in Exhibit C which is attached hereto and made a part hereof by reference thereto. The City agrees to pay the full cost of labor and materials for temporary anchoring done by the Village for the City.

ARTICLE XV

SEVERABILITY

15.01 If any Article, paragraph, sentence or clause of this Pole rental agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

ARTICLE XVI

GOVERNING LAW

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Illinois.

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

CITY OF SPRINGFIELD, ILLINOIS

By: _____
Mayor

Attest:

City Clerk

VILLAGE OF CHATHAM, ILLINOIS

By: Thomas L Gray
President

Attest:
Pat Schall
Village Clerk



EXHIBIT A

NOTIFICATION OF REMOVAL

Date _____

Notice No. _____

Mr. _____

CITY OF SPRINGFIELD

In accordance with the terms and conditions of the "Pole License Agreement" dated _____, approved by Ordinance No. _____, notification of removal of attachments to the following poles as indicated in the sketch provided on the reverse side of this sheet or attached hereto, is hereby given, effective _____.

BY _____

Notice Acknowledged

Date _____

VILLAGE OF CHATHAM

By _____

Poles in use to date _____

Poles Discontinued by this notice _____

Total Poles in use _____

EXHIBIT B

ABANDONED POLE PURCHASE FORMULA

Age of Pole x 5% = _____ %* x price of Pole in place = depreciation Price
of the Pole in place - depreciation = Value of Pole (purchase price)

*(Not to exceed 90%)

The price of the Pole in place is found on the table attached hereto as Exhibit B-1.

EXHIBIT B-1

FLAT RATE PRICES FOR POLES IN PLACE

<u>LENGTH & CLASS</u>	<u>FULL COST IN PLACE</u>
25' - 7	\$186.00
- 6	191.00
- 5	198.00
- 4	204.00
- 3	208.00
	216.00
30' - 7	\$211.00
- 6	218.00
- 5	227.00
- 4	235.00
- 3	242.00
- 2	252.00
35' - 6	\$259.00
- 5	276.00
- 4	287.00
- 3	296.00
- 2	316.00
- 1	328.00
40' - 5	\$302.00
- 4	329.00
- 3	341.00
- 2	355.00
- 1	373.00
45' - 4	\$420.00
- 3	443.00
- 2	464.00

EXHIBIT C

JOINT ANCHOR PRICES

Pricing for existing anchors, in place including labor are as follows:

1. 5/8" x 8' Rod	\$30.00
2. 3/4" x 10' Rod	\$70.00
3. 1" x 12' Rod	\$73.00