

**UTILITY RELOCATION AGREEMENT WITH MIDDLE TENNESSEE ELECTRIC  
MEMBERSHIP CORPORATION FOR THE FRANKLIN ROAD CORRIDOR IMPROVEMENTS  
(STREETSCAPE) PROJECT, HARPETH RIVER BRIDGE TO HARPETH INDUSTRIAL  
COURT/HOOPER LANE  
COF Contract No. 2019-0272**

THIS AGREEMENT is by and between the **City of Franklin, Tennessee** ("City") and **Middle Tennessee Electric Membership Corporation** ("MTEMC").

**WITNESSETH:**

**WHEREAS**, the City intends to construct the Franklin Road Corridor Improvements (Streetscape) Project, Harpeth River Bridge to Harpeth Industrial Court/Hooper Lane, in Franklin, Tennessee (the "Project"), as shown on construction plans and specifications as part of COF Contract No. 2019-0230, prepared by the City, with help from MTEMC; and

**WHEREAS**, MTEMC owns and maintains overhead utility lines and related facilities (the "Electric Facilities") on and under private and public utility easements along Franklin Road; and

**WHEREAS**, the Electric Facilities must be relocated and installed underground per the City's requirements to accommodate the Project; and

**WHEREAS**, pursuant to the Project, \_\_\_\_% percent of the Electric Facilities are located on public highway right-of-way and \_\_\_\_% percent of the Electrical Facilities are located on private utility right-of-way of MTEMC; and

**WHEREAS**, relocating the Electrical Facilities underground will incur a greater expense than an overhead relocation; and

**WHEREAS**, except for as specified herein, the relocation of Electric Facilities will be designed and constructed by MTEMC or MTEMC's contractor; and

**WHEREAS**, the City will approve final design plans to ensure the Electric Facilities are relocated in a manner which accommodates the Project.

**NOW THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. The City is responsible for all underground ditch work and installation of conduit pursuant to the specifications as described in the MTEMC Electrical Service Guidelines which may be found at <https://www.mtemc.com/sites/mtemc/files/PDF/Engineering/Electrical%20Service%20Guidelines%20-%20Dec%202018.pdf> and Underground Installation Guide which may be found at <https://www.mtemc.com/sites/mtemc/files/PDF/Engineering/UG.pdf>. The City

acknowledges and agrees that MTEM C will not begin construction until MTEM C approves the ditch work and conduit installation according to its specifications.

3. The City will be solely responsible for acquiring all MTEM C easements pursuant to MTEM C's standards outside of the available public rights-of-way as may be needed for construction of the Electric Facilities (the "Easement Acquisitions"). The City will be responsible for 100% of the costs related to the Easement Acquisitions, including but not limited to condemnation costs.
4. The City will reimburse MTEM C for all other costs related to the relocation of its facilities on private right-of-way, in an amount estimated to be **\$770,733.56** for the total construction costs, including but not limited to labor, materials, engineering, inspection, and betterment, which shall include the betterment cost of an underground installation in lieu of overhead ("Construction Costs"). Costs reimbursed by the City pursuant to this Section 5 shall be actual costs expended by MTEM C, regardless of whether such costs are more or less than the estimated cost as shown in Exhibit A – Estimated Total Construction Costs.
5. The City acknowledges and agrees that no construction will commence until: a.) the City has approved MTEM C's relocation plans, all cost estimates associated therewith, and any related amendments thereto; b.) all Easement Acquisitions have been completed in MTEM C's sole discretion; and c.) MTEM C approves the ditch work and conduit installations performed by the City.
6. MTEM C shall have the responsibility to inspect all items of installation of MTEM C's new facilities to be performed by its Contractor to ensure that the installation of the new Electric Facilities is completed in accordance with this Agreement, the approved plans, MTEM C's technical specifications and all applicable specifications and safety codes.
7. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable or the City cancels the Project for any reason, the City reserves the right to terminate this Agreement upon written notice to the MTEM C. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the City will reimburse MTEM C for the actual cost(s), incurred through the date of termination, of the Easement Acquisitions and Construction Costs, whether incurred for public or private right-of-way, but only if MTEM C provides reasonable documentation for all such cost(s).
8. This Agreement may be modified by the parties only by a written amendment specifically citing the paragraph within this Agreement to be amended.
9. MTEM C shall comply with all applicable federal, state and local laws and regulations in the performance of its duties under this Agreement.
10. The Estimated Total Construction Costs will be paid to MTEM C by the City prior to commencement of construction. If additional monies are further owed, MTEM C may submit periodic invoices to the City during the course of the relocation. Invoices shall be payable within thirty (30) days after receipt of same by the City. Within one (1) year of completion of the relocation of Electric Facilities, MTEM C and the City shall settle on a final billing. MTEM C will provide reasonable documentation for all such costs.

11. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
12. MTEMC agrees to timely review the plans as provided by the City. MTEMC approvals of such plans will not be unreasonably withheld.
13. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee.
14. If any terms, covenants, conditions, or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
15. The City and MTEMC agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), or by nationally recognized overnight delivery service (such as FedEx or UPS), addressed to the respective party at the appropriate address as set forth below or to such other party or address as may be hereafter specified by written notice.

**The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_\_ Day of \_\_\_\_\_, 2019.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**CITY OF FRANKLIN, TENNESSEE**

**MIDDLE TENNESSEE ELECTRIC  
MEMBERSHIP CORPORATION**

By: \_\_\_\_\_  
Dr. Ken Moore  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Eric S. Stuckey

City Administrator

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney