

UTILITY RELOCATION AGREEMENT
FOR CENTURY COURT AND BEASLEY DRIVE CONNECTOR PROJECT
COF Contract No.: 2014-0308

THIS AGREEMENT is made and entered into on this the ____ day of _____, 2014, by and between the **City of Franklin, Tennessee (“City”)** and **Middle Tennessee Electric Membership Corporation (“Utility”)**.

WITNESSETH:

WHEREAS, the **City** plans to construct roadway improvements to provide connectivity between Century Court and Beasley Drive (the **“Project”**), as shown on construction plans prepared by Cannon and Cannon, Inc. (COF Contract No. 2014-0001); and

WHEREAS, the **Utility** owns and maintains overhead utility lines and related facilities (the **“Electric Facilities”**) on and under private and public utility easements as shown on Century Industrial Park Section Two Plat (Book 5, Page 85), Century Industrial Park Section One (Plat Book 6, Page 5) and Right of Way Easement (Book 6105, Pages 168-169), Register’s Office of Williamson County (the **“Easements”**); and

WHEREAS, the **Electric Facilities** must be relocated to accommodate the **Project**; and

WHEREAS, the relocation of **Electric Facilities** will be designed and constructed by the **Utility** or the **Utility’s** contractor; and

WHEREAS, the **City** will provide the **Utility** with final design plans to ensure the **Electric Facilities** are relocated in a manner to accommodate 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 **Utility** shall be solely responsible for acquiring all utility easements outside of the available State or City-owned rights-of-way as may be needed to construct its **Electric Facilities** (the **“Acquisition Services”**). The **City** agrees to occasionally assist when requested by **Utility** in the acquisition of such easements by facilitating discussions with certain landowners.
3. The **City** will reimburse the **Utility** for the cost of the **Acquisition Services**, which shall include survey, appraisal, and condemnation costs, and any other cost related to the acquisition of necessary easements. The **City** will also reimburse the **Utility** for any cost related to the relocation of **Electric Facilities**. Costs reimbursed by the **City** pursuant to this Section 3 shall be actual costs expended by the **Utility**, regardless of whether such

costs are more or less than the estimated cost as shown in **Attachment A – Estimated Relocation Cost and Schedule**.

4. The **Utility** shall have the responsibility to inspect all items of installation of the **Utility'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, the **Utility's** technical specifications and all applicable specifications and safety codes.
5. 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 **Utility**. Said termination shall not be deemed a breach of contract by the **City**. Upon such termination, the **City** will reimburse the **Utility** for the actual cost(s), incurred through the date of termination, of the **Acquisition Services** and relocation of the Electric Facilities only if the **Utility** provides reasonable documentation for all such cost(s).
6. This **Agreement** may be modified by the parties only by a written amendment specifically citing the paragraph within this **Agreement** to be amended.
7. The **Utility** shall comply with all applicable federal, state and **City** laws and regulations in the performance of its duties under this **Agreement**.
8. The **Utility** will acquire new easement(s) in accordance with the plans as approved by the **Utility** and provided by the **City**.
9. The Utility may submit periodic invoices to the **City** during the course of the relocation (not more frequently than every thirty (30) days), which invoices shall be payable within thirty (30) days after receipt of same by the **City**. Within sixty (60) days of completion of the relocation of **Electric Facilities**, the **Utility** and the **City** shall settle on a final billing. The **Utility** will provide reasonable documentation for all such costs.
10. 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.
11. TIME IS OF THE ESSENCE OF THIS **AGREEMENT**.
12. The **Utility** agrees to timely review the plans as provided by the **City**. **Utility** 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 Williamson County, Tennessee. The **Utility** acknowledges and agrees that any rights or claims against the **City** or its officials, contractors, agents or employees hereunder, and any remedies

arising therefrom, shall be subject to and limited to those rights and remedies, if any, available to the **City** under law.

- 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 the **Utility** 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), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

City

Utility

Paul P. Holzen, Director of Engineering
City of Franklin - Engineering Department
109 3rd Ave South,
Franklin, TN 37064
615-550-6679

IN WITNESS WHEREOF, the parties have executed this Agreement.

The 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