

**UTILITY RELOCATION AGREEMENT WITH AT&T TENNESSEE
FOR THE HILLSBORO ROAD IMPROVEMENTS PROJECT PHASE 2,
INDEPENDENCE SQUARE TO MACK HATCHER PARKWAY
COF Contract No. 2015-0044**

THIS AGREEMENT is by and between the **City of Franklin, Tennessee** ("City") and **AT&T Tennessee** ("Utility").

WITNESSETH:

WHEREAS, the City plans to construct the Hillsboro Road Improvements Project Phase 2, Independence Square to Mack Hatcher Parkway, TDOT PIN 108409.00, (the "Project"), as shown on construction plans and specifications as part of COF Contract No. 2015-0002; and

WHEREAS, for said Project to be constructed it will be necessary for the Utility to relocate certain parts of its facilities, one hundred percent (100%) of which are located on public highway right-of-way and zero percent (0%) of which are located on private utility rights-of-way or easements; and

WHEREAS, the City is liable for the relocation of the Utility's facilities located on private Utility rights-of-way but is not liable for adjustment of the Utility's facilities located on publicly owned rights-of-way or for any Utility betterment costs; and

WHEREAS, the Utility has furnished the City with final Utility relocation construction plans and a construction cost estimate showing the manner of relocating their facilities and the estimated total cost is in the amount of One Hundred Forty Thousand One Hundred Thirty and 60/100 Dollars (\$140,130.60) ("Utility's Cost"); and

WHEREAS, the parties desire to enter into an Agreement to provide for the relocation of the Utility's facilities in conjunction with the City's Project, and the Utility has requested the City to undertake the hereinafter described Utility relocation work in its Project construction contract (COF Contract No. 2015-0002); and

WHEREAS, it is in the mutual interest of the parties that this Utility relocation work be performed together with the construction of 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 will show the proposed relocation of the Utility's facilities in the Project construction plans as Project cost items and will receive bids for same by its highway contractor as a part of the construction contract (COF Contract No. 2015-0002) for construction of the above mentioned Project. The City will be responsible for having its

contractor perform the aforesaid Utility relocation work in accordance with the City's construction contract, including the Project plans, standard specifications, special provisions, and the Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference.

3. The Utility agrees to reimburse the City for the Utility's Cost. Reimbursement shall be based on the reasonable and customary actual cost of the Utility's Cost items as shown on the approved Project plans incorporated herein by reference, which shall only include relocation of Utility cables and manholes with conduit runs. It is further agreed that the Utility will make payment to the City in the amount of the estimated cost of the Utility's Cost items prior to advertisement for bids. In the event said payment exceeds the aggregate amount of the Utility's Cost charges, the difference will be refunded to the Utility. In the event said Utility's Cost charges exceed the deposit, the Utility agrees to reimburse the City for such additional amount.
4. 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 prior to awarding the Project construction contract, 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.
5. The Utility agrees that the City may advertise for and receive bids for the construction of the Project, including the proposed relocation of the Utility's facilities, and award and enter into contract with the lowest responsible bidder.
6. If the apparent low bidder's bid for the Utility's Cost items exceeds the estimate by more than twenty percent (20%), the City shall notify the Utility of the bid amount and the Utility can agree to the bid or may request the withdrawal of the utility relocation work from the City's Project contract, provided that the Utility agrees to perform the utility relocation work with its own forces or by separate contract. Should the utility choose to withdraw its required relocation work from the City's Project contract and do the utility relocation work with its own forces or by separate contract, the utility shall be liable for any and all costs associated with any delay it may cause to the City's Project. It is also understood and agreed that the City, in its sole discretion, may reject any and all bids submitted for the construction of said Project without any liability whatsoever to the Utility.
7. It is further agreed that in letting the construction contract with respect to the proposed relocation of the Utility's facilities, the City is acting solely in accommodation of the Utility and shall have no liability to the Utility for any damages or claims arising out of acts or omissions on the part of the City's contractor. The Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's highway construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.

8. The Utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference are provided by the Utility, signed and sealed in accordance with State regulations by a licensed engineer employed by the Utility, and the Utility is solely responsible for said relocation plans and specifications. The Utility shall be responsible for all direct or indirect costs resulting from errors and omissions of said relocations plans and specifications included in the City construction contract. The Utility shall be responsible to provide the City any and all necessary plans, electronic files, documentation, or anything else that is deemed necessary by the City to include the Utility work in the City construction contract.
9. The Utility has acquired or shall acquire all Utility rights-of-way outside of the available public highway right-of-way and/or easements as may be needed to relocate its Utility facilities, including any betterment, and the Utility shall provide the City and its contractor with the rights to use these Utility rights-of-way and/or easements for construction purposes. The Utility further agrees that it has acquired or will acquire these rights-of-way at no cost to the City except insofar as City may be liable to reimburse the Utility for the replacement of previously owned private Utility right-of-way and/or easements.
10. The Utility shall have the right and responsibility to inspect and approve, prior to the City's release of its Project contractor's bond, all items of Utility relocation work to be performed under the proposed highway construction contract to ensure that the relocation is completed in accordance with this Agreement and all applicable plans, specifications, and safety codes. The inspection of the Utility's facilities shall be performed at no cost to the City.
11. The Utility agrees to perform the Utility engineering work and inspection work provided for in this Agreement by its own forces and/or consultant engineering services approved by the City.
12. The City may submit periodic invoices to the Utility during the course of the Project (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 Utility's relocated facilities, the City and Utility shall settle on a final billing. The City and Utility will provide reasonable documentation to reconcile all such costs.
13. The Utility agrees, to the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility or its employees in the performance of the Utility's engineering and inspection work relating to this Agreement. Except to the extent caused by the City's negligence or willful misconduct, the Utility agrees that it will not hold the City responsible for any claims arising out of the inclusion of the Utility's items of work in the City's Project construction contract. Under this Agreement, the "City" shall include any and all officers and employees of the City of Franklin, Tennessee acting within the scope of their employment with the City.

14. In the event that the City is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in the City's defense. The City shall give the Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent the City in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-1 06.
15. The City shall have no liability except as specifically provided in this Agreement.
16. 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 specifically citing the paragraph within the Agreement to be amended and signed by the parties hereto.
17. The Utility shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Agreement. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Agreement and subject the Utility to the repayment of all City funds expended, or expenses incurred, under this Agreement.
18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
19. TIME IS OF THE ESSENCE OF THIS AGREEMENT.
20. 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.
21. 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.

To City:
William Banks
Staff Engineer
109 3rd Avenue South
Franklin, TN 37064
Fax: (615) 791-3293
William.banks@franklintn.gov

To AT&T Tennessee
Name: LEE KORNEGAY
Title: MGR - OSP ENGR.
Address: 116 S. CANNON AVE
MURFREESBORO, TN 37129
Fax: (615) 848-2082
Email: KK4096@ATT.COM


The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____, 2015.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated below.

CITY OF FRANKLIN, TENNESSEE

AT&T Tennessee

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: 
Print: JAMIE LUCAS, JR
Title: DIRECTOR - TN/KY ENGINEERING
Date: 7/8/15

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Kristen L. Corn, Staff Attorney