

**UTILITY RELOCATION AGREEMENT WITH ATMOS ENERGY CORPORATION
FOR THE FRANKLIN ROAD CORRIDOR IMPROVEMENTS (STREETSCAPE) PROJECT,
HARPETH RIVER BRIDGE TO HARPETH INDUSTRIAL COURT/HOOPER LANE
COF Contract No. 2019-0229**

THIS AGREEMENT is by and between the **City of Franklin, Tennessee** ("City") and **Atmos Energy Corporation** ("Utility").

WITNESSETH:

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

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

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

WHEREAS, the City, with coordination from the Utility, has developed final Utility relocation/construction plans and a construction cost estimate showing the manner of relocating their facilities and the estimated total relocation cost ("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. 2019-0230); 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 the proposed relocation by its highway contractor as a part of the construction contract (COF Contract No. 2019-0230) 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 agreed upon by and between the parties , 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 actual cost of the Utility's Cost items as shown on the approved Project plans incorporated herein by reference. 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 required facility betterments, and award and enter into contract with the lowest responsive and responsible bidder. The City shall include the following provision in the winning contract: "All parties agree that Atmos Energy Corporation ("Atmos Energy") shall be, and is hereby, named as an express third-party beneficiary of this contract with respect to Atmos Energy's facilities and contractor's work related to the same (the "Gas Utility Work"). Atmos Energy shall be named as an additional insured on contractor's liability insurance, and all warranties relating to the Gas Utility Work shall be for the benefit of, and enforceable by, Atmos Energy."
6. 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. 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 . 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. The City 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.
8. The Utility relocation plans and specifications, agreed upon by and between the parties, all of which are incorporated herein by reference are provided by the City, in coordination with the Utility, signed and sealed in accordance with State regulations by a licensed Professional Engineer contracted by the City. The Utility is solely responsible for approving the relocation plans and specifications. The Utility shall be responsible for all direct or indirect costs resulting from errors and omissions of the relocation plans and specifications included in the City's Project 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 City and Utility agree to relocate and construct the Utility's facilities within public rights-of-way and/or public utility and drainage easements. The City has acquired or shall acquire all necessary public highway rights-of-way and public utility and drainage easements.
10. The Utility has acquired or shall acquire all Utility rights-of-way outside of the available public highway rights-of-way and/or easements as may be needed to relocate its Utility facilities, including any betterments, 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.
11. The City's contractor will be pre-approved by the Utility to perform the Utility's relocation work or must become approved by the Utility before work commences. The City's contractor will provide all work and materials necessary to complete the construction of the Utility's relocations and new facilities that are a part of the Project, in accordance with the plans prepared by the City, and approved by the City and Utility in accordance with the Utility's technical specifications.
12. 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 City's Project 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 by its own forces and/or consultant engineering services, at no cost to the City.
13. 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.
14. The Utility agrees to indemnify and hold the City harmless from and against liability from all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses arise from acts, omissions, errors, or negligence by the Utility or its employees. In the event the claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Utility and the City, they shall be borne by each party in proportion to its own negligence. The terms and conditions of this paragraph shall survive completion of the Agreement.
15. 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.
16. 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.

17. The parties are not required to arbitrate or mediate prior to filing any legal claim arising out of or relating to this agreement. No arbitration or mediation shall be binding.
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 any 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 of Franklin 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.
22. 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.

To City:
 Paul Holzen
 Director of Engineering
 109 3rd Avenue South
 Franklin, TN 37064
 Phone: (615) 791-3218
Paul.Holzen@franklintn.gov

Atmos Energy Corporation
 Name: _____
 Title: _____
 Address: _____

 Phone: _____
 Email: _____

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____, 2019.

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

CITY OF FRANKLIN, TENNESSEE

ATMOS ENERGY CORPORATION

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Maricruz R. Fincher, Staff Attorney