

BECKWITH-RUTLAND RD – UTILITY RELOCATION AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City of Mt. Juliet**, a municipality of the State of Tennessee ("City") and **Middle Tennessee Electric Membership Corporation** ("MTE").

WITNESSETH:

WHEREAS, the City of Mt. Juliet plans to widen the intersection of Beckwith, S. Rutland, and Posey Hill Rd, located in Wilson County, Tennessee (hereinafter called the "Project"), and for said Project to be constructed it will be necessary for MTE to relocate its facilities, **60%** percent of which are located in public right-of-way and **40%** percent of which are located on private utility right-of-way; and

WHEREAS, the Utility has furnished the City with an estimate and relocation plans showing the cost and manner of relocating these facilities, including engineering, which estimate is in the amount of **\$403,126.70**, and of which **40%** represents the pro-rata share to which the Utility is entitled to reimbursement for relocation of utility facilities located on private utility right-of-way, and **60%** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way; and

WHEREAS, the City is liable for the relocation of utility facilities located on private utility right-of-way but is not liable for adjustment of the facilities located on publicly owned right-of-way; and

WHEREAS, the parties want to enter into agreement to provide for the relocation of said facilities;

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. MTE shall be solely responsible for acquiring all MTE easements outside of the available public rights-of-way as may be needed to construct its electric facilities (the "Easement Acquisitions"). The City will reimburse MTE for 100% of the costs of the Easement Acquisitions, such amount estimated to be **\$50,000.00**.
3. The City will reimburse MTE for all other costs related to the relocation of its facilities on private right-of-way, in an amount estimated to be **\$211,250.68** for the total construction costs, including but not limited to labor, materials, engineering, inspection, and betterment ("Construction Costs"). Costs reimbursed by the City pursuant to this Section 3 shall be actual costs expended by MTE, regardless of whether such costs are more or less than the estimated cost as shown in Exhibit A – Estimated Total Construction Costs.
4. The City is responsible for any underground ditch work and installation of conduit pursuant to the specifications as described in the MTE Electrical Service Guidelines and Underground Installation Guide, which will be provided to City upon request. The City

acknowledges and agrees that MTE will not begin construction until MTE approves any ditch work and conduit installation according to its specifications.

6. The City acknowledges and agrees that no construction will commence until: a.) the City has approved MTE's relocation plans, all cost estimates associated therewith, and any related amendments thereto; b.) all Easement Acquisitions have been completed in MTE's sole discretion; and c.) MTE approves any ditch work and conduit installations performed by the City.
7. MTE shall have the responsibility to inspect all items of installation of MTE'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, MTE's technical specifications and all applicable specifications and safety codes. The City agrees that it will reimburse MTE the pro-rata share for the inspection of utility facilities on private utility right-of-way when the utility relocation is completed in accordance with the approved relocation plans. The inspection of utility facilities on public highway right-of-way shall be performed at no cost to The City.
8. 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 MTE. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the City will reimburse MTE 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 MTE provides reasonable documentation for all such cost(s).
9. This Agreement may be modified by the parties only by a written amendment specifically citing the paragraph within this Agreement to be amended.
10. MTE shall comply with all applicable federal, state and local laws and regulations in the performance of its duties under this Agreement.
11. MTE 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, MTE and the City shall settle on a final billing. MTE will provide reasonable documentation for all such costs.
12. 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.
13. MTE agrees to timely review the plans as provided by the City. MTE approvals of such plans will not be unreasonably withheld.
14. 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 Wilson County, Tennessee.

15. 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.
16. The City and MTE 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.

City of Mt. Juliet
Attn: Matthew White, P.E.
Deputy Public Works Director
115 Clemmons Rd
Mt. Juliet, TN 37122
Email: mwhite@mtjuliet-tn.gov

To the Utility:
Middle Tennessee Electric
Attn: Christopher Weaver
555 New Salem Hwy.
Murfreesboro, TN 37129
Email: ChrisWeaver@mte.com

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF MT. JULIET

By: _____

Print: _____
Mayor

Date: _____

**MIDDLE TENNESSEE ELECTRIC
MEMBERSHIP CORPORATION**

By: _____

Print: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____