

COF Contract No. 2009-0080

THE MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION

O.B. 102-K, ATTACHMENT NO. 1

Effective 06-24-09

Agreement for Provision of Electric Service in Developments

THIS AGREEMENT is made and entered into by and between the undersigned applicant/developer and The Middle Tennessee Electric Membership Corporation (MTEMC) subject to the following premises, terms and conditions:

WHEREAS, the undersigned desires to obtain electrical service for certain property within the service area of MTEMC known as Hillsboro Rd (Bridge St. to in the county of Williamson; and Mack Hatcher #3 off site circuits

WHEREAS, MTEMC is willing to provide electrical service to the subject property in accordance with its rules and regulations, operational bulletins, policies, and the terms and conditions of this Agreement:

PREMISES CONSIDERED, the parties do hereby agree as follows:

- A. The parties acknowledge the foregoing premises to be true and correct and to form the basis of this Agreement.
- B. The undersigned acknowledges receipt of a copy of Operational Bulletin 102-N, which sets forth certain requirements for the installation of underground service. A copy of said operational bulletin is attached to the Agreement. Each and every provision of said operational bulletin is incorporated by reference in this Agreement and made a part hereof as if set forth verbatim.
- C. The undersigned agrees to pay MTEMC \$ 1,632,877.00 for provision of electric service to the property named above, and a copy of the breakdown of these costs is attached hereto. This cost is the total cost of any required Contributions in Aid of Construction (CIAC) plus engineering costs, inspection costs, and feeder circuit related costs, as required. No materials shall be ordered or work performed on the project by MTEMC, other than that design or approval work required allowing an estimate of costs to be prepared, until the total amount shown above has been paid to MTEMC. Any cost estimates provided shall be valid for a period of thirty (30) days, after which time the costs may be recalculated by MTEMC based on current material and labor pricing.
- D. In some cases, the undersigned may desire that MTEMC perform inspection services of the conduit and/or duct system within the development prior to the ordering of any materials required to provide electric service to the development. If this is desired and MTEMC engineering staff approves, then the undersigned agrees to pay an amount equal to fifteen percent of the total amount shown above, which in this case is \$ N/A. The remaining 85 percent of the full amount shown above must be paid to MTEMC prior to the ordering of any

material for this project or any work being performed by MTEMC on the project other than the conduit and/or duct inspections.

- E. The undersigned acknowledges that it has furnished, or will furnish, MTEMC a plat depicting the final grade of all or a portion of the subject property. The undersigned acknowledges that the final grade, especially in the area where the underground cable is to be laid, is of particular importance to MTEMC inasmuch as the bottom of the ditch to be excavated by developer to contain the electrical cable, conduits and other equipment, must be at least 48 inches below final grade. Further, the undersigned acknowledges and understands that MTEMC will be relying entirely on information furnished by the undersigned with respect to the final grade and other certain matters, and that MTEMC does not do independent field work or engineering with respect to such matters. In the event the actual final grade of the subject property is at an elevation below the final grade depicted on the plat furnished, or to be furnished, by the undersigned, the undersigned agrees that it will pay all costs and expenses including, but not limited to, labor, materials, equipment usage, engineering time, and otherwise, which are incurred by MTEMC to make whatever adjustments and/or relocations are deemed necessary by MTEMC to ensure that the depth of the underground cable as well as the placement of all equipment on the subject property meet specifications deemed appropriate by MTEMC. The determination of the amount of such costs and expenses shall be the sole province of MTEMC and the undersigned agrees to pay whatever amount is determined by MTEMC to be appropriate.
- F. Further, the undersigned has furnished, or will furnish, a copy of the current long-range thoroughfare plan, or its equivalent, for the city and/or county in which the property being served is located. MTEMC shall use the information from the major thoroughfare plan, the MTEMC Long-Range Feeder Plan, and the development location to determine whether or not feeder circuitry shall be required through the development. Any required feeder circuitry may be installed overhead by MTEMC at no expense to the developer. If for any reason the feeder circuitry is requested or required to be placed underground, the developer shall be responsible for the cost of the feeder circuitry. Payment in full of this cost shall be required before any work is performed by MTEMC under this contract, including ordering of materials.
- G. The undersigned agrees that it will comply fully with all of the requirements and provisions of the operational bulletin which is attached hereto as well as the rules and regulations of MTEMC. In the event the undersigned fails to comply with any of said requirements and provisions, the undersigned agrees that it will reimburse MTEMC for all costs and expenses including, but not limited to labor, materials, equipment usage, engineering time and otherwise, incurred by MTEMC in making corrections and adjustments deemed appropriate by MTEMC to ensure that the installation does fully comply with the requirements of the operational bulletin and the rules and regulations of MTEMC. The determination of the amount of such cost and expenses shall be the sole province of MTEMC and the undersigned agrees to pay whatever amount is determined by MTEMC to be appropriate.
- H. All additional statements for additional costs or for the cost of adjustments and/or relocations shall be paid within 30 days of their date. Any sum not paid within 30 days of the date of the invoice shall bear interest at the rate of 1-1/2% per month.



- I. ~~In the event MTEMC employs the services of an attorney to collect any sum which MTEMC deems due and owing, the undersigned agrees that it shall be liable to MTEMC for all attorney's fees and expenses incurred by MTEMC to collect said sum.~~
- J. Upon determination by MTEMC that: (1) installation of MTEMC facilities as defined under this agreement has been completed and (2) acceptance by the city/county engineering staff of the water, sewer, roadway grading and drainage systems and recommendation to the city/county that performance bonds be released, then MTEMC will execute a release discharging the undersigned and the Guarantor from further obligations under this Agreement.
- K. This Agreement contains the entire understanding of the parties. There are no representations, warranties or promises other than those expressly set forth herein.
- L. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs and assigns.
- M. In the event any provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such individual provision shall not affect the other provisions of the Agreement, said provisions being severable.
- N. This Agreement may be altered, amended or canceled only by instrument in writing signed by each of the parties and this requirement cannot be waived by oral agreement.

This the _____ day of _____.

THE MIDDLE TENNESSEE ELECTRIC
MEMBERSHIP CORPORATION

By: _____
DISTRICT MANAGER OR DEVELOPMENT ENGINEER

APPLICANT/DEVELOPER

By: 

**AMENDMENT NO 1 TO
MIDDLE TENNESSEE ELECTRIC MEMBERSHIP
CORPORATION (MTEMC) AGREEMENT
FOR HILLSBORO ROAD IMPROVEMENTS
COF Contract No 2009-0080**

THIS AMENDMENT is made and entered into on this the --- day of ----, 2010, by and between the **City of Franklin, Tennessee** ("City") and **Middle Tennessee Electric Membership Corporation (MTEMC)** ("Utility").

WITNESSETH:

WHEREAS, the City approved the Agreement for Provision of Electric Service (O.B. 102-K, Attachment No. 1) with MTEMC for the relocation and undergrounding of their electrical lines along Hillsboro Road for the Hillsboro Road Improvements Project (hereinafter called the "Project") located in the City in Williamson County, Tennessee; and

WHEREAS, as a part of the Agreement, the City is required to relocate the three (3) of the Utility's electric circuits off-site of the Project; and

WHEREAS, the new easements for the addition, or relocation of poles and guy wire anchors for the new relocated electric circuits; and

WHEREAS, the Utility is requiring that the City agree to acquire, including the payment of all costs, for the acquisition of the easements necessary for the relocation of their facilities prior to their approval of the Agreement.

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. That an additional condition; paragraph "O"; as follows be added to the Agreement;

"O. The City of Franklin shall be responsible for acquisition, including all costs, of any pole and/or guy wire anchor easements required for the relocation of the MTEMC facilities as approved in conjunction with this Agreement."

4. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

5. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

6. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

7. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

8. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

9. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement as approved by City on November 24, 2009 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

**MIDDLE TENNESSEE ELECTRIC
MEMBERSHIP CORPORATION**

By: _____
John C. Schroer
Mayor
Date: _____

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

Approved as to form:

Shauna R. Billingsley, City Attorney


DRAFT



MEMORANDUM

October 1, 2010

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
David Parker, City Engineer/CIP Executive

SUBJECT: **Amendment (Special Condition) to Agreement with
Middle Tennessee Electric Membership Corporation (MTEMC)
For Hillsboro Road Project COF Contract No 2009-0080**

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an amendment to the Agreement (COF Contract No 2009-0080) with MTEMC for the relocation of electrical lines along Hillsboro Road.

Background

In November 2009, BOMA approved the Agreement for Provision of Electric Service (O.B. 102-K, Attachment No. 1) with MTEMC for the relocation and undergrounding of their electrical lines along Hillsboro Road. This work is necessary for the construction of the Hillsboro Road Improvements Project as designed. The signed Agreement was forwarded to MTEMC for execution, but was returned unsigned in order to obtain a clarification as to who was responsible for pole and guy wire anchor easements. Typically, when the City has required the relocation of MTEMC facilities, the City has been responsible for these easements.

The reason for the long delay in trying to settle this issue is due to the time needed for MTEMC to design their relocation and provide the City with the information as to where easements will be required. The easements will be acquired utilizing MTEMC standard easement agreements and in MTEMC's name.

The Special Condition proposed to be added to the Agreement is as new paragraph "O";

"O. The City of Franklin shall be responsible for acquisition, including all costs, of any pole and/or guy wire anchor easements required for the relocation of the MTEMC facilities as approved in conjunction with this Agreement."

Financial Impact

The exact costs associated with the easement acquisitions are unknown at this time, but these costs are a part of the Hillsboro Road Project and should be covered in the estimated cost of the Project.

Options

In order to avoid any further delays in the Hillsboro Road Project, there is no viable alternative to approving this amendment/special condition to the Agreement.

Recommendation

Approval of the amendment/special condition to the MTEMC Agreement for the Hillsboro Road Improvements Project is recommended.