

Office Use Only
MASTER CONTRACT NUMBER:

UTILITY AGREEMENT (Engineering & Design Phase)

This Utility Agreement for the Engineering and Design Phase of Work ("Agreement") is made by and between the CITY OF BRANSON, MISSOURI, hereinafter the "City" and the WHITE RIVER VALLEY ELECTRIC COOPERATIVE, (hereinafter "Utility Company"), and shall be effective on the date of approval and execution of this Agreement by and on behalf of the City (the "Effective Date"). Utility Company and City are collectively referred to herein as the "Parties".

WHEREAS, the City has determined that it is necessary to make certain roadway improvements that will also involve the relocation of utilities in and along the City's street system on the 76 Country Boulevard corridor; and

WHEREAS, these improvements are intended to enhance the safety and efficiency of this thoroughfare and to improve aesthetic appearance within the corridor of Segment I and Segment 2 (the "Corridor"); and

WHEREAS, the City will construct and own underground utility duct banks that will house electrical and communication facilities for utilities operating in the City's jurisdiction within the Corridor; and

WHEREAS, the duct banks will be utilized by existing and future utility providers who provide services within the City and along the Corridor; and

WHEREAS, the duct banks will be located in the 6' utility zone, and/or in the permanent utility easement, or the duct banks will be placed by a variance that permits location elsewhere in the right of way, as authorized by the City; and

WHEREAS, the Utility Company may access, maintain, and upgrade its facilities within the duct banks in the Corridor upon advanced notice provided to the City except in the case of an emergency, natural disaster and/or power outage, in which event, the Utility Company may access duct banks to restore power without notice; and

WHEREAS, future placement of facilities by other occupants of the duct bank will be granted, provided that vacant conduits are available, and only under the authority of a utility permit granted by the City; and

WHEREAS, any utility companies that desire to place future utility facilities within the right of way or permanent utility easement outside of the duct banks shall be required to have their request evaluated (as a variance) by the City and shall pay all required fees associated with their request and occupancy of such spaces; and

WHEREAS, Utility Company will have ownership and control of its specified conduits constructed or placed within the duct banks to operate its facilities until such conduits are no longer

needed by the Utility Company, as determined by the Utility Company in its absolute discretion, at which time the ownership of the conduit(s) will revert back to the City; and

WHEREAS, this Agreement is intended to serve as authority for the City to reimburse the Utility Company for the engineering and design work associated with placing the Utility Company's facilities in the duct banks, with such facilities to have like-kind capabilities and no significant betterments from that which currently exist in the Corridor;

NOW, THEREFORE, be it mutually agreed between the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as follows:

1. **Utility Company Engineering and Design Services.** City shall supply Utility Company with its plans and specifications for the design and construction of the duct banks within the Corridor along with any construction work plans and related documents (the "Plans"). These Plans may be developed by the City in phases. Utility Company will provide comments and general guidance and recommendations based on its input and review of the Plans; however, the Utility Company shall have no obligation to specifically seal or draft any portion of the Plans as such responsibility shall rest with the City. In addition, the Utility Company, on reasonable request, shall attend planning meetings and shall assist with the coordination of the Plan phases, mapping of facilities and utility locates, preparation of its facility "as-built" drawings in the Corridor, and attendance at site visits throughout the construction process as needed and requested. These services outlined in this paragraph shall be referred to herein as the "Services".
2. **Agreement Price.** City shall pay the Utility Company for completion of the work in accordance with this Agreement in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). This sum shall be paid by the City to the Utility Company within 30 days after the Effective Date of this Agreement.
3. **Commencement of Work.** The engineering and design work as described in this Agreement shall commence within thirty (30) days of the effective date of this Agreement and be completed no later than 180 after the work has commenced.
4. **Insurance.** Without limiting any of the other obligations or liabilities of the Utility Company, the Utility Company shall secure and maintain at its own cost and expense, throughout the duration of this Agreement and until the work is completed and accepted by City, insurance of such types and in such amounts as may be necessary to protect it and the interests of City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Agreement. The forms and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the Utility Company to always maintain adequate insurance coverage during the term of this Agreement. Failure of the Utility Company to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under this Agreement.

The certificates of insurance, including evidence of the required endorsements hereunder the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Agreement to the Utility Company and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company prior to modification, cancellation or nonrenewal of such insurance. Such notices shall be mailed, certified mail, return receipt requested to the City Clerk Compliance Officer at 110 W. Maddux Street, Branson, MO 65616.

- a. Worker's Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million and no/100 Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Utility Company and sub-contractor.
- b. Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo (Supp 1995). The City of Branson shall be named as additional insured. Blasting operations shall not be performed unless and until the Utility Company has obtained and furnished to the engineer a certificate of blasting coverage properly executed by a qualified agent or representative of the insurance company. In case the insurance company has no local agent, a telegraphic certificate may be accepted.
- c. Automobile Liability Insurance with a company authorized to do business in the State of Missouri covering bodily injury and property damage for owned, non-owned, and hired vehicles, with respect to injuries and/or death of any one person in a single accident or occurrence. The policy shall meet the scope or extent of the city's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo (Supp 1995). The City of Branson shall be named as additional insured. The policy shall also specify that the Utility Company its employees and/or the subcontractor's employees operating their own vehicles for business reasons applicable to the performance of their work whether or not involved in operations pertaining to the performance of the Agreement for the City, will be protected by a non-ownership and hired automobile liability policy with limits as described above for automobile liability and property damage.
- d. All of the above coverage described pertaining to Worker's Compensation, Public Liability, Automobile Liability, and Non-ownership and Hired Car Liability requiring certificates of insurance to the City must specifically provide that "no changes of coverage will be made in this Agreement, nor will any coverage be cancelled or altered without a thirty (30) day notice of cancellation or alteration being mailed to the City Clerk Compliance Officer, City of Branson, Missouri by registered mail."

- e. Scope of Insurance and Special Hazard. The insurance required under Subparagraphs B and C hereof shall provide adequate protection for the Utility Company against damage claims which may arise from operations under this Agreement, whether such operations be by the insured or by anyone directly or indirectly employed by it, and also against any special hazards which may be encountered in the performance of this Agreement.
 - f. The Utility Company shall furnish the City, prior to approval of this Agreement, the policy as specified in this section and satisfactory proof of carriage of all the insurance required by this Agreement. NOTE: It is the sole responsibility of the Utility Company to furnish current insurance certificates if expiration dates do not coincide with the beginning and ending dates of this Agreement. Current insurance certificates are also required for any additional renewal periods covered by this Agreement. Any failure to maintain insurance coverage shall not relieve any contractual responsibility or obligation or liability under the Agreement documents. Renewal certificates for this Agreement shall be sent to the City of Branson City Clerk Compliance Officer, 110 W. Maddux, Branson, MO 65616.
 - g. In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo. (Supp 1995) is broadened or increased during the term of this Agreement by legislative or judicial action, the City may require Utility Company, upon ten (10) days written notice, to execute an Agreement addendum whereby the Utility Company agrees to provide, at a price not exceeding Utility Company's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. The sovereign immunity limits for Missouri public entities are calculated by the Missouri Department of Insurance as of January 1st each calendar year and published annually in the Missouri Register pursuant to Sect. 537.610 RSMo. (see <http://www.insurance.mo.gov/industry/sovimmunity.htm>). Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.
 - h. Unless otherwise specifically indicated in the Agreement, no deductibles will be permitted with respect to any of the above-described policies.
5. **Design Assumption.** Utility Company assumes that all information, measurements, and facts contained in the Plans are accurate and true and will not accept liability for any loss or damage caused in reliance on such information, measurements, and/or facts.
6. **Indemnification.**
- a. In no event shall the City be liable to the Utility Company for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach

of this Agreement. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Agreement.

- b. The Utility Company shall defend, indemnify, and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays, and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontractor thereunder (the Utility Company hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Utility Company, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents, and employees.
- c. The Utility Company agrees to defend, indemnify, and save the City harmless from and against all claims, suits and actions of every description, brought against the City and from all damage and costs by reason or on account of any injuries or damages received or sustained by any person or persons, or their property, by Utility Company, its servants, agents or subcontractors in the construction of said work, or by any negligence or carelessness in the performance of same, or on account of any act or omission if Utility Company, its servants, agents, or subcontractors, arising out of this Agreement to Utility Company.
- d. The Utility Company shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this Agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
- e. The indemnification obligations of Utility Company hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Utility Company, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents, and employees, for which indemnification is sought.
- f. The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents, and employees, which are otherwise available under statute, or in law or equity.
- g. All the provisions in this Agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.
- h. To the extent allowed by law and without waiving sovereign immunity, City agrees to indemnify and hold harmless Utility Company and its employees, agents

and contractors, from and against any and all claims, costs, loss, damage, injury, death, and liability, including reasonable attorney's fees, arising from the Plans, the actions or inactions related thereto, and caused in whole or in part by negligent, willful or wanton, or intentional acts or omissions of City, its employees, agents and/or contractors. This provision shall create no duty on the part of the City where said claims, costs, loss, damage, injury, death, or liability is caused solely by negligent, willful or wanton, or intentional acts or omissions of the Utility Company or its employees, agents, and/or contractors.

12. **General Independent Contractor Clause.** This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Utility Company will be independent and not the City's employee for all purposes., including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Utility Company shall retain sole and absolute discretion in the judgment of the manner and means of conducting the Utility Company's activities and responsibilities hereunder. The Utility Company agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Utility Company and the City, and the City will not be liable for any obligation incurred by the Utility Company, including but not limited to unpaid minimum wages and/or overtime premiums, or unpaid subcontractors.
13. **Termination.** The City reserves the right to terminate this Agreement by giving at least five (5) days' prior written notice to the Utility Company, without prejudice to any other rights or remedies of the City should the Utility Company be adjudged bankrupt, or if Utility Company should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Utility Company or for any of its property, or if Utility Company should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Utility Company should refuse or fail to make prompt payment to any person supplying labor or materials for the work under this Agreement, or persistently disregard instructions of the City or fail to observe or perform any provisions of this Agreement. Anticipatory profits and consequential damages shall not be recoverable by Utility Company.
14. **Termination for Convenience of City.** The City shall have the right at any time by written notice to Utility Company to terminate and cancel this Agreement, without cause, for the convenience of the City, and Utility Company shall immediately stop work. In such event, City shall not be liable to Utility Company except for payment for actual work performed prior to such notice in an amount proportionate to the completed agreement price and for the actual costs of preparations made by Utility Company for the performance of the cancelled portions of this Agreement, including a reasonable

allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Utility Company.

15. **Missouri Immigration Law Affidavit.** Utility Company acknowledges that Section 285.530 RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Utility Company therefore covenants that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work as part of this Agreement, and that its employees are lawfully eligible to work in the United States.
16. **Anti-Discrimination Against Israel.** Utility Company agrees to provide a certification if requested by the City, in accordance with Sec. 34.600, RSMo that they have not engaged in a boycott of: Goods or services from the State of Israel; Companies doing business in, or with, Israel; Companies authorized by, licensed by, or organized under, the laws of the State of Israel; or Persons or entities doing business in the State of Israel.
17. **Conflict of Interest.** In accepting this Agreement, Utility Company certifies that no member or officer of its firm or corporation is an officer or employee of the City of Branson, Missouri, and further that no officer or employee of the City has any financial interest, direct or indirect, in this Agreement. All applicable federal regulations and provisions of RSMo. Section 105.450 et seq. shall not be violated.
18. **Assignment.** The Utility Company shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Utility Company from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Agreement, including the right to change or delete activities from the Utility Company to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Agreement.
19. **Nondiscrimination.** The Utility Company agrees in the performance of this Agreement not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Utility Company or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
20. **Notices.** All notices required or permitted herein are required to be in writing and may be given by FAX or by first class mail addressed to City at 110 West Maddux, Branson, Missouri 65616, and to the Utility Company at the address indicated below. The date

of delivery of any notice given by U.S. mail shall be the date falling on the second full day after the date of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

21. **Compliance with Laws.** Utility Company agrees to comply with all applicable federal, state, and local laws or rules and regulations applicable to the provision of services and products hereunder. Utility Company affirmatively states that payment of all local, state, and federal taxes and assessments owed by Utility Company is current.
22. **Entire Agreement.** This Agreement contains the entire agreement of the Parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto and signed by both parties.
23. **Severance.** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
24. **Jurisdiction.** This Agreement shall be governed by the laws of the State of Missouri. The City and Utility Company agree that the performance of this Agreement will be deemed to have occurred in the State of Missouri and that Utility Company's performance under this Agreement will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this Agreement shall be exclusively in the Circuit Court of Taney County, Missouri, or the Federal District Court for the Western District of Missouri, as appropriate. Utility Company submits to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

In Witness Whereof, the Parties have set their hands and seals as of the dates set forth below.

WHITE RIVER VALLEY ELECTRIC
COOPERATIVE

By: _____

Title: _____

Date: _____

CITY OF BRANSON

By: _____
Mayor Date

(SEAL)

Attest: _____
City Clerk Date

APPROVED AS TO FORM:

City Attorney

Date

SCHEDULE 1

Description of Plan Phase Services:

- Engineering and design services
- Provide comments, general guidance, recommendations, and approvals throughout the overall design phase of the project.
- Attend planning meetings.
- Prepare work orders for the construction phase.
- Staking services for retiring existing facilities
- Staking services for installing new underground facilities
- Site visits throughout the construction process
- GIS mapping for as-built changes

Commencement date for the Services:

Upon execution of Utility Agreement

Completion date for these Services:

8/30/2025

Estimate of Utility Company's Costs & Expenses for these Plan Phase Services: \$25,000