

Office Use Only

MASTER CONTRACT NUMBER:

## UTILITY AGREEMENT (Construction Phase Work)

This Utility Agreement for Construction Phase 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 of Branson; 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 construction 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 Construction Work.** City shall supply Utility Company with its final-approved 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 (each a "Plan Phase"). Utility Company will construct its facilities within the Corridor and specifically, the duct banks, in accord with the Plans, and its facilities so constructed shall be permitted by the City for Utility Company's use and enjoyment in those locations specified in the Plans and as-built, at no cost to Utility Company. This may include, but is not limited to, the installation of conduit with pull strings, the pulling of wire and setting of transformers, the installation of switchgears and tie-ins, the installation of operational equipment, the opening and closing of trenches, along with the coordination of the utility service switch-over and energizing of the new facilities and decommissioning of the facilities that will be replaced as required by the Plans. Overhead powerlines can be removed once new underground facilities are functioning and able to supply electric power through the duct bank with established and confirmed electric service to those customers requiring such power. Existing streetlights shall remain operable until new lighting is available and ready for use. The construction work outlined in this paragraph shall be referred to herein as the "Work". All Work shall be coordinated with the City to ensure it is timely performed with minimal disruptions to the traveling public in the Corridor. Work will begin when City provides Utility Company with written authority to proceed.
2. **Manner and Time of Completion.** The Utility Company agrees to furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform work. The Work shall commence no later than the date of execution of this Agreement and be completed no later than December 31, 2028.
3. **Agreement Price:** City shall pay the Utility Company for completion of the work in accordance with this Agreement in an amount not to exceed One Million One Hundred Thirty-Two Thousand Dollars One Hundred and Zero Cents (\$1,132,100.00). This sum shall be paid by the City to the Utility Company on the following schedule:
  - a. City shall pay fifty percent (50%) of the estimated cost of the Work in advance of the commencement of such Work; and
  - b. City shall deposit at TRI-LAKES TITLE & ESCROW, 800 State Highway 248, Suite 4, Branson, MO 65616 (417) 334-1114, or at such other escrow company mutually agreeable by the Parties (hereinafter the "Escrow Agent"), the sums representing the remaining fifty percent (50%) of the good-faith estimate



reflected on SCHEDULE I, and the Parties shall execute an escrow agreement in the form attached hereto as SCHEDULE 2 for management and disbursement of those funds should one be required by Escrow Agent. Once the funds in section 3a. have been exhausted, Utility Company shall submit invoicing for remaining Work to the Escrow Agent who shall release payment for same after first receiving written approval from the City to do so. Final invoicing for the Work shall be submitted to the Escrow Agent no later than ninety (90) days from the date of last Work by Utility Company.

- c. In the event the Escrow Agent is holding funds representing an escrow balance after all Work under this Agreement is complete, then those funds shall be promptly returned to the City.
4. **Prevailing Wages.** It is agreed that all labor utilized in the construction of the aforementioned Work shall be paid a wage of no less than the “prevailing hourly rate of wages” for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri.
5. **Monitoring of Work by City Inspector.** The City Inspector shall monitor the Work and shall verify all records related to the cost of such Work.
6. **Performance and Labor and Materials Payment Bond.** The Utility Company shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City. Each bond shall be in the total amount of the Agreement conditioned upon the full and faithful performance of all major terms and conditions of this Agreement and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Utility Company shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Utility Company shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.
7. **Payment for Labor and Materials.** The Utility Company agrees and binds itself to pay for all labor done and for all the materials used in the construction of the work to be completed pursuant to this Agreement. Utility Company shall execute the payment and performance bonds attached hereto.

**8. Required Safety Training.**

- a. Utility Company shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site as part of this Agreement for City improvements. The construction safety program shall include a course in construction safety and health that is approved by OSHA, or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- b. Utility Company shall require its on-site employees to complete a construction safety program within sixty (60) days after the date work as part of this Agreement for City improvements commences.
- c. Utility Company acknowledges and agrees that any of Contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- d. Utility Company shall require all its subcontractors to comply with the requirements of this paragraph and Section 292.675, RSMo.

**9. Notice of Penalties for Failure to Provide Safety Training.**

- a. Pursuant to Section 292.675, RSMo, Utility Company shall forfeit to City as a penalty Two Thousand Five Hundred and no/100 Dollars (\$2,500.00), plus One Hundred and no/100 Dollars (\$100.00) for each on-site employee employed by Utility Company its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Paragraph 8 of this Agreement. This penalty shall not begin to accrue until the time periods described in Paragraph 8 above have lapsed.
- b. Violations and imposition of the penalty described in Paragraphs 8 & 9 shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

**10 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 1<sup>st</sup> each calendar year and published annually in the Missouri Register pursuant to Section 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.
11. **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.
12. **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. Maximum liability for Utility Company shall be limited to amount of insurance coverage for valid claims.

**13. Limitation of Product Warranty.** Utility Company is a reseller of products and is not a manufacturer of products. As such, it does not offer or provide any warranty whatsoever of any kind in relation thereto. Utility Company EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW, FROM COURSE OF DEALING OR USAGE OF TRADE, OR IN ANY OTHER MANNER OR UNDER ANY BASIS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. The only warranty offered or provided on products included with the Work is the warranty or warranties, if any, offered by the manufacturer of any product to subsequent buyers or owners of said product. Said manufacturer's warranty is subject to all terms, conditions, and limitations defined by said manufacturer. To the extent allowed by law, all buyers or owners of any such product shall have no rights or claims against Utility Company, its employees, agents, or contractors, as a warranty claim or under any other basis, for INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, OR FOR ANY OTHER CLAIM OR CAUSE OF ACTION FOR LOSS OR DAMAGE, OR FOR INJURY TO PERSON OR PROPERTY, arising out of or related in any way to any product provided with the Work by Utility Company. Any liability of Utility Company to a buyer or owner under operation of law, or under any other basis, shall be limited and shall not exceed the purchase price of the product upon which a legally valid liability claim is established.

**14. Utility Company's Responsibility for Subcontractors.** It is further agreed that Utility Company shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Utility Company is for the acts and omissions of persons it directly employs. Utility Company shall cause appropriate provisions to be inserted in all subcontracts relating to this work to bind all subcontractors to the same specifications that bind the Contractor, insofar as applicable to the work of subcontractors and to give Utility Company the same power regarding termination of any subcontract as the City may exercise over Utility Company under any provisions of this Agreement. Nothing contained in this Agreement shall create any contractual relation between the subcontractor and the City or between any subcontractors.

**15. 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.

16. **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.
17. **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.
18. **City's Right to Proceed.** In the event this Agreement is terminated pursuant to Paragraph 16, then the City may take over the work and prosecute the same to completion, by Utility Company otherwise, and Utility Company and its sureties shall be liable to the City for any costs over the amount of this Agreement thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances, and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of this Agreement, city ordinances, state, and federal laws.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **Certification of Nonresident/Foreign Contractors.** The Utility Company shall procure and maintain during the life of this Agreement:
- a. If the Utility Company is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.
  - b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.



25. **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.
26. **Occupational License.** The Utility Company shall obtain and maintain an occupational license with the City of Branson, Missouri, if required by City Code and any required state or federal license. The cost for this occupational license shall be borne by the Utility Company. This Agreement will not be executed by the City until this occupational license has been obtained.
27. **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.
28. **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.
29. **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.
30. **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

CITY OF BRANSON

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor Date

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

City Clerk

Date

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date

## **SCHEDULE 1**

### **GOOD FAITH COST ESTIMATE OF THE WORK**

#### Description of Construction Phase Work:

- Provide labor, equipment, and materials to construct underground electric facilities within the duct banks of the Corridor.
- Duct banks are provided by others.
- Install pad mount transformers, junction cabinets, switchgear, and other operational equipment required to supply electric power through the new underground facilities and to those customers requiring such power.
- Pull new underground cable wire and make required connections to electrically operate underground facilities.
- Retire existing overhead facilities owned by White River throughout this section of work.
- All work according to plans and specifications.

Commencement date for Work:           Upon date of execution of Utility Agreement  
Completion date for Work:               December 2028

#### Estimate of Utility Company's Costs & Expenses for this Construction Phase Work:

- Segment 1   \$ 551,500
- Segment 2   \$ 580,600  
                  \$1,132,100



## SCHEDULE 2

### ESCROW AGREEMENT

This Escrow Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the City of Branson, Missouri ("hereinafter "City"), and White River Valley Electric Cooperative, Inc., (hereinafter "Utility Company").

**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 1 and Segment 2 (the "Corridor"); and

**WHEREAS**, this Agreement is intended to serve as authority for the City to reimburse the Utility Company for the construction 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, in consideration of the mutual covenants hereinafter set forth, the City and Utility Company do hereby covenant and agree upon the following terms and conditions:

1. City shall deposit with Tri-Lakes Title & Escrow, 800 State Highway 248, Suite 4, Branson, MO 65616 (hereinafter "Escrow Agent"), or such other escrow company mutually agreeable by the Parties the sum of Five Hundred Forty-Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$545,750.00) in cash.
2. The Escrow Agent shall place the funds deposited by City in an escrow account set aside for the Improvements. The interest earned from the funds shall be the property of the City.
3. The Utility Company shall construct the Improvements.

IN WITNESS WHEREOF, the Parties hereto execute this agreement on the day and year first above written.

CITY OF BRANSON, MISSOURI

\_\_\_\_\_  
Larry Milton, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Hillary Briand, City Clerk

\_\_\_\_\_  
City Attorney

WHITE RIVER VALLEY ELECTRIC COOPERATIVE, INC

By: \_\_\_\_\_

Title: \_\_\_\_\_

## PAYMENT BOND

**KNOW ALL MEN BY THESE PRESENTS:** \_\_\_\_\_  
(Utility Company) a \_\_\_\_\_, hereinafter  
called Principal, and (Corporation, Partnership, or Individual)

\_\_\_\_\_(Surety)  
\_\_\_\_\_(Surety Address)

hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_  
(hereinafter called City), in the penal sum of \_\_\_\_\_dollars (\$\_\_\_\_\_) in lawful money in the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that whereas, the Principal entered into a certain Agreement with the City, dated the \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof in the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing material for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, repairs or machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IMPORTANT- Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contractor to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Utility Company to the work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the City and Utility Company shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST: By \_\_\_\_\_

\_\_\_\_\_  
Secretary Address

SEAL

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address

Surety

ATTEST: By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Secretary Address

SEAL

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Address

NOTE: Date of bond must not be prior to date of Agreement.

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT We, the undersigned, \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as "Utility Company", and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of Missouri, as "Surety", are held and firmly bound unto The City of Branson, Missouri, hereinafter referred to as "City", in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States of America for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Utility Company has, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into a written Agreement with the aforesaid City for furnishing all materials, equipment, tools, superintendence, and other facilities and accessories, for the construction of certain improvements as designated, defined, and described in the said Agreement and the conditions thereof, and in accordance with the specifications and plans therefore; a copy of said Agreement being attached hereto and made a part thereof:

NOW, Therefore if said Utility Company shall and will, in all particulars will, duly, and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Agreement, and the conditions, specifications, plans and other documents thereto attached or by reference made a part thereof, according to the true intent and meaning in the case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect:

PROVIDED further, that the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alternation, or addition to the terms of the Agreement, or the work to be performed thereover, or the specifications accompanying the same, shall in any way affect its obligations on this bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Agreement, or to the work, or to the specifications.

IN TESTIMONY WHEREOF, the Utility Company has hereunto set his hand, and said surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized to do so at

\_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Utility Company

By \_\_\_\_\_

Title \_\_\_\_\_



\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-fact

By \_\_\_\_\_  
Missouri Resident Agent

(Accompany this bond with the attorney-in-fact's authority from the surety company certified to include the date of the bond).