

RESOLUTION NO. _____

A RESOLUTION APPROVING AGREEMENTS WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR UTILITIES RELOCATION IN CONJUNCTION WITH A STATE INDUSTRIAL ACCESS PROJECT SERVICING EASTMAN CHEMICAL COMPANY AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, several years ago, Eastman Chemical Company made a strong long term commitment to their corporate and manufacturing future within the city through Project Inspire, and it not only included the investment of Eastman's Corporate Business Center located along Wilcox Drive, but also a multi-year reinvestment to various manufacturing capabilities within their plant, and the State of Tennessee through the Tennessee Department of Transportation (TDOT) committed to provide assistance related to the road infrastructure improvements necessary to support Eastman's various investments; and

WHEREAS, it is time to extend Meadow Park Lane and TDOT will reimburse the engineering cost of the relocation for both water and sewer located on private property; and

WHEREAS, TDOT will not reimburse for water and sewer relocation in public right-of way, which there is a small portion of for the sewer relocation; and

WHEREAS, the city will pay \$7,034.54 for the relocation of the sewer utility lines for this project, and funding is available in the utilities operating budget and will be reimbursed through the project.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the agreement with Tennessee Department of Transportation for the relocation of water Utilities for the State Industrial Access Servicing Eastman Chemical Company along the Meadowview Park Lane Extension, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Agreement with Tennessee Department of Transportation for the relocation of water Utilities for the State Industrial Access Servicing Eastman Chemical Company along the Meadowview Park Lane Extension, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

UTILITY RELOCATION CONTRACT

THIS CONTRACT made and entered into by and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **City of Kingsport (Sewer)**, hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT plans to construct PIN Number **131034.00, State Industrial Access Serving Eastman Chemical Company** located in **Sullivan County**, Tennessee (hereinafter called the "Project"), and for said Project to be constructed it will be necessary for the Utility to relocate certain of its facilities, **1** percent of which are located on public highway right-of-way and **99** percent of which are located on private utility right-of-way; and

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **\$734,664.38** including the amount of **\$31,210.38** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **September 3rd, 2025**; including the amount of **\$0.00** for the cost of inspection provided by the Utility; including the amount of **\$0.00** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **\$7,034.54** for deposit for the utility work in the State contract, and of which **99** percent 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 **1** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way, reimbursement being for the cost of construction, engineering, and inspection on private utility right-of-way, but excluding inspection on public highway right-of-way, betterment, and the cost over the maximum TDOT reimbursement amount; and

WHEREAS, TDOT 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 or for any utility betterment costs; and

WHEREAS, the parties want to enter into a contract to provide for the relocation of the Utility's facilities in conjunction with this highway construction project, and the Utility has requested TDOT to undertake the hereinafter described utility relocation work in its highway construction contract; and

WHEREAS, it is in the mutual interest of the parties that this utility relocation work be performed together with the proposed highway construction;

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. (a) TDOT will show the proposed relocation of the Utility's facilities on TDOT's highway construction plans as project cost items and will receive bids for same by its highway contractor as a part of the contract for construction of the above mentioned Project. TDOT will be responsible for having its contractor perform the aforesaid utility relocation work in accordance with TDOT's construction contract, including the project plans, standard specifications, special provisions, and the utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference.

(b) The Utility agrees to reimburse TDOT for the Utility's Cost. Reimbursement shall be based on the agreed percentage of the actual cost of the Utility's Cost items as shown on the project plans incorporated herein by reference. It is further agreed that the Utility will make payment to TDOT in the amount of the estimated cost of the Utility's Cost items prior to advertisement for bids. The Utility may provide these funds by one of the following means:

A. A check made payable to the order of and sent to TDOT; or

B. Documentation of a deposit made only by wire or by immediate credit transfer with the Treasurer of the State.

In the event said deposit 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 TDOT for such additional amount.

(c) The Utility agrees that TDOT may advertise for and receive bids for the construction of the Project, including the proposed relocation of the Utility's facilities, and award and enter into contract with the lowest responsible bidder.

(d) The Utility agrees that any memoranda or other information concerning the estimated cost of the proposed relocation of the Utility's facilities will not directly or indirectly be released or disclosed to potential bidders except to the extent that the utility may otherwise be required to do so by law.

(e) Neither the Utility nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Utility's relocation work to be performed under a contract to be awarded by TDOT. The Utility further agrees that no employee, officer, or agent of the Utility shall participate in the selection or in the award or administration of a contract for the performance of any part of the Utility's relocation work if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for a subcontract to perform the Utility's relocation work for this Project. Neither the Utility nor any affiliate, subsidiary, employee, officer, or agent of the Utility shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal

monetary value, from contractors or bidders.

(f) It is also understood and agreed that TDOT, in its sole discretion, may reject any and all bids submitted for the construction of said Project without any liability whatsoever to the Utility.

2. It is further agreed that in letting the contract with respect to the proposed relocation of the Utility's facilities, TDOT is acting solely in accommodation of the Utility and shall have no liability to the Utility for any damages or claims arising out of acts or omissions on the part of TDOT's contractor. The Utility agrees that it will not hold TDOT responsible for any claims arising out of the inclusion of the Utility's items of work in TDOT's highway construction contract. Under this contract, "TDOT" shall include any and all officers and employees of the State of Tennessee acting within the scope of their employment with the State of Tennessee.

3. (a) The Utility has acquired or shall acquire all utility rights-of-way outside of the proposed public highway right-of-way as may be needed to relocate its utility facilities, including any betterment, and the Utility shall provide TDOT and its contractor with the rights to use these utility rights-of-way for construction purposes. The Utility further agrees that it has acquired or will acquire these rights-of-way at no cost to TDOT except insofar as TDOT may be liable to reimburse the Utility for the replacement of previously owned private utility rights-of-way as may be provided in a separate contract between the parties.

(b) The Utility agrees to transfer to TDOT that portion of the previously owned private utility rights-of-way being vacated by the Utility and within the Project proposed right-of-way as needed for highway purposes.

4. The Utility agrees that:

(a) The Utility will perform the utility engineering work provided for in this Contract by its own forces and/or consultant engineering services approved by TDOT.

(b) It will develop the utility engineering costs in accordance with the current provisions of 23 CFR §645.117.

5. The Utility shall have the right and responsibility to inspect and approve, prior to TDOT's release of its highway contractor's bond, all items of utility relocation work, including betterment, to be performed under the proposed highway construction contract to ensure that the relocation is completed in accordance with this Contract and all applicable specifications and safety codes. The Utility shall provide progressive inspection reports to TDOT in accordance with the current TDOT Construction Circular Letter section 105.07 "Utilities Diaries and Inspection Procedures" incorporated herein by reference. TDOT agrees that it will reimburse the Utility 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, incorporated herein by reference. The inspection of utility facilities on public highway right-of-way shall be performed at no cost to TDOT.

6. The Utility agrees to comply with all current, applicable provisions of 23 CFR Subpart 645A, which are incorporated herein by reference; provided, however, that provisions for review, approval, authorization and participation by the Federal Highway Administration set forth in 23 CFR Subpart 645A shall not apply to the extent that the Project is not a federal-aid project. The Utility acknowledges possession of 23 CFR Subpart 645A.

7. The Utility agrees to comply with all current, applicable provisions of the Guidelines for Governmentwide Debarment and Suspension of 2 CFR §180.355 through §180.365 which are incorporated herein by reference. The Utility acknowledges possession of 2 CFR Part 180 and the requirements of the attached FHWA Form 1273, Section X – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

8. The Utility agrees to comply with all current, applicable provisions of the Buy America requirements established under 23 USC § 313 and 23 CFR § 635.410. In accordance with guidance provided by the Federal Highway Administration, the Utility agrees that all products used in the Utility's relocation work that are manufactured of steel or iron shall be manufactured in the United States. For the purposes of applying this Buy America requirement and determining whether a product is a steel or iron manufactured product, the job site includes any sites where precast concrete products that are incorporated into the Utility's relocation work are manufactured.

9. Subject to the provisions of this paragraph and as otherwise provided in this Contract, TDOT agrees to reimburse the Utility for the Utility's reimbursable costs associated with the relocation of the Utility's facilities, as follows:

(a) The Utility shall perform any work in accordance with the estimate of cost and plans as approved by TDOT and incorporated herein by reference. The estimate of cost and schedule of work are attached hereto as Exhibit "A".

(b) The Utility may perform preliminary engineering to generate the schedule of calendar days, color coded relocation plans and estimate of cost as needed for TDOT to generate the this agreement. Costs incurred for preliminary engineering prior to the execution date of this agreement are eligible for reimbursement as long as they were incurred after the preliminary authorization date.

Any costs for consultant engineering shall also be eligible for reimbursement as long as they are incurred after consultant authorization.

(c) Any change in the approved estimate of cost or plans shall require the prior written approval of TDOT. TDOT agrees to review and, if acceptable, approve such requests for change in a timely manner, and TDOT agrees to cooperate with the Utility to resolve, if possible, any objections TDOT may have to such requested changes.

(d) TDOT shall reimburse the Utility for such direct and indirect costs as are allowable under the current provisions of 23 CFR Subpart 645A. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR Subpart 645A on a federal-aid project shall be ineligible for reimbursement by TDOT on this Project, whether it is or is not a federal-aid project.

(e) The Utility shall develop and record all costs in a manner consistent with the current provisions of 23 CFR §645.117 as of the effective date of this Contract and as approved by TDOT.

(f) The Utility shall submit all requests for payment by invoice, in form and substance acceptable to TDOT, with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Contract to date.

(g) The Utility may submit invoices for interim payments during the progress of the work; provided, however, that such interim payments may be approved only up to a maximum of eighty percent (80%) of the approved estimate of cost attached hereto as Exhibit "A" to this Contract, and any remaining reimbursable costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.

(h) TDOT shall, unless it has good faith and reasonable objections to the Utility's invoice for interim payment, use its best efforts to issue payment based on the Utility's invoice within forty-five (45) days after receipt. If, however, TDOT has good faith and reasonable objections to the Utility's invoice(s) or any part thereof, TDOT shall specifically identify those objections in writing to the Utility so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, TDOT shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Utility. All other reimbursable cost items set out in the Utility's invoice shall be paid by TDOT.

(i) Subject to the Utility's right to bill on an interim basis as described above, the Utility shall by invoice provide one final and complete billing of all costs incurred within one year following the completion of the Utility relocation work in its entirety. Otherwise, any previous payments to the Utility may be considered final, and the Utility may be deemed to have waived any claim for additional payments, except as TDOT and Utility may have agreed otherwise in writing before the end of that year.

(j) The Utility's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Contract, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.

(k) The Utility's invoice(s) shall include a Buy America certification attesting that all products used in the Utility's relocation work that are manufactured of steel or iron comply with the Buy America requirements set forth in 23 USC § 313 and 23 CFR § 635.410 and as further described in paragraph 8 of this Contract.

10. The Utility agrees that its cost records will be subject to inspection at any reasonable time by representatives of TDOT before or after final payment for reimbursable work. In the event any costs are determined not to be allowable under provisions of this Contract, the Utility agrees to repay TDOT such amount of ineligible costs included within payments made by TDOT.

11. The Utility shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Utility, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years after final payment has been received by the Utility and shall be subject to audit at any reasonable time and upon reasonable notice by TDOT, the Comptroller of the Treasury, or their duly appointed representatives during this three year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.

12. In the event that funds are not appropriated or are otherwise unavailable, TDOT reserves the right to terminate this Contract upon written notice to the Utility. Said termination shall not be deemed a breach of Contract by TDOT. Upon receipt of the written notice, the Utility shall cease all work associated with the Contract, except as may be reasonably necessary to return the Utility's facilities to safe operation. Should such an event occur, the Utility shall be entitled to compensation

for all costs of relocation reimbursable under 23 CFR Subpart 645A (in accordance with paragraph 9 of this Contract) for work completed as of the termination date or in accordance with this provision. Upon such termination, the Utility shall have no right to recover from TDOT any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

13. The Utility agrees, to the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Utility's relocation work relating to this Contract. The Utility further agrees that it will not hold TDOT responsible for any such claims. Under this Contract, "TDOT" shall include any and all officers and employees of the State of Tennessee acting within the scope of their employment.

In the event that TDOT is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in TDOT's defense. TDOT shall give the Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

14. TDOT shall have no liability except as specifically provided in this Contract.

15. This Contract may be modified only by a written amendment executed by the parties hereto.

16. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract 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 Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

17. The Utility hereby agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Utility on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the State of Tennessee. The Utility shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

18. The Utility shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The Utility agrees that failure of the Utility to comply with this provision may subject the Utility to the repayment of all State funds expended, under this Contract.

19. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Contract.

20. The parties hereto, in the performance of this contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

21. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Utility acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

22. If any terms, covenants, conditions or provisions of this Contract 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 Contract are declared severable.

23. TDOT and the Utility agree that any notice provided for in this Contract or concerning this Contract 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 TDOT:

Tennessee Department of Transportation
Attention: State Utility Coordinator
Tennessee Tower Building, 11th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

With a copy if requested by TDOT to:

Leslie South, General Counsel
Tennessee Tower Building, 26th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
Facsimile Number: (615) 532-5988

To the Utility:

Attention: _____

Facsimile Number: _____

With a copy if requested by Utility to:

Attention: _____

Facsimile Number: _____

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IN WITNESS WHEREOF, the parties have executed this contract.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION I. That the agreement with Tennessee Department of Transportation for the relocation of sewer Utilities for the State Industrial Access Servicing Eastman Chemical Company along the Meadowview Park Lane Extension, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Agreement with Tennessee Department of Transportation for the relocation of sewer Utilities for the State Industrial Access Servicing Eastman Chemical Company along the Meadowview Park Lane Extension, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

UTILITY RELOCATION CONTRACT

THIS CONTRACT made and entered into by and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **City of Kingsport (Water)**, hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT plans to construct PIN Number **131034.00**, **State Industrial Access Serving Eastman Chemical Company** located in **Sullivan County**, Tennessee (hereinafter called the "Project"), and for said Project to be constructed it will be necessary for the Utility to relocate certain of its facilities, **0** percent of which are located on public highway right-of-way and **100** percent of which are located on private utility right-of-way; and

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **\$533,188.98** including the amount of **\$40,120.98** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **September 3rd, 2025**; including the amount of **\$0.00** for the cost of inspection provided by the Utility; including the amount of **\$0.00** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **\$0.00** for deposit for the utility work in the State contract, and of which **100** percent 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 **0** percent represents the pro-rata share for relocation of utility facilities

located on public highway right-of-way, reimbursement being for the cost of construction, engineering, and inspection on private utility right-of-way, but excluding inspection on public highway right-of-way, betterment, and the cost over the maximum TDOT reimbursement amount; and WHEREAS, TDOT 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 or for any utility betterment costs; and

WHEREAS, the parties want to enter into a contract to provide for the relocation of the Utility's facilities in conjunction with this highway construction project, and the Utility has requested TDOT to undertake the hereinafter described utility relocation work in its highway construction contract; and WHEREAS, it is in the mutual interest of the parties that this utility relocation work be performed together with the proposed highway construction;

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. (a) TDOT will show the proposed relocation of the Utility's facilities on TDOT's highway construction plans as project cost items and will receive bids for same by its highway contractor as a part of the contract for construction of the above mentioned Project. TDOT will be responsible for having its contractor perform the aforesaid utility relocation work in accordance with TDOT's construction contract, including the project plans, standard specifications, special provisions, and the utility relocation plans and specifications heretofore agreed upon by and between the parties hereto, all of which are incorporated herein by reference.

(b) The Utility agrees to reimburse TDOT for the Utility's Cost. Reimbursement shall be based on the agreed percentage of the actual cost of the Utility's Cost items as shown on the project plans incorporated herein by reference. It is further agreed that the Utility will make payment to TDOT in the amount of the estimated cost of the Utility's Cost items prior to advertisement for bids. The Utility may provide these funds by one of the following means:

A. A check made payable to the order of and sent to TDOT; or

B. Documentation of a deposit made only by wire or by immediate credit transfer with the Treasurer of the State.

In the event said deposit 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 TDOT for such additional amount.

(c) The Utility agrees that TDOT may advertise for and receive bids for the construction of the Project, including the proposed relocation of the Utility's facilities, and award and enter into contract with the lowest responsible bidder.

(d) The Utility agrees that any memoranda or other information concerning the estimated cost of the proposed relocation of the Utility's facilities will not directly or indirectly be released or disclosed to potential bidders except to the extent that the utility may otherwise be required to do so by law.

(e) Neither the Utility nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Utility's relocation work to be performed under a contract to be awarded by TDOT. The Utility further agrees that no employee, officer, or agent of the Utility shall participate in the selection or in the award or administration of a contract for the performance of any part of the Utility's relocation work if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for a subcontract to perform the Utility's relocation work for this Project. Neither the Utility nor any affiliate, subsidiary, employee, officer, or agent of the Utility shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

(f) It is also understood and agreed that TDOT, in its sole discretion, may reject any and all bids submitted for the construction of said Project without any liability whatsoever to the Utility.

2. It is further agreed that in letting the contract with respect to the proposed relocation of the Utility's facilities, TDOT is acting solely in accommodation of the Utility and shall have no liability to the Utility for any damages or claims arising out of acts or omissions on the part of TDOT's contractor. The Utility agrees that it will not hold TDOT responsible for any claims arising out of the inclusion of the Utility's items of work in TDOT's highway construction contract. Under this contract, "TDOT" shall include any and all officers and employees of the State of Tennessee acting within the scope of their employment with the State of Tennessee.

3. **(a)** The Utility has acquired or shall acquire all utility rights-of-way outside of the proposed public highway right-of-way as may be needed to relocate its utility facilities, including any betterment, and the Utility shall provide TDOT and its contractor with the rights to use these utility rights-of-way for construction purposes. The Utility further agrees that it has acquired or will acquire these rights-

of-way at no cost to TDOT except insofar as TDOT may be liable to reimburse the Utility for the replacement of previously owned private utility rights-of-way as may be provided in a separate contract between the parties.

(b) The Utility agrees to transfer to TDOT that portion of the previously owned private utility rights-of-way being vacated by the Utility and within the Project proposed right-of-way as needed for highway purposes.

4. The Utility agrees that:

(a) The Utility will perform the utility engineering work provided for in this Contract by its own forces and/or consultant engineering services approved by TDOT.

(b) It will develop the utility engineering costs in accordance with the current provisions of 23 CFR §645.117.

5. The Utility shall have the right and responsibility to inspect and approve, prior to TDOT's release of its highway contractor's bond, all items of utility relocation work, including betterment, to be performed under the proposed highway construction contract to ensure that the relocation is completed in accordance with this Contract and all applicable specifications and safety codes. The Utility shall provide progressive inspection reports to TDOT in accordance with the current TDOT Construction Circular Letter section 105.07 "Utilities Diaries and Inspection Procedures" incorporated herein by reference. TDOT agrees that it will reimburse the Utility 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, incorporated herein by reference. The inspection of utility facilities on public highway right-of-way shall be performed at no cost to TDOT.

6. The Utility agrees to comply with all current, applicable provisions of 23 CFR Subpart 645A, which are incorporated herein by reference; provided, however, that provisions for review, approval, authorization and participation by the Federal Highway Administration set forth in 23 CFR Subpart 645A shall not apply to the extent that the Project is not a federal-aid project. The Utility acknowledges possession of 23 CFR Subpart 645A.

7. The Utility agrees to comply with all current, applicable provisions of the Guidelines for Governmentwide Debarment and Suspension of 2 CFR §180.355 through §180.365 which are incorporated herein by reference. The Utility acknowledges possession of 2 CFR Part 180 and the requirements of the attached FHWA Form 1273, Section X – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

8. The Utility agrees to comply with all current, applicable provisions of the Buy America requirements established under 23 USC § 313 and 23 CFR § 635.410. In accordance with guidance provided by the Federal Highway Administration, the Utility agrees that all products used in the Utility's relocation work that are manufactured of steel or iron shall be manufactured in the United States. For the purposes of applying this Buy America requirement and determining whether a product is a steel or iron manufactured product, the job site includes any sites where precast concrete products that are incorporated into the Utility's relocation work are manufactured.

9. Subject to the provisions of this paragraph and as otherwise provided in this Contract, TDOT agrees to reimburse the Utility for the Utility's reimbursable costs associated with the relocation of the Utility's facilities, as follows:

(a) The Utility shall perform any work in accordance with the estimate of cost and plans as approved by TDOT and incorporated herein by reference. The estimate of cost and schedule of work are attached hereto as Exhibit "A".

(b) The Utility may perform preliminary engineering to generate the schedule of calendar days, color coded relocation plans and estimate of cost as needed for TDOT to generate the this agreement. Costs incurred for preliminary engineering prior to the execution date of this agreement are eligible for reimbursement as long as they were incurred after the preliminary authorization date. Any costs for consultant engineering shall also be eligible for reimbursement as long as they are incurred after consultant authorization.

(c) Any change in the approved estimate of cost or plans shall require the prior written approval of TDOT. TDOT agrees to review and, if acceptable, approve such requests for change in a timely manner, and TDOT agrees to cooperate with the Utility to resolve, if possible, any objections TDOT may have to such requested changes.

(d) TDOT shall reimburse the Utility for such direct and indirect costs as are allowable under the current provisions of 23 CFR Subpart 645A. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR Subpart 645A on a federal-aid project shall be ineligible for reimbursement by TDOT on this Project, whether it is or is not a federal-aid project.

(e) The Utility shall develop and record all costs in a manner consistent with the current provisions of 23 CFR §645.117 as of the effective date of this Contract and as approved by TDOT.

(f) The Utility shall submit all requests for payment by invoice, in form and substance acceptable to TDOT, with all necessary supporting documentation, prior to any reimbursement of

allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Contract to date.

(g) The Utility may submit invoices for interim payments during the progress of the work; provided, however, that such interim payments may be approved only up to a maximum of eighty percent (80%) of the approved estimate of cost attached hereto as Exhibit "A" to this Contract, and any remaining reimbursable costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.

(h) TDOT shall, unless it has good faith and reasonable objections to the Utility's invoice for interim payment, use its best efforts to issue payment based on the Utility's invoice within forty-five (45) days after receipt. If, however, TDOT has good faith and reasonable objections to the Utility's invoice(s) or any part thereof, TDOT shall specifically identify those objections in writing to the Utility so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, TDOT shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Utility. All other reimbursable cost items set out in the Utility's invoice shall be paid by TDOT.

(i) Subject to the Utility's right to bill on an interim basis as described above, the Utility shall by invoice provide one final and complete billing of all costs incurred within one year following the completion of the Utility relocation work in its entirety. Otherwise, any previous payments to the Utility may be considered final, and the Utility may be deemed to have waived any claim for additional payments, except as TDOT and Utility may have agreed otherwise in writing before the end of that year.

(j) The Utility's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Contract, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.

(k) The Utility's invoice(s) shall include a Buy America certification attesting that all products used in the Utility's relocation work that are manufactured of steel or iron comply with the Buy America requirements set forth in 23 USC § 313 and 23 CFR § 635.410 and as further described in paragraph 8 of this Contract.

10. The Utility agrees that its cost records will be subject to inspection at any reasonable time by representatives of TDOT before or after final payment for reimbursable work. In the event any costs are determined not to be allowable under provisions of this Contract, the Utility agrees to repay TDOT such amount of ineligible costs included within payments made by TDOT.

11. The Utility shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Utility, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years after final payment has been received by the Utility and shall be subject to audit at any reasonable time and upon reasonable notice by TDOT, the Comptroller of the Treasury, or their duly appointed representatives during this three year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.

12. In the event that funds are not appropriated or are otherwise unavailable, TDOT reserves the right to terminate this Contract upon written notice to the Utility. Said termination shall not be deemed a breach of Contract by TDOT. Upon receipt of the written notice, the Utility shall cease all work associated with the Contract, except as may be reasonably necessary to return the Utility's facilities to safe operation. Should such an event occur, the Utility shall be entitled to compensation for all costs of relocation reimbursable under 23 CFR Subpart 645A (in accordance with paragraph 9 of this Contract) for work completed as of the termination date or in accordance with this provision. Upon such termination, the Utility shall have no right to recover from TDOT any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

13. The Utility agrees, to the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Utility's relocation work relating to this Contract. The Utility further agrees that it will not hold TDOT responsible for any such claims. Under this Contract, "TDOT" shall include any and all officers and employees of the State of Tennessee acting within the scope of their employment.

In the event that TDOT is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in TDOT's defense. TDOT shall give the Utility written

notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

14. TDOT shall have no liability except as specifically provided in this Contract.

15. This Contract may be modified only by a written amendment executed by the parties hereto.

16. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract 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 Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

17. The Utility hereby agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Utility on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the State of Tennessee. The Utility shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

18. The Utility shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The Utility agrees that failure of the Utility to comply with this provision may subject the Utility to the repayment of all State funds expended, under this Contract.

19. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Contract.

20. The parties hereto, in the performance of this contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

21. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Utility acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

22. If any terms, covenants, conditions or provisions of this Contract 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 Contract are declared severable.

23. TDOT and the Utility agree that any notice provided for in this Contract or concerning this Contract 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 TDOT:

Tennessee Department of Transportation
Attention: State Utility Coordinator
Tennessee Tower Building, 11th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

With a copy if requested by TDOT to:

Leslie South, General Counsel
Tennessee Tower Building, 26th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
Facsimile Number: (615) 532-5988

To the Utility:

Attention:

Facsimile Number: _____

With a copy if requested by Utility to:

Attention: _____

Facsimile

Number: _____

N WITNESS WHEREOF, the parties have executed this contract

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 21st day of April, 2026.

PAUL W. MONTGOMERY, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY