

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR A UTILITY EASEMENT CONTRACT RELATIVE TO PIN #101431.00, SR-320, FROM THREE HUNDRED TWENTY-FIVE (325) FEET EAST OF GRAYSVILLE ROAD TO NINE HUNDRED (900) FEET EAST OF BELL-AIR ROAD FOR SANITARY SEWER RELOCATION, CONTRACT NO. W-10-011-802, FOR AN AMOUNT OF EIGHTY-FOUR THOUSAND FOUR HUNDRED THIRTY-SIX DOLLARS (\$84,436.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator of the Department of Public Works to enter into an agreement with the Tennessee Department of Transportation for a Utility Easement Contract relative to PIN #101431.00, SR-320, from 325 feet East of Graysville Road to 900 feet East of Bell-Air Road for sanitary sewer relocations, Contract No. W-10-011-802, for an amount of \$84,436.00.

ADOPTED: \_\_\_\_\_, 2013.

/mms

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 7/9/13

Preparer: Dennis Malone *Dennis Malone for*

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # \_\_\_\_\_

Council District # \_\_\_\_\_

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A Council Action is requested to authorize the Administrator of Public Works to enter into an agreement with Tennessee Department of Transportation, for a Utility Easement Contract, relative to PIN# 101431.00, SR-320, From 325 feet East of Graysville Road to 900 feet East of Bell-Air Road for Sanitary Sewer Relocations, Contract No. W-10-011-802, for an amount of \$84,436.00.

Name of Vendor/Contractor/Grant, etc.	<b>Tennessee Department of Transportation</b>	New Contract/Project? (Yes or No)	No
Total project cost	\$ 84,436.00	Funds Budgeted? (YES or NO)	Yes
Total City of Chattanooga Portion	\$ -	Provide Fund	6011
City Amount Funded	\$ 84,436.00	Provide Cost Center	K40152
New City Funding Required	\$ \$ -	Proposed Funding Source if not budgeted	
City's Match Percentage	% 0%	Grant Period (if applicable)	

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
\$84,436.00	TDOT

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

ISS Capital Budget

Approved by: \_\_\_\_\_

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09



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## UTILITY EASEMENT CONTRACT

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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 Chattanooga (Sewer)**, hereinafter called the "Utility".

### WITNESSETH:

WHEREAS, TDOT plans to construct PIN Number 101431.00, SR-320: From 325' East of Graysville Road to 900' East of Bell-Air Road, located in Hamilton County, Tennessee (hereinafter called the "Project"), and for said Project to be constructed it will be necessary for the Utility to convey existing utility easements for the proposed highway right-of-way and acquire replacement easements for the relocation of their facilities in order that said Project may be constructed; and

WHEREAS, the Utility has furnished TDOT with a relocation plans and an estimate showing the cost of acquiring said replacement easements, which estimate is in the amount of \$84,436.00; and

WHEREAS, the parties want to enter into an agreement to provide for the acquisition of said replacement easements.

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) The Utility shall acquire said replacement easements in accordance with the estimate of cost and relocation plan as approved by TDOT, incorporated herein by reference, and as otherwise contemplated by this Contract. The estimate includes a written valuation of the replacement right-of-way. The approved estimate of cost is attached hereto as Exhibit "A".  
  
(b) Any change in the approved estimate of cost or relocation plan, 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 in the Contract.
2. (a) The Utility 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.  
  
(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.

3. (a) The Utility agrees that it will perform the acquisition work provided for in this Contract by one of the following methods (mark the appropriate space and describe as required):

- By force account (provided that the Utility is qualified to perform the work with its own forces in a satisfactory and timely manner)
- By contract awarded to the lowest qualified bidder based on appropriate solicitation
- By use of an existing continuing contract (provided that the costs are reasonable)
- By combination of the above, as described below:  
\_\_\_\_\_  
\_\_\_\_\_

(b) Whenever the Utility elects to perform the acquisition work by award of a contract, it shall submit the same to TDOT for prior approval. TDOT shall not be required to reimburse the Utility for its obligation under any contract that has not received the advance written approval of TDOT.

(c) 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.

(d) Neither the Utility nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Utility's proposed acquisition to be performed under a contract to be awarded by the Utility. 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 proposed acquisition 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 award of a contract to perform the Utility's acquisition 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.

(e) The Utility must request in writing and receive TDOT's written approval prior to any revision in the method of performing the acquisition work. Failure to do so may result in the loss of TDOT participation in the cost of acquisition.

4. The Utility agrees to comply with all current, applicable provisions of 23 CFR 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 645A shall not apply to the extent that the Project is not a federal-aid project. The Utility acknowledges possession of 23 CFR 645A.

5. Subject to the provisions of this paragraph and as otherwise provided in this Contract, TDOT agrees to reimburse the Utility for the cost of acquiring replacement easements in accordance with the approved plan, as follows:
- (a) Subject to the provisions of the next succeeding paragraphs herein, the State agrees that it will pay the Utility the entire cost, under the provisions of 23 CFR 645.111, for acquiring the Utility's replacement easements in accordance with said estimate. The parties specifically recognize that the costs of acquiring easements are not fixed and that this fact may require modification of this agreement to reflect the actual costs of the easements to be acquired. However, in no event shall the State's liability exceed the amount estimated above or as modified under this agreement.
  - (b) TDOT shall reimburse the Utility for such direct and indirect costs as are allowable under the current provisions of 23 CFR 645A. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR 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.
  - (c) The Utility shall develop and record acquisition 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.
  - (d) 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.
  - (e) 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 reimbursable costs for the total acquisition project, as described in Exhibit "A" of 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.
  - (f) 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.
  - (g) 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 acquisition work in its entirety. Otherwise, any previous payments to the Utility shall be considered final, and the Utility shall 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.

- (h) 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.
6. TDOT shall have the right to confirm the financial information made available by the Utility to TDOT in support of the Utility's invoiced amounts.
  7. 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.
  8. 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.
  9. This Contract is subject to the appropriation and availability of TDOT funds. In the event that the 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 acquisition reimbursable under 23 CFR 645A (in accordance with paragraph 5(a) 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.
  10. The Utility agrees to indemnify and hold harmless TDOT as well as its employees, officers and agents from and against 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 acquisition work relating to this contract. The Utility further agrees it shall be liable for the reasonable cost of attorneys for TDOT in the event such services are necessitated to enforce the terms of this contract or otherwise enforce the obligations of the Utility to TDOT.

**IN WITNESS WHEREOF**, the parties have executed this agreement.

**UTILITY**  
City of Chattanooga (Sewer)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF TENNESSEE  
DEPARTMENT OF  
TRANSPORTATION

BY: \_\_\_\_\_  
John C. Schroer  
Commissioner

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
John H. Reinbold  
General Counsel

Exhibit A



**Utility Relocation Estimate**  
 Summary of Project Cost  
 (Attach Utility Detailed Worksheets)

Project No: STP-320(4)  
 County: Hamilton  
 Date: August 31, 2012

**for consideration of reimbursement on this project.\*\***

Contact Name (1): Ron Key, P.E.  
 E-mail: rkey@ctiengr.com Phone: 423-267-7613  
 Contact Name (2): Dennis Malone, P.E.  
 E-mail: malone.d@chattanooga.gov Phone:  
 Utility Name: City of Chattanooga Department of Public Works  
 Address: 1250 Market Street, 2nd Floor  
 City, State: Chattanooga, TN Zip: 37402  
 Percent On Private: 100% Private ROW - # Main Poles/Length facility:  
 Percent On Public: 0% Public ROW - # Main Poles/Length facility:  
 Total Percentage: 100% Total Number of poles/Length of facility:

**TDOT Use Only**

RG Approval and Date: *MSP 2/25/13*

Consult Appr. Date: / /

Amount Approved: \$

HQ Approval and Date: / /

CH86 Y (N) PIMPIN: *101431*

LET: *9/29/13* Contract #: *7937*

Easement Contract # *7944*

Replacement Easement

Is Utility Chapter 86 Certified (Obtained from Certification Sheet)?  N

(If project does not qualify for Chapter 86 Reimbursement, then "Percent on Private" will be used to calculate total amount due to Utility)

**NO COST / NO REIMBURSEMENT (STOP HERE. REMAINDER OF FORM IS NOT REQUIRED)**

**UTILITY REQUESTS**  Chapter 86 Move Prior % Public / Private Utility Relocation  
**REIMBURSEMENT:**  Chapter 86 MOVE IN  % Public / Private MOVE IN State Contract  
 (Please check ONE)  Other  Utility Replacement Easement Reimbursement

1) Construction Labor (In House) + (Contract) + (Overhead) (From Pg 6.1)	Ref Page:	\$
2) Preconstruction Engineering (In House)+(Consultant)+(Overhead)(From Pg 6.1)	Ref Page:	\$
3) Construction Engineering (In House) + (Consultant) + (Overhead) (From Pg 6.1)	Ref Page:	\$
4) Other Expenses (Transportation, Lodging, Meals, Printing, etc.) (From Pg 6.1)	Ref Page:	\$
5) Easement Acquisition Expenses (From Pg 6.1)	Ref Page:	\$ 80,436.00
6) Inspection (From Pg 6.1)	Ref Page:	\$
(Includes Betterment)		<b>Total A</b> \$ 341,202.02

1) Subtotal Material to Install (From Pg 5.1)	Ref Page:	\$
2) Note only Material provided to State Contractor (Pg 5.1)	Ref Page:	\$
1.1 Subtotal Material Recovered/Salvaged (From Pg 3.1)	Ref Page:	\$
1.2 Subtotal Non-Usable (Junked) (From Pg 3.1)	Ref Page:	\$
Total Material Recovered/Salvaged/Junked		\$
(Includes Betterment)		<b>Net Material Cost</b> <b>Total B</b> \$ 0

1) Clearing and Grubbing (From Pg 2.1)	Ref Page:	\$
2) Traffic Control (From Pg 2.1)	Ref Page:	\$
3) Erosion Control (From Pg 2.1)	Ref Page:	\$
(Traffic and Erosion Control are not required if utility chooses MOVE IN Contract)		<b>Total C</b> \$

(W/out Betterment) **Total D = (A+B+C)-E** \$ 612,812.02 (Includes Betterment) **Total D=(A+B+C)** \$

1) Betterment - Labor Installation & Removal(From Page 3.1 & 5.1)	Ref Page:	\$
2) Betterment - Materials (From Page 5.1)	Ref Page:	\$
<b>Total Betterment</b>		<b>Total E</b> \$

Estimate exceeds \$1.75M = N	Chapter 86 Move In	Chapter 86 Move Prior	Non-Chapter 86 Move In	Non-Chapter 86 Move Prior
Estimate capped 75% = Y	\$ -	\$ -	\$ -	\$ -
<b>Utility Reimbursement</b>	\$ -	\$ -	\$ -	\$ -
Amount Utility Owes (CH86 exceeds \$1.75M)	\$ -	\$ -	\$ -	\$ -
Amount Utility Owes (CH86 exceeds 75%)	\$ -	\$ -	\$ -	\$ -
<b>Utility Deposit (if applicable):</b>	\$ -	\$ -	\$ -	\$ -

\* Inspection cost for Private is added after the percentage is applied.  
 The Utility will reference the page number where designated on the form when other Detail Cost Estimate sheets are attached.