

UTILITY FACILITIES RELOCATION CONTRACT

THIS CONTRACT is made and entered into by and between the City of Crossville, Tennessee, a municipal corporation organized and existing under the laws of the State of Tennessee (hereinafter the "City"), and Citizens Telecommunications Company of Tennessee, L.L.C. (hereinafter the "Utility").

WITNESSETH:

WHEREAS, the City plans to construct the Crossville Downtown Economic Development Project (Project No. 27017.01E) (hereinafter collectively the "Project"), and to complete the Project it will be necessary for the Utility to relocate its assets, property, and/or facilities (hereinafter collectively the "Facilities" located on utility poles and within public and/or privately owned property and/or easements or rights-of-way in order that the Project may be constructed; and

WHEREAS, the Utility has furnished the City with an estimate showing the cost of relocating these Facilities, which estimate is currently budgeted in the amount of \$285,622, which includes the cost of engineering and relocation by the Utility;

WHEREAS, the Project includes the removal of and then the subsequent burial relocation of current above-ground utility poles and overhead Utility Facilities in the project area in Crossville, Tennessee; and

WHEREAS, the parties want to enter into this Agreement to provide for such removal of and then the subsequent burial relocation of said Utility Facilities;

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

1. The Utility shall relocate its Facilities in accordance with any estimate of cost and any related schedule of work and plan as previously approved by the City, which is incorporated herein by reference, and as otherwise contemplated by this Contract.
2. Any change in any approved estimate of cost and any related schedule of work and plan as previously approved by the City shall require the prior written approval of the City. The City agrees to review and, if acceptable, approve such request for change in a timely manner, and the City agrees to cooperate with the Utility to resolve, if possible, any objections the City may have to such requested changes in the plan of relocation by the Utility.
3. The Utility shall utilize any of its presently existing utility rights-of-way or easements, along with any presently existing available appropriate public rights-of-way or easements, in removing and/or relocating its Facilities. If any other or further utility rights-of-way or easements are required in order for the Utility to remove and/or relocate its Facilities under this Contract, then the Utility shall

- acquire all such utility rights-of-way or easements as may be so needed, and the Utility agrees to acquire these rights-of-way or easements at no cost to the City.
4. The Utility agrees to acquire or provide all equipment, engineering, personnel, traffic control, clearing, public or private property repair, etc., any required surveys, and permits for the purpose of the utility relocation, and the estimated costs thereof are included in the estimate described above.
 5. The Utility shall have the responsibility to inspect all items and types of utility relocation work to be performed by the Utility to insure that the relocation is completed in accordance with this Contract and all applicable federal, state, and local laws, rules, ordinances, regulations, and safety codes.
 6. The Utility agrees that it will perform the relocation work provided for in this Contract by force account, provided that the Utility is qualified to perform the work with its own forces and equipment in a satisfactory and timely manner and/or by contract awarded to a qualified contractor already under contract with the utility, or to the lowest qualified bidder based on appropriate bidding solicitation. Whenever the Utility elects to perform the removal and subsequent burial relocation work by award of a new specific contract, the contract shall incorporate by reference all of the specifications, costs, time limitations, etc. contained in this Contract and Utility's facility specifications.
 7. The Utility agrees that any memorandum 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.
 8. Neither the Utility nor any affiliate or subsidiary thereof or any of its agents, and/or employees, shall participate directly or indirectly with a bidder for any part of the Utility's relocation work 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 selection or in the award of administration of a contract for the performance of any part of the Utility relocation work if a real or apparent conflict of interest would be involved.
 9. The Utility must request in writing and receive the City's written approval prior to any revision in the method of performing the work required under this Contract. Failure to do so may result in the loss of the City's participation in the cost of the relocation.
 10. The Utility agrees to comply with all applicable local, state, and federal laws, rules, ordinances, and regulations concerning this project.
 11. The City agrees to reimburse the Utility for the actual cost of removing and then subsequent burial relocating of the Utilities' Facilities. The Utility shall submit to the City all requests for payment in a form and substance acceptable to the City, with all necessary supporting documentation, prior to any reimbursement of allowable cost. Such Invoice shall indicate, at a minimum, the amount charged by allowable cost line item for the entire project, the amount charged by line item, and the total amount charged under the contract. The parties further understand and agree that only the actual qualified cost to the Utility associated with the removal and then the subsequent burial relocation of its utility facilities shall be billed to the City for reimbursement, and the Utility shall not profit by such work in

any manner. The parties agree that the documentation may follow the Utility's standard accounting practice of tracing major material items and using loading factors for minor material.

12. The City shall, unless it has good faith and reasonable objections to the Utility's invoice for payment, use its best efforts to issue payment based on the Utility's monthly invoice within 30 days after receipt of the invoice, and one final invoice shall be submitted after the completion of the entire Project. If, however, the City has good faith and reasonable objections to any of the Utility's invoices or any part thereof, the City 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, the City shall only withhold payment 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 the City, subject to the limitations set out herein.
13. The Utility's invoices shall be subject to reduction for amounts included in the invoice which are determined by the City, 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 the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.
14. The City shall have the right to inspect all work and confirm the financial information made available by the Utility to the City in support of the Utility's invoiced amounts. The Utility shall notify the City of the date that the first work will be performed in order that adequate inspection can be arranged and proper records kept. Any faulty, deficient, non-workmanlike, or sub-standard work done by the Utility shall immediately be cured and remedied by the Utility at no cost to the City. If the Utility refuses or is unable to immediately cure and remedy such faulty, deficient, non-workmanlike, or sub-standard work, then the City shall have the right to have the same immediately cured and remedied by a third party of the City's choosing at the Utility's sole expense notwithstanding the provisions of paragraph 27 hereunder to the contrary.
15. The Utility agrees that its cost records will be subject to inspection at any reasonable time by representatives of the City before any payment for reimbursable work is issued. In the event any costs are determined not to be allowable under the provisions of this Contract, the Utility agrees to repay the City within 30 days of any such amount of ineligible costs included within the payment made by the City.
16. 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 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 the City.
17. The Utility agrees to indemnify and hold the City harmless, as well as the City's 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 any acts, omissions, or negligence on the part of the Utility, its employees, its contractor, or any person acting for or on its or their behalf in performance of the Utility's relocation work relating to this Contract, except for such 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 any acts, omissions, or negligence on the part of the City, its employees, its contractor, or any person acting for or on its or their behalf.

In the event of any such suit or claim, the Utility shall give the City immediate notice thereof and shall provide all assistance required by the City in the City's defense. Nothing contained herein shall be deemed to give the Utility, through its attorneys, the right to represent the City in any legal matter concerning this Contract.

18. The City shall cause its contractor to perform the trench excavation, conduits material (including any inner-duct), and backfill. The City agrees to cause its contractor to provide substantially the same indemnification set forth in paragraph 17 above to both the City and Frontier.
19. This contract may be modified only by written amendment executed by the parties hereto.
20. Failure of 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 such 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.
21. The Utility shall comply with all applicable local, federal, and state laws, codes, ordinances, and regulations in the performance of its duties under this Contract. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Contract and subject the Utility to the repayment of all funds expended, or costs incurred, under this Contract.
22. The Utility agrees to begin its burial relocation and then the subsequent removal project pursuant to the terms of this Contract no later than _____ and to complete the same not later than _____.
23. 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.
24. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee.
25. The parties agree to first make a good faith attempt to resolve any dispute under this Contract informally and between themselves. The parties further agree that any dispute under this Contract that is not otherwise informally resolved between themselves shall be subject to mediation prior to litigation initiation by either party, with each party to bear its own separate mediation expenses related

thereto unless agreed to otherwise in writing. Arbitration shall not be initiated by, nor requested by, nor available to any party for any reason regarding this Contract and any dispute hereunder.

Any dispute under this Contract that is not otherwise informally resolved between the parties or thereafter through mediation, and for which a lawsuit is thereafter initiated by any party, such lawsuit shall be filed in and proceed exclusively in the Chancery Court for Crossville, Tennessee.

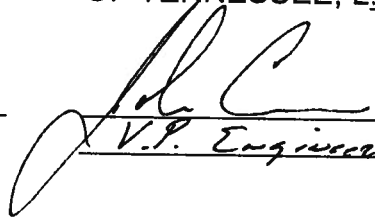
26. In any terms, covenants, conditions, or provisions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms, covenants, and hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
27. The City and the Utility agree that any notice provided for in this contract concerning this Contract shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by national 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 to such other party, facsimile number, or address as may be hereto specified by written notice.
28. The City and the Utility expressly understand, represent, and agree in all respects that all performance under this Contract by the Utility (through its employees, agents, and assigns), shall not create any actual, intended, or perceived employer/employee relationship between the City (nor any of its employees, agents, or assigns) and the Utility (nor any of its employee, agents, or assigns). Rather, the relationship of the City (and its employees, agents, and assigns) and the Utility (and its employees, agents, and assigns) is that of an independent contractor. The Utility shall at all times be responsible for, and shall indemnify and hold the City harmless for, all liability claims and workers' compensation claims and benefits of or against the Utility and the Utility's employees, agents, and assigns (along with any contractors hired by the Utility to perform under this Contract) that may arise while the Utility performs hereunder, along with any and all costs and attorney fees of the City related thereto.
29. Utility recognizes and acknowledges that City has, or will, enter into a master construction contract, ("General Contract"), with a general contractor, ("Contractor"), for the Project. Utility shall work in good faith with the Contractor and coordinate its work under this Contract with the Contractor. Notwithstanding any term or provision herein to the contrary, the City shall not be liable or responsible for any increase, overage or charges, including without limitation fees, expenses, and invoices, in excess of the previously approved estimates by the City under this Contract created by a change in work, plans, specifications, scope of work, or action or directive of the Contractor, its agents, officers or representatives, unless the same shall be have been previously approved by the City.

AGREED this _____ day of _____, 2013.

CITY OF CROSSVILLE

CITIZENS TELECOMMUNICATIONS
OF TENNESSEE, L.L.C

J. H. Graham, III Mayor

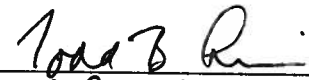


V.P. Engineering

ATTEST:

ATTEST:

City Clerk



TYP. NETWORK MANAGEMENT