



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 Crossville (Water)**, hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT plans to construct PIN Number **119140.00, SIA Serving Colinx LLC in Crossville**, located in **Cumberland 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, **64** percent of which are located on public highway right-of-way and **36** percent of which are located on private utility right-of-way; and

WHEREAS, the Utility has furnished TDOT with an estimate and plans showing the cost and manner of relocating these facilities, which estimate is in the total amount of **\$104,415.49**, including the amount of **\$33,475.21** for the cost of engineering; the amount of **\$273.38** for the cost of inspection provided by the Utility; and the amount of **\$70,666.90** for the cost of relocating the Utility's facilities, including the amount of **\$0.00** for the cost of betterment to the Utility's facilities (hereinafter called "Betterment Cost"), and of which **36** 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 **64** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way/or any betterment to the Utility's facilities (hereinafter called the "Utility's Cost"); 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; and

WHEREAS, the parties want to enter into agreement to provide for the relocation of said facilities;

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 relocate its facilities in accordance with the estimate of cost, schedule of work and plan as approved by TDOT, incorporated herein by reference, and as otherwise contemplated by this Contract. The approved estimate of cost and schedule of work are attached hereto as Exhibit "A".
- (b) Any change in the approved estimate of cost, schedule of work or 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. To the extent that facilities are being located within public highway right-of-way the Utility's relocation work shall comply with the State's Rules and Regulations for Accommodating Utilities Within Highway Rights-of-Way and 23 CFR 645B, which are incorporated herein by reference. The Utility acknowledges possession of each.
3. (a) The Utility has acquired or shall acquire all utility rights-of-way outside of the available public highway right-of-way as may be needed to relocate its utility facilities, including any betterment, and 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 to provide engineering, erosion control, traffic control, clearing and grubbing of the proposed construction site, and all survey staking for the purpose of the utility relocation, and the estimated cost thereof is included in the estimate described above.
5. The Utility shall have the responsibility to inspect all items of utility relocation work to be performed by the Utility to ensure that the relocation is completed in accordance with this Contract and all applicable specifications and safety codes. 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. The inspection of utility facilities on public highway right-of-way shall be performed at no cost to TDOT.
6. (a) The Utility agrees that it will perform the relocation 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 and equipment 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, or otherwise as authorized in 23 CFR § 645.115, as **described below**:

- (b) Whenever the Utility elects to perform the relocation 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 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 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 award of a contract 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.
 - (e) The Utility must request in writing and receive TDOT's written approval prior to any revision in the method of performing the work. Failure to do so may result in the loss of TDOT participation in the cost of relocation.
7. 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.
 8. The Utility agrees to comply with 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 predominantly of steel or iron – that is, all manufactured products consisting of at least 90% steel or iron content by weight when delivered to the job site for installation – 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 cost of relocating the Utility's facilities in accordance with the approved plan, as follows:

- (a) 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.
- (b) The Utility shall develop and record relocation 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.
- (c) Unless a lump-sum payment has been approved by TDOT, 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.
- (d) 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 relocation 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.
- (e) 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.
- (f) 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, or of the agreed-to lump sum, within one year following the completion of the Utility relocation 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.
- (g) 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.

(h) 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 predominantly of steel or iron (that is, all manufactured products consisting of at least 90% steel or iron content by weight when delivered to the job site for installation) 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. TDOT shall have the right to inspect the work and to confirm the financial information made available by the Utility to TDOT in support of the Utility's invoiced amounts. The Utility shall notify TDOT of the date that the first work will be performed in order that adequate inspection can be arranged and proper records kept. Any costs billed by the Utility that cannot be verified by TDOT records will not be reimbursed.
11. 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.
12. 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.
13. 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 645A (in accordance with paragraph 8(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.
14. 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 or its employees in the performance of the Utility's engineering and inspection work relating to this Contract. 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.

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.

- 15.** TDOT shall have no liability except as specifically provided in this Contract.
- 16.** This Contract may be modified only by a written amendment executed by the parties hereto.
- 17.** 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.
- 18.** 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.
- 19.** 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.
- 20.** 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.
- 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
Suite 600, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0329
Facsimile Number: (615) 532-1548

With a copy if requested by TDOT to:

John H. Reinbold, General Counsel
Suite 300, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0326
Facsimile Number: (615) 532-5988

To the Utility:

Attention: _____

Facsimile Number: _____

With a copy if requested by Utility to:

Attention: _____

Facsimile Number: _____

IN WITNESS WHEREOF, the parties have executed this agreement.

UTILITY

City of Crossville (Water)

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: 18950-1540-04
County: Cumberland
Date: May 23, 2014

for consideration of reimbursement on this project.**

Contact Name (1): Tim Begley
E-mail: tim.begley@crossvilletn.gov Phone: 931-456-6172
Contact Name (2): Barry R. Field
E-mail: barryfield@fieldengineering.net Phone: 931-456-6071
Utility Name: City of Crossville - WATER
Address: 392 North Main Street
City, State: Crossville, TN Zip: 38555

TDOT Use ONLY	
RG Approval and Date: <i>[Signature]</i>	
Consult Appr. Date: <u>5/28/14</u>	<u>15.49</u>
Amount Approved: <u>\$ 104,409.94</u>	
HQ Approval and Date: <u>Jim Burt 6/4/2014</u>	
CHAS YIN#	PIN/PIN#: <u>119140.00</u>
LET: <u>3/29/2014</u>	Contract #: <u>8171</u>
Easement Contract #	

Percent On Private: 36% Private ROW - # Main Poles/Length facility: 393
Percent On Public: 64% Public ROW - # Main Poles/Length facility: 685
Total Percentage: 100% Total Number of poles/Length of facility: 1078
Is Utility Chapter 86 Certified (Obtained from Certification Sheet)?

(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

A. Labor

1) Construction Labor (In House) + (Contract) + (Overhead) (From Pg 6.1)	Ref Page	\$ 37,566.70	✓
2) Preconstruction Engineering (In House)+(Consultant)+(Overhead)(From Pg 6.1)	Ref Page	\$ 24,422.00	✓
3) Construction Engineering (In House) + (Consultant) + (Overhead) (From Pg 6.1)	Ref Page	\$ 6,241.21	✓
4) Other Expenses (Transportation, Lodging, Meals, Printing, etc.) (From Pg 6.1)	Ref Page	\$ 2,867.00	✓
5) Easement Acquisition Expenses (From Pg 6.1)	Ref Page	\$ -	
6) Inspection (From Pg 6.1)	Ref Page	\$ -	
Private =		\$ 2,812.00	✓
Total A		\$ 74,309.74	✓
		\$ 272.84	✓
		\$ 71,315.29	✓

B. Materials & Supply

1) Subtotal Material to Install (From Pg 5.1)	Ref Page	\$ -	
2) Note only: Material provided to State Contractor (Pg 5.1)	Ref Page	\$ 33,100.20	✓
Less: Salvage (Estimated Values only. Final bill will include actual salvage values.)			
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		\$ -	
Net Material Cost		\$ 33,100.20	✓
Total B		\$ 33,100.20	✓

C. Site Cost

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)			
Total C		\$ -	

D. Total Cost (Contract Amount)

(Without Betterment) Total D = (A+B+C)-E \$ 104,409.94 (Includes Betterment) Total D=(A+B+C) \$ 104,409.94

E. Betterment

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

F. Total Amount Due:

Estimate exceeds \$1.75M = N
Estimate capped 75% = N

Utility Reimbursement

Amount Utility Owes (CH86 exceeds \$1.75M)
Amount Utility Owes (CH86 exceeds 75%)

Utility Deposit (if applicable):

Chapter 86 Move In	Chapter 86 Move Prior	Non-Chapter 86 Move In	Non-Chapter 86 Move Prior
\$ -	\$ 104,409.94	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -

* Inspection cost for Private is added after the percentage is applied.

Reimb Cost \$37,764.51
 TDOT Utility Form 2011 16
 Private Page 6.1
 6/4/14



Declaration of Scheduled Calendar Days

Project Number: 18950-1540-04

Date: May 23, 2014

Description: City of Crossville, Cox Avenue

County: Cumberland

Utility: City of Crossville

Address: 392 North Main Street

City: Crossville

State: TN

Zip: 38555

Phone Number: 931-456-6172

Fax Number: 931-484-7713

Type of Facilities: Water Sewer Gas Telephone Electric
 CATV Fiberoptic Other

Required Period services cannot be interrupted: _____

All estimated days should be expressed in "Calendar" days to complete installation, relocation or adjustment of the utility facilities on the above referenced project. The utility can as an option submit an "On or Before" date all work will be completed. In accordance with provisions set forth in TCA 54-5-854.

Task	Days to Complete	Special Conditions
Stock Pile Material (Including ordering material)	30	N/A
Mobilize Work Force (including Bidding process if Required)	60	N/A
Complete Relocation	30	N/A
Total Days To Complete	120	N/A

Special Conditions:

Water Service cannot be turned off for a period exceeding 2 hours. *OK*

T. Bepler 5-27-14
Signature of submitting Date
Utility Representative

[Signature] 5/23/14
Signature of submitting Date
State Representative

Subject to provisions of the TDOT Utility Office Maintenance of Traffic Procedures.

OK
APPROVED BY
[Signature]
UTILITY COORDINATOR