

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
UTILITY RELOCATION  
KEEP COST AGREEMENT  
PURSUANT TO KRS 179.265

COUNTY, FEDERAL NUMBER: Fayette, STPM 8552 06  
UPN FD52 C034 6790101 R  
PROJECT NAME: Clays Mill Road Project Section 2C  
ITEM NO. 07-224.55

THIS UTILITY RELOCATION AGREEMENT is made and entered into by and between the Lexington Fayette Urban County Government, hereinafter called LFUCG, and *Windstream Communications, 130 West New Circle Road, Suite 170, Lexington, KY 40505*, hereinafter referred to as *Windstream*.

AGREEMENT PREMISES

1. The LFUCG, in the interest of public safety and convenience, proposes to widen and reconstruct *Clays Mill Road* from *Keithshire Way to Waco Drive*, a distance of approximately *1.2* miles as shown by the LFUCG's survey and general plan sheets, which are hereby made a part of this Agreement.
2. The subject project was authorized by TC 10-1, Official Order Authorization No. *67901*, dated *March 20, 2007*, subject to appropriate reimbursement by the Federal Highway Administration or LFUCG, which as pertains to this Agreement is in the amount of *\$401,088.62*.
3. The right of way for the proposed roadwork for *Clays Mill Road* will pass over and include certain *Windstream* facilities constructed and now maintained by *Windstream*.

4. The said facilities will be relocated as designed by *Windstream* and shown on the LFUCG's survey and general plan sheets.
5. The said facilities may be relocated upon highway right of way, with restrictions, or upon other private right of way to be obtained by *Windstream* or obtained by the LFUCG and granted to *Windstream*.
6. If required and applicable, the LFUCG will recommend approval of this project to the Federal Highway Administration for construction with funds apportioned to the LFUCG under the Federal Aid Highway Program, and Acts amendatory thereof and supplementary thereto, including Subpart A of 23 Code of Federal Regulations (CFR) 645.
7. *Windstream* is authorized herein to make the necessary removal, alterations or adjustments of its existing facilities with *Windstream's* regular engineering, construction, and maintenance forces. Said work is to be reimbursed with *Four and seventeen hundredths (4.17)* percent of the costs to be borne by the LFUCG and *ninety five and eighty three hundredths (95.83)* Percent of the costs to be borne by *Windstream*.
8. If *Windstream* chooses to use a contractor or a subcontractor, *Windstream* is required to obtain prior LFUCG approval in writing pursuant to 23 CFR 645.109(a) and 23 CFR 645.115(a). The LFUCG reserves the right to refuse reimbursement for any and all costs associated with work performed by a contractor or subcontractor prior to their approval by the LFUCG. The LFUCG is hereby held harmless from all actions taken by a contractor or subcontractor

related to *Windstream*'s failure to acquire said approvals. Said work is to be paid under a contract let by *Windstream*, adhering to the cost share stipulations described herein.

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**SCOPE OF AGREEMENT**

**In consideration of the premises, the parties agree as follows:**

9. *Windstream*, with its regular construction or maintenance personnel, and/or with an approved contractor or subcontractor, will furnish all construction labor, equipment and materials to make and complete all necessary adjustments of its facilities to accommodate the proposed highway construction as shown in the attached plans and estimate, (Attachment A) and which by this reference is hereby made a part of this Agreement.
10. The estimated cost of relocating and/or adjusting on private right of way, (*See attachment for listing of reimbursable existing facilities*) is \$16,743.76, which is *Four and seventeen hundredths (4.17)* Percent of the total cost (\$401,088.62) and is to be borne by the LFUCG as shown by the estimate attached hereto, shown in Attachment A.
11. If *Windstream* proposes to include betterment in this Agreement, all work directly pertaining to said betterment if any, is detailed in Attachment A and is not reimbursable.
12. The scope of work to be completed under this Agreement is listed in the attachment titled *Listing of Total Work Proposed*.
13. Once *Windstream* receives the authorization by the LFUCG to begin work, *Windstream* estimates that it will take approximately *one hundred twenty (120)* working days to complete the relocation of the facilities.

14. *Windstream* shall submit any change orders necessary to the LFUCG for consideration and approval before initiation of the work detailed in said change order. A change order shall be considered in the event there is a change in the scope of work, extra work to be performed, or other major changes in the work covered by this Agreement. Said change order must be reasonably detailed and include proper itemizations from *Windstream*, computed in accordance with the methods and procedures set forth in Subpart A of 23 CFR 645. If *Windstream* fails to obtain prior approval of a change order from the LFUCG, the LFUCG has the right to refuse reimbursement of expenditures for such change order.
15. *Windstream* shall be reimbursed only for the cost of constructing the most economical type of facilities that satisfactorily meet the service requirements of the former facilities, previously located outside of public right of way. A certification to this effect shall be included in submittals for reimbursement for work performed and actual costs incurred.
16. On any relocation project, all work within the limits of the LFUCG's right-of-way, whether by force account or contract, shall be done in accordance with the Cabinet's Standards, Specifications, and Standard Drawings. All traffic control will be in accordance with Part VI of the *Manual on Uniform Traffic Control Devices*. Backfilling and bedding, if required and/or necessary, will be performed in accordance with the most recent version of the Roadway Drainage Installations (RDI) section of the Cabinet's *Division of Highway Design Standard Drawings*. Surface restoration, if required, will be performed in accordance with details as

shown in the most recent version of the Cabinet's Standard Specifications for Road and Bridge Construction and the *Permits Manual*, or as directed by the LFUCG's engineer.

17. On any relocation project, the vertical clearance of overhead utilities shall be a minimum of eighteen (18) feet or in no case less than the clearance required by the National Electric Safety Code, American National Standards Institute, Institute of Electrical & Electronic Engineers, Inc.
18. On any relocation project, the vertical clearance of overhead utilities crossing the interstate or other limited access highway, roadways, and ramps shall be a minimum of twenty-four (24) feet as determined by the LFUCG, but in no case less than the clearance required by the National Electric Safety Code, American National Standards Institute, Institute of Electrical & Electronic Engineers, Inc.
19. The minimum depth for underground utilities on minor arterial routes is thirty six (36) inches under roadways, shoulders, ramps, and ditch lines and thirty (30) inches in all other areas within right-of-way. Exceptions may be made where a lesser depth will not interfere with the highway maintenance or safety. Exceptions shall include an engineering study that will be prepared and submitted by the permittee and approved by the LFUCG's engineer.

#### **RESPONSIBILITIES OF LFUCG**

20. The LFUCG will reimburse *Windstream* for the actual cost of the work upon presentation of invoices from *Windstream*. *Windstream* will compute costs by and in accordance with the methods and procedures set forth in Subpart A of 23

CFR 645. The method of developing the relocation costs is found in 23 CFR 645.117.

21. Itemized bills from *Windstream* will be in detail form that will meet the approval of the LFUCG and the Federal Highway Administration.

**Payments will be made on the following basis  
in accordance with 23 CFR 645.117:**

**Current Billings.** *Windstream* may submit current billings reflecting the actual cost incurred during any given work period, in which case, the current billings will be paid within thirty (30) business days after receipt of same by the LFUCG.

**Final Payment.** Upon completion of all said work and the submission of final itemized invoices and as-built drawings, *Windstream* shall provide one final and complete billing of all remaining costs incurred, within one year following completion of the utility relocation work performed by *Windstream* pursuant to this Agreement, otherwise previous payments to the utility shall be considered final, except as agreed to between the LFUCG and *Windstream*. The final billing will be forwarded for payment after review and approval of the Engineer and submitted to the Division of Engineering, it being understood, however, that the billings are subject to audit and verification by the KYTC, LFUCG and/or the Federal Highway Administration.

#### **ADDITIONAL REQUIREMENTS**

22. The LFUCG certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration LFUCG, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Records

and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the Agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c). *Windstream* also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

23. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration LFUCG shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)
24. All records of *Windstream* pertaining to this project will be subject to inspection at any reasonable time by representatives of the LFUCG and/or the Federal Highway Administration, and shall be retained and maintained as prescribed in 23 CFR 645.117 (i)(3) and 49 CFR 18.42- *Retention and Access Requirements for Records*.
25. Execution of this Agreement and issuance of a LFUCG Permit number hereon is conditioned upon the acceptance of and agreement to the standard terms and conditions of the Cabinet Encroachment Permit (TC99-1) form revision in effect at the time of the execution of this Agreement, and this Cabinet Encroachment Permit (TC99-1) form revision is made a part of this agreement by this reference.



26. The work of altering and maintaining *Windstream's* facilities covered by this Agreement, at any time after they have been relocated by *Windstream* as herein provided, shall be done by *Windstream* at its sole expense except as may otherwise be provided by law. Such work as is necessary to install, alter, service and maintain any facilities within the LFUCG's right of way will be performed in accordance with policies and procedures prescribed by the Cabinet's Permits Manual and in such a manner as will ensure the safety of the general public. Access from the through-traffic roadways and ramps for maintenance or servicing of utility facilities located on the LFUCG's right of way requires an encroachment permit except by permission of the District Engineer in an emergency situation.
27. *Windstream* shall comply with the 18 United States Code (U.S.C.) 874 Copeland "Anti-Kickback" Act as supplemented in Department of Labor regulations (29 CFR Part 3).
28. It is agreed by and between the parties hereto that 23 CFR 645 and supplements and amendments thereto form an essential part of this Agreement, and shall in no way be abrogated or superseded by the terms and provisions of this Agreement.
29. Limited to acts related to this Agreement, *Windstream* agrees to indemnify and hold harmless the LFUCG against any and all third-party claims, demands, obligations, or litigation, that result from: (1) any material breach of this Agreement by *Windstream*; (2) any and all negligent acts of *Windstream*; and (3) any policy, procedure, or employment practice of *Windstream* violating applicable, Federal, State, or local laws.

30. *Windstream* shall maintain adequate protection of all work from damage and shall protect the LFUCG's property from injury or loss arising in connection with this Agreement. *Windstream* shall make good any such damage, injury or loss, except such as may be directly caused by agents or employees of the LFUCG. *Windstream* shall adequately protect adjacent property as provided by law and this Agreement.
31. *Windstream* shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. *Windstream* shall comply with all applicable Federal and State Occupational Safety and Health Administration (OSHA) standards including 23 CFR 634 and Kentucky Revised Statutes (KRS) Chapter 338.
32. KRS 45A.480 requires *Windstream* to comply with the LFUCG's requirements pertaining to workers' compensation insurance and unemployment insurance. By execution of this agreement, *Windstream* agrees that all contractors and subcontractors employed, or to be employed in connection with this Agreement shall be in compliance with Kentucky requirements for Workers' Compensation Insurance KRS Chapter 342 and Unemployment Insurance KRS Chapter 341.
33. By execution of this Agreement, *Windstream* is agreeing that the scope of this Agreement shall be in compliance with all applicable Federal, State and local laws, regulations and mandates. Compliance as described herein includes, but not

exclusively, environmental regulations such as: Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR Part 15).

34. To the extent applicable to this agreement, *Windstream* shall comply with the Buy America requirements (as specified in 23 U.S.C. 313 and 23 CFR 635.410) if the utility work uses any amount of Federal Aid Highway Program (FAHP) funding. *Windstream* is not required to change its existing standards for materials as long as the Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or relocation of *Windstream's* facilities (as specified in 23 CFR 645) on contracts or agreements involving FAHP funding and over regulations which allow *Windstream* to furnish materials from company stock (as specified in 23 CFR 645.117(e)). Company stock materials that do not meet Buy America requirements may not be permanently incorporated into an FAHP funded project. *Windstream* must provide a definitive statement that all products, permanently incorporated into the project are covered under the Buy America requirements. This requirement is fulfilled via proper signature and submission of the statement of charges form. In some circumstances, a waiver of the Buy America requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis. If the accommodation or relocation of *Windstream's* facilities uses only State or local funding, the Buy America requirements do not apply.

35. The Commonwealth of Kentucky and the LFUCG are prohibited from contracting with firms that utilize the services of illegal immigrants in the performance of a contract of goods, services or construction purposes and the performance of a contract with the Commonwealth. By execution of this Agreement, *Windstream* agrees not to hire any illegal immigrants itself and to take commercially reasonable measures to ensure that its contractors and their subcontractors not utilize the services of illegal immigrants.
36. The LFUCG may terminate this Agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the Agreement.
37. The LFUCG reserves the right in its sole discretion to demand that *Windstream* and all subcontractors immediately cease any portion of, or all further work undertaken within the scope of work of this agreement. Any authorized services performed, materials used or installed to the satisfaction of the LFUCG before the demand to cease any or all further work shall be paid in accordance with the terms of the section entitled "Responsibilities of the LFUCG". The LFUCG shall thereafter authorize *Windstream* in writing to undertake only minimal, reasonable and necessary additional work or services and acquire, expend, use or install only

minimal, reasonable and necessary additional materials to reestablish the original use and function of their facility.

38. *Windstream* affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any Agreement awarded. *Windstream* shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.
39. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

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**AGREEMENT EXECUTION**

By the execution of this Agreement, the Parties warrant that they have fully read this Agreement, and agree to the terms and conditions. *Windstream* warrants that the existing *facility type* facilities identified have been verified, said facilities must be relocated due to the referenced LFUCG project, and the relocation of said facilities are reimbursable as defined in KRS 179.265. The LFUCG warrants that all reimbursable costs invoiced will be paid as defined herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

This the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**LFUCG APPROVALS**

Approval of the Division of Engineering

SIGNATURE: A. Bradley Frazier  
A. Bradley Frazier, Division Director

Approval of the LFUCG

SIGNATURE: \_\_\_\_\_  
Jim Gray Mayor

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

Approved Form and Legality

SIGNATURE: \_\_\_\_\_

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

Office of Legal Services

Approval of *Windstream Communications*

SIGNATURE: [Signature] DATE: 8/9/13

TITLE: Division Vice President





Steven L. Beshear  
Governor

Commonwealth of Kentucky  
Finance and Administration Cabinet  
**OFFICE OF THE SECRETARY**  
Room 383, Capitol Annex  
702 Capital Avenue  
Frankfort, KY 40601-3462  
(502) 564-4240  
Fax (502) 564-6785

Lori H. Flanery  
Secretary

**SECRETARY'S ORDER 11-004**

**FINANCE AND ADMINISTRATION CABINET**

**Vendor Document Disclosure**

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a formal review process should be created whereby the Finance and Administration Cabinet would provide oversight and direction to an agency of the Commonwealth that is in a dispute with a vendor regarding documents that it believes are being improperly withheld by the vendor and are necessary to conduct a thorough review of the vendor's activities pursuant to said contract; and

**WHEREAS**, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

**NOW, THEREFORE**, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, 45A.230, and 200 KAR 5:314, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the filing of a Petition for Determination with the Finance and Administration Cabinet by an agency of the Commonwealth, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the filing of a Petition for Determination from an agency of the Commonwealth, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits,



investigations or any other formal inquiry and a dispute has arisen as to what documents are necessary to conclude the inquiry.

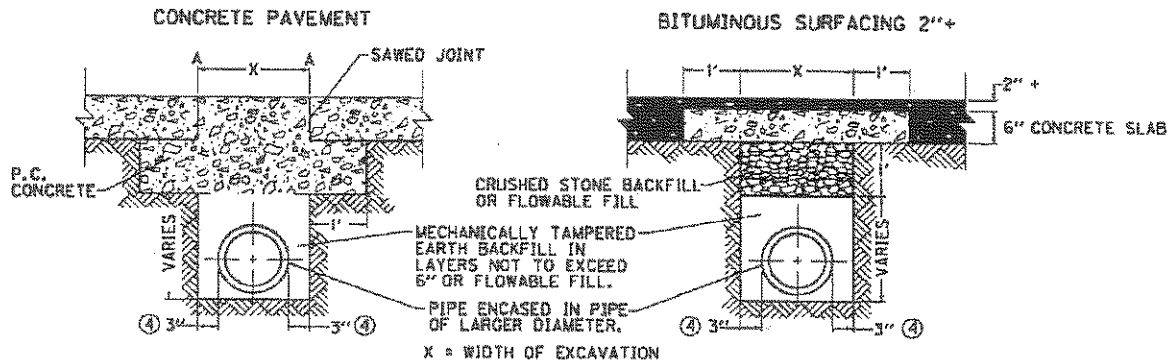
- III. Upon the filing of a Petition for Determination by an agency of the Commonwealth pursuant to Section I or Section II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall pursue any and all options that it possesses to obtain the documents in question, including, but not limited to the following:
  - a. Initiating discussions with the vendor to obtain the documents determined to be necessary for the inquiry;
  - b., Terminating the vendor's contract; or
  - c. Filing an action jointly or singularly against the vendor in a court of appropriate jurisdiction to obtain a court order mandating the disclosure of the documents determined to be necessary for the inquiry.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

THIS ORDER SHALL BECOME EFFECTIVE UPON EXECUTION.

COMMONWEALTH OF KENTUCKY  
 TRANSPORTATION CABINET  
 DEPARTMENT OF HIGHWAYS  
 DIVISION OF TRAFFIC  
 TYPICAL HIGHWAY BORING CROSSING DETAIL

TC 99.13  
 REV 2/95

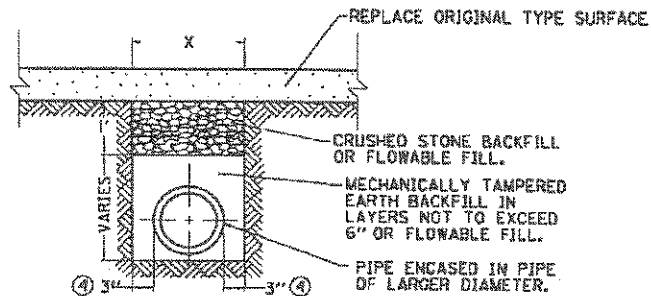
SURFACE RESTORATION METHODS



REPLACE CONCRETE PAVEMENT WITH NEW PAVEMENT SAME THICKNESS OF EXISTING PAVEMENT.

REPAVE BITUMINOUS PAVEMENT WITH THE SAME TYPE AND DEPTH AS EXISTING PAVEMENT.

BITUMINOUS SURFACE LESS THAN 2" AND TRAFFIC BOUND MACADAM



NOTE:

1. DISTANCE FROM POINTS "A" (CONCRETE PAVEMENT) TO NEAREST JOINT OR BREAK IN PAVEMENT MUST BE SIX (6) FEET OR MORE. IF LESS THAN SIX (6) FEET, REMOVE PAVEMENT TO JOINT OR BREAK AND REPLACE ENTIRE SLAB.
2. CONCRETE SLAB UNDER BITUMINOUS SURFACE TO EXTEND TWELVE (12) INCHES ON EACH SIDE OF TRENCH.
3. AN APPROVED JOINT SEALER TO BE APPLIED BETWEEN NEW AND EXISTING PAVEMENT.
- ④ 3" MIN. EACH SIDE OF PIPE WITH USE OF FLOWABLE FILL.