



Iowa Department of Transportation Utility Reimbursement Agreement

February 2014

Agreement No.: U-2014-16634
County: Warren
ROW Project No.: STPN-092-5(50)--2J-91
Construction Project No.: NHSX-092-5(51)--3H-91
Staff Action No.: 15-0257

IT IS AGREED, by and between the State of Iowa, Iowa Department of Transportation, Highway Division (hereafter Department), and **Qwest Corporation dba CenturyLink**, a corporation, with offices in Littleton, Colorado, (hereafter Company) as follows:

1. Project Information

- 1.1. The Department shall proceed with the proposed pavement grade and replace project in accord with its plans and specifications as designated by the project numbers listed above. The plans and specifications are made a part of this agreement.
- 1.2. Communication line owned and operated by the Company located on its own easements upon privately owned land affected by the project shall be adjusted in accordance with Exhibit "A". Work and operations to be done by the Company consist of the following:
 - a. Engineering for the work proposed at the preliminary and construction stages
 - b. Relocated existing long distance fiber line currently located on the north side of IA 92 to the south side of IA 92. Most of the line will be relocated in private easement, south of DOT right-of-way.

2. Project Costs and Method of Payment

- 2.1. The total estimated cost (**\$1,248,729.55**) required by the project for adjustment of Company facilities and estimated **Department share of such costs (100%)** are shown on the itemized cost estimate included in Exhibit "B". The Department's share of costs will be limited to only those costs that are eligible for Federal-aid reimbursement as per Title 23, Code of Federal Regulations (CFR), Part 645.
- 2.2. If actual costs will exceed 125% of the estimate, the Company shall promptly request written approval from the Department to exceed the estimated cost unless the additional cost is \$10,000 or less. Such requests shall include an updated itemized cost estimate and an explanation for the increased costs. The Department will not reimburse the Company for costs exceeding 125% of the estimate unless the Department approves such a request in writing.
- 2.3. For full and complete compensation for all work, materials, and services furnished under the terms of this agreement, the Company shall be paid actual costs as estimated on Exhibit "B", subject to the provisions of Section 4 of this agreement.

3. Construction

- 3.1. The Company agrees to perform the work specified to adjust its facilities, and further certifies:
 - a. It is financially capable of performing the work prior to being reimbursed.
 - b. The work shall be done by qualified, properly trained, and experienced personnel.
 - c. The work shall be done no later than fifteen (15) days prior to the letting date.
 - d. It is aware of all applicable work requirements and administrative rules imposed by the Federal Highway Administration and the Department.
- 3.2. Upon receipt of written notice to proceed from the Department, the Company shall adjust its facilities in a satisfactory manner as outlined in paragraph 1.2 that will not interfere with the highway project. The Company shall notify the appropriate Resident Construction Engineer of the date on which Company work begins in the project area and of the anticipated completion date. The Company will also inform the Department when each phase of the work is completed. If a change in schedule is warranted, it shall be approved by the Department Resident Construction Engineer.

4. Billing and Final Payment

- 4.1. The Company may elect to provide the Department with an invoice at various stages of the utility adjustment effort. However, the invoice shall only be for expenses incurred prior to the date of the invoice. The Company shall provide the Department with an invoice that includes the following:
 - a. Company name
 - b. Date of invoice
 - c. Invoice number
 - d. Agreement number as shown on page 1 of this agreement
 - e. ROW project number as shown on page 1 of this agreement
 - f. Beginning and ending dates of work
 - g. An itemized statement of actual costs incurred, including a specific description of each item, product, or

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- service provided. Labor, indirect costs, and direct costs shall be identified separately.
- h. Total amount claimed to date
 - i. Previous payments to date, if any
 - j. Company project or activity numbers
 - k. If the invoice is final, it shall conspicuously show the word "FINAL" near the top of the invoice. Otherwise, the invoice shall conspicuously show the word "PROGRESS" near the top of the invoice.
 - l. If more than one progress payment is requested, the total of all progress payments will not exceed 90% of the Department's share of the cost as specified in Exhibit "B"
- 4.2. Upon receiving a final invoice from the Company, the Department will pay the Company an amount not to exceed 90% of either the Department's share of the estimated cost as specified in Exhibit "B" or the claimed amount, whichever is less.
- 4.3. Upon receiving a final invoice, the Department will send the Company a Certificate of Completion. The company shall complete the certificate and return it to the Department. The Department will either acknowledge and accept the work as complete or explain why it cannot do so. After the work is accepted as complete, the Department may perform a final audit of the Company's claimed cost.
- 4.4. Without further compensation, other than performance by the Department of its obligations as stated in this agreement, the Company shall execute and deliver to the Department, on forms supplied by the Department, a Disclaimer of Interest in Realty in and to all rights-of-way acquired by the Department for this project.
- 4.5. Upon satisfactory completion of the work, completion of a final audit by the Department, and receipt of a properly executed Disclaimer of Interest in Realty from the Company, the Department shall make a final payment to the Company. Final payment (which includes the final progress payment and the retainage release) will be equal to the difference between the total eligible costs and the amount previously reimbursed, if any. In the event justifiable audit exceptions exist, or for other reasons the Company has been overpaid, the Company will promptly refund to the Department any overpayment previously made.

5. General Provisions

- 5.1. The Company hereby acknowledges receipt of notice and waives further notice required by law.
- 5.2. In accordance with the Department's Utility Accommodation Policy, this agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway rights-of-way. Where facilities are to be located on or across the rights-of-way, the Company is responsible for obtaining a permit from the District Engineering Operations Technician prior to commencing work within the rights-of-way.
- 5.3. This agreement is subject to the following provisions of 23 CFR Part 645 and the Department's Utility Accommodation Policy, as set forth in Administrative rules 761 Iowa Administrative Code (IAC) Chapter 115, which are incorporated by reference.
- 5.4. All work performed pursuant to this agreement shall comply with 49 CFR Part 21-Nondiscrimination in Federally Assisted Programs of the Department of Transportation and all other applicable State or Federal laws, regulations, or directives, as of the date of execution of this agreement.
- 5.5. The Company shall perform future construction, repair, replacement, or maintenance of the Company's facilities within Department's highway rights-of-way in accordance with the Department's Utility Accommodation Policy.
- 5.6. The Company and its contractors, or subcontractors where applicable, shall maintain all books, documents, accounting records, supporting cost proposals, and other evidence pertaining to costs incurred and make such material available at their respective offices at all reasonable times during the period of this agreement. These records shall be available for 3 years from the date of final payment under this agreement for inspection by the Department, Federal Highway Administration, or any authorized representative of the Federal government. The Company shall furnish copies of these records, if requested.
- 5.7. If difficulties or delays arise which, in the opinion of the Department, make it impractical to proceed with the proposed improvement, the Department may cancel this agreement by written notification to the Company and this agreement shall become null and void, provided such notification is given prior to the notice by the Department to the Company to proceed.
- 5.8. This agreement and the referenced exhibits constitute the entire agreement between the Company and the Department concerning this project. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement. Any addendums shall become effective only upon written approval of the Company and the Department. If any clause in this agreement is declared invalid, it shall not void the entire agreement.
- 5.9. This agreement shall be executed and delivered in two or more copies, each of which shall be deemed to be an original and shall constitute but one and the same agreement.
- 5.10. The attention of the Company is directed to the provisions of an act of Congress known as Title 23, United States Code, Section 1 and any other acts of Congress providing for road improvements. When

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the Federal Government is to pay all or any portion of the cost of an improvement or project, the construction work, although it is under the supervision of the Department and subject to laws of the State of Iowa, is also subject to the above mentioned acts of Congress and to all authorities. This construction work shall be subject to inspection by duly authorized agents of the Federal Government, but this inspection will not make the Federal Government a party to the contract.

- 5.11. All work done under this utility accommodation permit must conform to Buy America requirements in accordance with 23CF 635.410 as it relates to permanently incorporated steel and/or iron materials. Exhibit C contains the Buy America documents. BA1 is a guide of why Buy America applies and how to apply Buy America requirements. BA2 and BA3 need to be signed and submitted to the DOT with the permit application.
- 5.12. On all contracts involving Federal-aid, all products of iron, steel, or a coating of steel which are incorporated into the work shall be of domestic origin and shall be melted and manufactured in the United States. The Engineer may allow minimal amounts of these materials from foreign sources, provided the cost does not exceed 0.1% of the contract sum or \$2,500, whichever is greater. The Contractor shall certify that these materials are of domestic origin. This amount shall include transportation, assembly, and testing as delivered cost of foreign products to the project.

6. Signatures

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed by their duly authorized officers on the dates below indicated.

Executed by the Company this _____ day of _____, 2014

CENTURYLINK

By _____
(Print Name/Title)

State of _____

ss

County of _____

This instrument was acknowledged before me on this ____ day of _____, 2014,

by _____, as _____ of _____.
(Name) (Title) (Company)

Notary Public in and for said State

Executed by the Department this _____ day of _____, 2014

STATE OF IOWA
IOWA DEPARTMENT OF TRANSPORTATION

By _____
Steve Gent, Director
Office of Traffic and Safety
State of Iowa

State of Iowa

ss

County of Story

This instrument was acknowledged before me on this ____ day of _____, 2014, by Steve Gent, as Director, Office of Traffic and Safety of the Iowa Department of Transportation.

Notary Public in and for said State