



Pre50 P-338271

## **AGREEMENT FOR RELOCATION, ADJUSTMENT OR PROTECTION OF TELECOMMUNICATIONS FACILITIES**

THIS UTILITY RELOCATION, ADJUSTMENT AND/OR PROTECTION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of March 31, 2023, by and between the CITY OF FRESNO, a California municipal corporation, (hereinafter called, "Requestor"), and CenturyLink Communications, LLC, a Delaware limited liability company (hereinafter called, "Affiliate").

WHEREAS, Requestor has contacted Affiliate, an affiliate of Lumen Technologies, Inc. ("Company"), regarding relocation, protection and/or adjustment of the Company's telecommunications facilities, including those facilities as set forth in Exhibit A, (the "Facilities"), located at E North Ave / S Golden State Blvd, City of Fresno, County of Fresno, State of California, for the benefit of the Requestor's North Avenue sewer main realignment project ("Project");

WHEREAS, the current location of the Facilities is set forth in the description attached hereto as Exhibit A. To avoid all identified conflicts between the Facilities and the Requestor's Project, Company will adjust, protect and/or relocate its Facilities as further described in Exhibit B, subject to the terms and conditions set forth below.

### **AGREEMENT**

In consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- (1) The government or private entity owning or otherwise controlling the underlying property whereupon the Facilities are located or are to be relocated, if so required, first grant to Company the complete authority to perform the Work described in Exhibit B and, where necessary, to provide Company permanent easement rights necessary for the Facilities to remain in the location upon completion of the Work.
- (2) Company will coordinate and perform all relocation, protection and/or adjustment work (the "Work") described in Exhibit B at the Requestor's sole cost and expense. Company will use reasonable efforts to perform all Work from within the area where the Facilities are located or are to be relocated; provided, however, that where Company is required to perform the Work from a third party's property, Company will, obtain any necessary permission in advance



Pre50 P-338271

- for Company to perform the Work, including temporary or permanent easements necessary for the Work or continued operation of the Facilities.
- (3) Total estimated project cost is: **\$675,081.78 (Six Hundred Seventy-Five Thousand, Eighty-One Dollars and Seventy-Eights Cents)**. Requestor will first provide Company with a check for fifty percent (50%) of estimated project cost in the amount of **\$337,540.89 (Three Hundred Thirty-Seven Thousand, Five Hundred Forty Dollars and Eighty-Nine Cents)** prior to the relocation Work beginning. Requestor's payment will be applied toward the estimated cost of the Work as set forth in Exhibit C. The check should be made out to **CenturyLink Communications, LLC** **Error! Reference source not found.****Error! Reference source not found.****Error! Reference source not found.****Error! Reference source not found.****Error! Reference source not found.**and sent to the address listed in Exhibit C below. During the Work the Company will send the Requestor quarterly statements detailing the costs of the work performed by the Company under this Agreement. Upon completion of Work, a final invoice will be sent providing remaining balance due based upon actual cost to perform. Final invoice is due within 30 days of receipt.
  - (4) **COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE WORK OR AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. HOWEVER, COMPANY GUARANTEES THAT THE WORK WILL BE PERFORMED SUCH THAT THE FACILITIES WILL NO LONGER CONFLICT WITH REQUESTOR'S PROJECT.**
  - (5) In the event that circumstances arise that cause the cost and expense of performing the Work to exceed the estimate, Company will make an adjustment to the estimate and provide Requestor with the updated estimate and an explanation of the source of the increase. The Company acknowledges that should the cost exceed the estimate, Requestor will require City Council to amend this Agreement and expend additional funds. Requestor will pay such additional amounts within forty-five (45) calendar days of Council approval. Company may, in its discretion, suspend performance of



Pre50 P-338271

the Work until payment is received. A failure to pay such amount shall cause same to bear interest from the due date until payment is received at a rate of one-and one-half percent (1 1/2%) per month, compounded annually.

- (6) To the furthest extent allowed by law, Company shall indemnify, hold harmless and defend Requestor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Requestor, Company or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Company's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the gross negligence, or caused by the willful misconduct, of Requestor or any of its officers, officials, employees, agents or volunteers.

If Company should subcontract all or any portion of the work to be performed under this Agreement, Company shall require each subcontractor to indemnify, hold harmless and defend Requestor and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

- (7) (a) Throughout the life of this Agreement, COMPANY shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by REQUESTOR'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to REQUESTOR, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.



Pre50 P-338271

(b) If at any time during the life of the Agreement or any extension, COMPANY or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to COMPANY shall be withheld until notice is received by REQUESTOR that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to REQUESTOR. Any failure to maintain the required insurance shall be sufficient cause for REQUESTOR to terminate this Agreement. No action taken by REQUESTOR pursuant to this section shall in any way relieve COMPANY of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by REQUESTOR that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by COMPANY shall not be deemed to release or diminish the liability of COMPANY, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify REQUESTOR shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by COMPANY. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of COMPANY, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."



Pre50 P-338271

2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

**MINIMUM LIMITS OF INSURANCE**

COMPANY shall procure and maintain for the duration of the contract, and for 3 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to REQUESTOR, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**
  - (i) \$2,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$2,000,000 per occurrence for personal and advertising injury;
  - (iii) \$4,000,000 aggregate for products and completed operations; and,
  - (iv) \$4,000,000 general aggregate for the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could



Pre50 P-338271

result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

#### **UMBRELLA OR EXCESS INSURANCE**

In the event COMPANY purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the REQUESTOR, its officers, officials, employees, agents and volunteers.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

COMPANY shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and COMPANY shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the REQUESTOR'S Risk Manager or his/her designee. At the option of the REQUESTOR'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects REQUESTOR, its officers, officials, employees, agents and volunteers; or
- (ii) COMPANY shall provide a financial guarantee, satisfactory to REQUESTOR'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall REQUESTOR be responsible for the payment of any deductibles or self-insured retentions.

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to COMPANY, except ten (10) days for nonpayment of premium. COMPANY is responsible for providing written notice to the REQUESTOR under the same terms and conditions on any required coverage that is not replaced. Upon



Pre50 P-338271

- issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, COMPANY shall furnish REQUESTOR with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for REQUESTOR, COMPANY shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than five (5) calendar days prior to the expiration date of the expiring policy.
- (ii) In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.
  - (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
  - (iv) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name REQUESTOR, its officers, officials, agents, employees and volunteers as an additional insured. COMPANY shall establish additional insured status for the REQUESTOR and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37 or equivalent.
  - (v) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the COMPANYS' insurance shall be primary to and require no contribution from the REQUESTOR. The Commercial General and Pollution Liability policies are required to include primary and non contributory coverage in favor of the REQUESTOR for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to



Pre50 P-338271

REQUESTOR, its officers, officials, employees, agents and volunteers.

- (vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to REQUESTOR, its officers, officials, agents, employees and volunteers.
- (viii) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to REQUESTOR, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - COMPANY shall furnish REQUESTOR with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received and approved by the REQUESTOR'S Risk Manager or his/her designee prior to REQUESTOR'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of COMPANY shall also be required to provide all documents noted herein.

**SUBCONTRACTORS** - If COMPANY subcontracts any or all of the services to be performed under this Agreement, COMPANY shall require, at the discretion of the REQUESTOR'S Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the REQUESTOR to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by REQUESTOR Risk Manager or designee. If no Side Agreement is required, COMPANY will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

- (8) The execution of this Agreement by the parties' representatives and their performance hereunder (a) has been duly authorized by requisite action, (b) will not require any additional approval on the part of the parties, and (c) will not violate any provision of law, any regulation or any contract or other obligation.



Pre50 P-338271

- (9) This Agreement constitutes the complete legal, valid, and binding obligation of the parties hereto with regard to the Work and is enforceable against the parties in accordance with the terms hereof. Except to the extent herein provided, no amendment, supplement, modification, or termination of this Agreement shall be enforceable unless executed in writing by both parties.
- (10) If any part of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the court shall interpret the terms hereof to give the greatest effect to the parties' intentions in entering into this Agreement.
- (11) This Agreement shall be construed under the laws of the State in which the Facilities are located.
- (12) This Agreement shall become effective on the date signed by Requestor.
- (13) Following execution, Company will thereafter work with underlying property owner or governing locality to coordinate a construction start date and the times for performing the Work.

*[Approval signatures appear on following page.]*

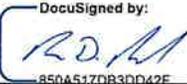


Pre50 P-338271

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

CENTURYLINK COMMUNICATIONS,  
LLC  
A Delaware limited liability company

By:  3/31/2023  
DocuSigned by:  
850A517DB3DD42E

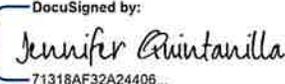
By:   
Brian Economaki (Mar 8, 2023 16:15 CST)

BROCK D. BUCHE, Director

Name: Brian Economaki

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

Title: VP Field OPS

By:  3/16/2023  
DocuSigned by:  
71318AF32A24406  
Jennifer M. Quintanilla Date  
Senior Deputy City Attorney

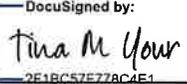
REVIEWED BY:  
  
Gary L. Nelson (Mar 3, 2023 14:47 MST)

Gary Nelson, DIR Field Ops

ATTEST:  
TODD STERMER, CMC  
City Clerk

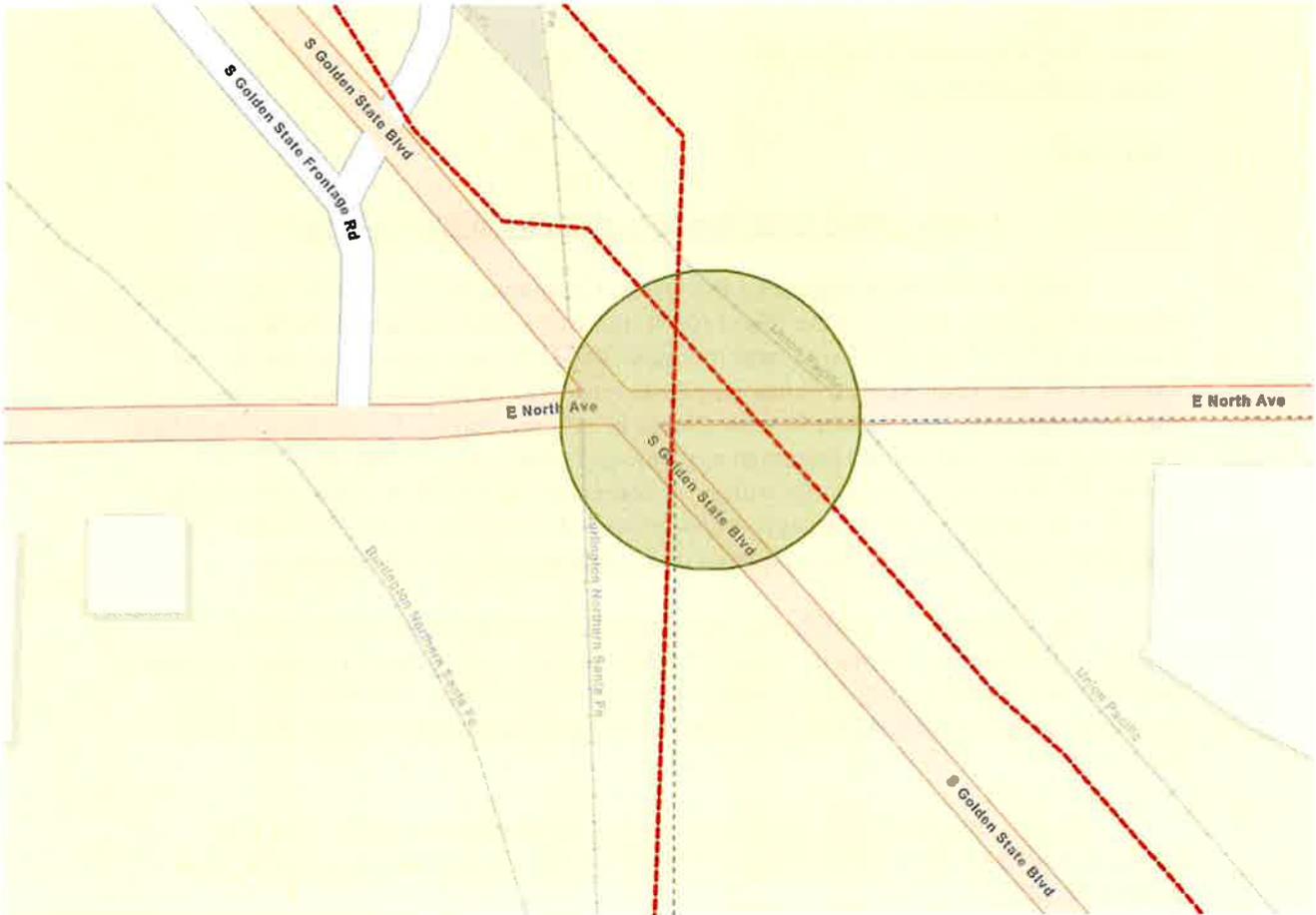
  
Brad P. Enea (Mar 1, 2023 14:04 PST)

Brad Enea, MGR Field Ops

By:  3/31/2023  
DocuSigned by:  
2E1BC5E778C4E1  
Deputy Date  
Tina M Your

Pre50 P-338271

**Exhibit A**  
(Current Location of Facilities in UPRR ROW)



LUMEN®

Pre50 P-338271

Information Technologies



City of Fresno-UP&E  
Sarah Aguila  
Supervising Engineering Technician  
[Sarah.aguila@fresno.gov](mailto:Sarah.aguila@fresno.gov)

September 30, 2022

Dear Sarah:

**SUBJECT: Lumen - Fiber Optic Facilities on Railroad Right-of-Way**

This letter is written regarding the Qwest Communications ("Qwest") fiber optic telecommunication facilities (the "Facilities") installed within Union Pacific Railroad Company's ("UP") rights-of-way near milepost 209.21 of the Fresno Subdivision near Fresno, CA, and your planned North Ave Sewer project that may be impacting these Facilities. Qwest is now part of Lumen. Please be advised that the Qwest Facilities (1) are permitted under confidential easement agreements ("Agreements") between UP and Qwest; (2) were commenced only with prior review and approval of construction plans by UP in accordance with its design, engineering and construction standards (the "UP Standards"), and (3) was to be completed in accordance with the UP Standards.

The Agreement is confidential and proprietary and not to be released to third parties. Under the provisions governing the Agreement, responsibility (through up-front payment or reimbursement) for the costs to relocate or otherwise protect such Facilities as a result of any project shall be the responsibility of third party(ies) other than UP or Qwest.

If you have any further questions regarding the matters covered in this letter, please contact Mr. Clem Helmstetter at (913) 312-2744, representing Lumen, or me at (402) 544-7425.

Sincerely yours,

A handwritten signature in blue ink that reads "Gary Voogd".

GARY VOOGD  
Commercial Telecom

CC:  
Clem Helmstetter – Lumen  
James Nickerson – Lumen

Pre50 P-338271

**Exhibit B**

**Summary Description of Work**

Scope: City has advised the CenturyLink fiber within UPRR ROW conflicts with proposed sewer bore. CenturyLink will ENG, seek approval from railroads and utilize our approved vendor for all aspects of construction. Duct package will be like for like (same size, quantity, and fiber type and count). New deep “wireline” bore will be proposed for UPRR approval. Once approved new fiber will be pulled and spliced from existing splice points. Typically, these are located approximately at 25,000-foot intervals.





Pre50 P-338271

**Exhibit C****Estimated Cost Breakdown and Remittance Information**

 <b>CenturyLink®</b>	Relocation Project Cost Estimate - URA
Estimate Valid within 30 Days from:	10/6/2022
Relocation Project Tracking #:	P-338271
Project Name:	Fresno Sewer Replacement North Ave Realignment
Customer Name:	City of Fresno
Internal Project Code	P.038216.C.27
GL Code:	82441000
Legacy Network Builder:	CenturyLink Communications LLC
RELO PM Contact Info:	Clem Helmstetter; 913-312-2744
Invoice Number:	pending
Customer Number:	#N/A
<b>Description</b>	<b>Cost</b>
Outside Plant Construction / Materials	\$374,456.25
Engineering / Inspection	\$24,404.50
Fiber Optic Cable Purchased	\$18,200.00
Fiber Optic Testing / Splicing	\$10,640.00
RR Flagging / Traffic Control	\$90,000.00
<b>Subtotal:</b>	<b>\$517,700.75</b>
Internal Cost Percentage	30.40%
Internal G&A Cost 30.4%	\$157,381.03
<b>Total Estimated Cost</b>	<b>\$675,081.78</b>
<b>50% Advance Payment Required</b>	<b>\$337,540.89</b>
<b>Estimated Balance to reflect Actual Cost</b>	<b>\$337,540.89</b>

\* Estimate does not include any rock adders and will be reviewed if encountered.

**General instructions for requestor:**

Agreement must be scanned back in color to RELO PM – via email to [clem.helmstetter@lumen.com](mailto:clem.helmstetter@lumen.com) for counter execution. Lumen support digital signatures and can route via Adobe Sign if requested.

- Please do not mail agreement.
- A W-9 is included as page 2 of the invoice for your Accounts Payable team's use and check payable info.
- Please scan/email a copy of your check to [clem.helmstetter@lumen.com](mailto:clem.helmstetter@lumen.com) RELO PM, before mailing.

**Remit copy of invoice with payment and provided UPS RS label to:**

Lumen Technologies, Inc.  
 Attn: Ashley Tran; 4000-41C-E21 / RELO  
 1025 Eldorado Blvd.  
 Broomfield, CO 80021

# Final-URA-Pre50-P-338271

Final Audit Report

2023-03-08

Created:	2023-03-01
By:	clem Helmstetter (clem.helmstetter@lumen.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVjgtLE_FFxNIQ4YVScOzivuLFiBLCQMd

## "Final-URA-Pre50-P-338271" History

-  Document created by clem Helmstetter (clem.helmstetter@lumen.com)  
2023-03-01 - 1:11:57 AM GMT- IP address: 4.68.48.226
-  Document emailed to brad.enea@lumen.com for signature  
2023-03-01 - 1:13:56 AM GMT
-  Email viewed by brad.enea@lumen.com  
2023-03-01 - 10:03:27 PM GMT- IP address: 104.47.55.126
-  Signer brad.enea@lumen.com entered name at signing as Brad P. Enea  
2023-03-01 - 10:04:26 PM GMT- IP address: 209.244.4.106
-  Document e-signed by Brad P. Enea (brad.enea@lumen.com)  
Signature Date: 2023-03-01 - 10:04:28 PM GMT - Time Source: server- IP address: 209.244.4.106
-  Document emailed to gary.nelson4@lumen.com for signature  
2023-03-01 - 10:04:31 PM GMT
-  Email viewed by gary.nelson4@lumen.com  
2023-03-03 - 8:58:27 PM GMT- IP address: 104.47.70.126
-  Signer gary.nelson4@lumen.com entered name at signing as Gary L Nelson  
2023-03-03 - 9:47:42 PM GMT- IP address: 155.70.104.119
-  Document e-signed by Gary L Nelson (gary.nelson4@lumen.com)  
Signature Date: 2023-03-03 - 9:47:44 PM GMT - Time Source: server- IP address: 155.70.104.119
-  Document emailed to brian.economaki@lumen.com for signature  
2023-03-03 - 9:47:45 PM GMT
-  Email viewed by brian.economaki@lumen.com  
2023-03-08 - 10:14:55 PM GMT- IP address: 104.47.55.126

 Signer brian.economaki@lumen.com entered name at signing as Brian Economaki

2023-03-08 - 10:15:22 PM GMT- IP address: 155.70.104.121

 Document e-signed by Brian Economaki (brian.economaki@lumen.com)

Signature Date: 2023-03-08 - 10:15:24 PM GMT - Time Source: server- IP address: 155.70.104.121

 Agreement completed.

2023-03-08 - 10:15:24 PM GMT

