



4038 3<sup>RD</sup> AVE WEST  
DICKINSON, ND 58601-8544  
TELEPHONE (701) 225-4431  
FAX (701) 225-4433

GENERAL CONTRACTORS

**RECEIVED**

July 23, 2012

JUL 27 2012

**PUBLIC SERVICE COMMISSION**

ATTN: Christopher Marohl  
ND Public Service Commission  
600 East Boulevard, Dept 408  
Bismarck, ND 58505-0480

RE: **Third Party Damage Complaint**  
Case No. PU-12-527

Dear Mr. Marohl

Please consider this our response to Mr. Shepherd's complaint alleging that Tooz Construction intentionally damaged their 200 pair line.

The week of May 28, 2012, Mark Lefor, from our office, spoke with a Ms. Connie Kassian of Century Link regarding this line. She requested a site plan of our project.

On June 5, 2012, I forwarded a site plan and informed her that we had began dirtwork and we need to take care of the line quickly. I corresponded with her by e-mail on June 6<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 19<sup>th</sup> regarding the line (see attached e-mails).

On the 19<sup>th</sup> of June, I notified her the line had been hit. She (Connie) called me shortly after and telephone conferenced me with - I believe it was Mr. Shepherd. We discussed the line and what led upto the line being damaged and he would get it repaired.

Upon my site investigation after I spoke with Ms. Kassian and Mr. Shepherd I came to the following assessment.

**ATTN: Christopher Marohl**

**Page 2**

**July 23, 2012**

**Our site foreman, Mr. Bob Evey, was concerned that our scrapers were coming to close to the flagging locating the line (Tooz had 6 scrapers, 1 Motorgrader, 1-Dozer and a Loader working the site. We were required to remove 8' to 11' of soil from the project site. Bob located the line with motorgrader and was clearing debris away from its location when the motorgrader struck a rock and slid into the line - damaging the insulation and some wire (reference attached photo).**

**To meet the requirements of your complaint letter the response by letter is as follows:**

- A. The line locate was in a legal easement and the proper locates were called in on ticket #12078076 on June 11, 2012, updated on June 18, 2012 ticket #12083324 and by looking at Tooz Construction's history we updated our locates every Monday.**
- B. The fault as explained above was accidental. The line was already exposed and Mr. Evey slid into it and merely scraped the line.**
- C. Tooz Construction has had no prior excavation complaints and has been in operation for 44 years.**
- D. Tooz Construction does an annual average volume of 17 to 25 million of sales per year and has the financial ability to pay the fine but feels the fine is not warranted due to an accidental hit.**
- E. Good faith is shown by our staff trying to work with the very busy utility companies on the relocation of the line. Tooz Construction was in contract with the company requesting quotes for service and ultimately forwarded a PO to move the line from Tracy Tooz, Vice-President of the company giving additional easements to Century Link, to other project coordinates working with Century Link on the moving of the line we have cooperated with the utility company.**
- F. The effects of any penalty, fine or levy is a burden to any company. In this instance Tooz Construction believes that we are handling ourselves in a professional manner.**

**There was no malicious intent to damage the line instead care was being taken to prevent damage when an accident occurred.**

**If I can be of any assistance feel free to let me know.**

**Thank you!**

  
**Doug Sarsland, Project Manager**  
**Tooz Construction, Inc.**



Contract No No  
Job Authorization No: E346065

Special Construction Proposal

Date: 6/19/2012	
Billing Address:	Work Location:
Customer: Tooz Construction, Inc.	33rd St SW
Attention: Tracy Tooz	County STARK
4038 3rd Ave W	DICKINSON, ND
Dickinson, ND 58601	

This Proposal is governed by the terms and conditions set forth herein as well as any applicable state or federal tariffs filed with the appropriate state or federal regulators. Description and/or specifications of work to be performed by Qwest Corporation d/b/a Centurylink QC ("Centurylink") under this Proposal ("Work") is as follows: Work will include CenturyLink placing 2,900 feet of 200-pair buried cable via trenching. The cost shown includes all splicing contractor and engineering hours.

Advance Payment (required before work begins): \$43,162.69

Total Charges: Forty-Three Thousand One Hundred Sixty-Two Dollars and 69/100


For the Work performed hereunder, Customer will be responsible for the above charges only, unless a Change Order is signed by both parties. All charges shall be paid prior to commencement of the Work ("Advance Payment"). No Work shall commence prior to receipt of Advance Payment. Notwithstanding, Customer shall also be responsible for foreign, federal, state and local taxes assessed in connection with the Work, including without limitation, all use, sales, value added, surcharges, excise, franchises, commercial, gross receipts, license, privilege or other similar charges, whether charged to or against Centurylink or Customer, but excluding any taxes based on Centurylink's net income.

**FOR GOVERNMENT CUSTOMERS**, CenturyLink will submit an invoice for the above charges upon completion of the Work, payable within 45 days of the date of the invoice. All past due invoices will be assessed a late fee at 14% APR.

\*Note: If applicable, the Work proposed here is separate from any work that may be performed pursuant to any other order or agreement, including but not limited to a Pre-Service Request for cell site provisioning. The Proposal may be withdrawn by Centurylink if not accepted by the Customer within 30 days. Upon execution by both parties, this Proposal shall constitute a binding agreement upon the parties.

For Centurylink Affiliate Transactions Only. If under applicable law, this Agreement, or notice thereof, must be filed with a governmental entity, including but not limited to a state public utility commission, this Agreement shall not become effective with respect to any jurisdiction having such requirements until the filings have occurred.

**CenturyLink**  
 Authorized Signature: \_\_\_\_\_  
 Name Printed/Typed: **Maggie Burgoyne**  
 Title: **Manager Finance**  
 Date: \_\_\_\_\_

**Customer**  
 Authorized Signature:   
 Name Printed/Typed: **Tracy Tooz**  
 Title: **Vice President**  
 Date: **06/26/12**

NOTE: CONTRACT TERMS AND CONDITIONS ARE PRINTED ON PAGE 2 OF THIS DOCUMENT.

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The Proposal, these Terms and Conditions and all terms and conditions in the applicable tariff, catalog, or price schedules constitute the entire agreement between the parties (the "Agreement") and supersede all previous agreements between CenturyLink and Customer relating to the Work and related subject matter hereof. No other terms and conditions are applicable, including but not limited to terms and conditions attached to Customer's Purchase Order (PO). In the event that any applicable tariffs, catalogs, price schedules, rules or statutes prohibit performance in accordance with the terms of the Agreement, or have the effect of modifying, superseding, or suspending provisions of the Agreement prior to performance by a Party hereunder, then to the extent of such inconsistency, the Agreement may become null and void, and the Parties may elect to enter into a new agreement or an amendment of the Agreement to conform to such tariffs, catalogs, price lists, rules or statutes.

1. Customer Responsibilities. Customer shall furnish all applicable surveys and a description of the Customer site. Customer shall be responsible for, and secure and pay for all necessary permits, approvals, easements, assessments and any other charges required for the Work to be performed under the Agreement on the Customer's Premises. Customer agrees to provide copies of the same, along with any filing information if applicable, to CenturyLink upon demand.

2. Concealed/Subsurface Conditions. Should concealed conditions be encountered below the surface of the ground, or in an existing structure, during the performance of the Work, differing materially from those ordinarily encountered and generally recognized as inherent in the Work, the Agreement Charges shall be equitably adjusted by Change Order upon written claim by either party made within twenty (20) days after the first observance of such conditions.

3. Safety and Environmental. Customer understands and acknowledges that should CenturyLink encounter a hazardous substance and determine that such substance presents a health or physical hazard, CenturyLink may, without penalty, discontinue work under this contract.

4. Changes. Changes in the Work, an adjustment to the proposal price or the timeframe for the Work shall be made by Change Order specifically stated in writing between the parties. The cost or credit to the Customer from a change shall be determined by mutual agreement.

5. Termination. In the event Customer elects to abandon the project and terminate this contract for Customer's convenience, CenturyLink shall be paid for all Work executed and any reasonable expense sustained as of the date of termination.

6. Title to Equipment and Facilities. Title to, and ownership of all lines, equipment and other property installed or constructed by CenturyLink in connection with the Agreement or the provisioning of Service is and remains with CenturyLink. Customer does not own facilities placed as a result of the Work performed under the Agreement, those facilities are owned solely by CenturyLink.

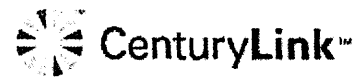
7. Other Communications Services. The Agreement is independent, separate, and distinct from any local exchange or other communications or other service CenturyLink currently provides, or may provide in the future to Customer, whether or not CenturyLink provides or may provide such services to Customer using the CenturyLink equipment and facilities to which the Agreement refers. Customer shall be responsible for paying for all

other local exchange or other services separate from the payment requirements of the Agreement.

8. Warranty. CenturyLink shall perform the Work in a professional manner, consistent with industry standards, and shall conform to the specifications set forth herein. All workmanship for the Work performed under the Agreement is guaranteed against defects for a period of six (6) months from the date of completion. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO, ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS APPLICABLE TO THE WORK PERFORMED UNDER THE AGREEMENT.** The exclusive remedy for a breach of this warranty shall be that CenturyLink will re-perform any part of the Work which is found to be defective. CenturyLink shall not be responsible for damage to its work by other parties or for improper use of the equipment by others.

9. General. This Agreement shall be governed by the state within in which the facilities are located, or in the case of interstate facilities the laws of the State of New York, without regard to its choice of law principles; provided however, that Work may also be subject to the Communications Act of 1934, as amended or applicable State tariff, catalogs or price lists. Neither party's failure to insist upon strict performance of any provision of this Agreement shall be construed as a waiver of any of its rights hereunder. Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of CenturyLink, which consent will not be unreasonably withheld. Customer may not assign to a reseller or a communications carrier under any circumstances. This Agreement is intended solely for CenturyLink and its affiliates and Customer and it shall not benefit or be enforceable by any other person or entity. All amendments to this Agreement shall be in writing and signed by the parties' authorized representatives. Electronic or facsimile signatures in connection with this Agreement shall be recognized and treated the same as the original. CenturyLink may act in reliance upon any instruction, instrument, or signature reasonably believed by CenturyLink to be genuine and Customer agrees that any employee of Customer who gives any written notice or other instruction has the authority to do so.

10. For CenturyLink Affiliate Transactions Only. If under applicable law, this Agreement, or notice thereof, must be filed with a governmental entity, including but not limited to a state public utility commission, this Agreement shall not become effective with respect to any jurisdiction having such requirements until the filings have occurred.



6/19/2012

Tooz Construction, Inc.  
Attn: Tracy Tooz  
4038 3rd Ave W  
Dickinson, ND 58601

Re: DICKINSON, ND

BAN Number E346065

Tracy Tooz,

Please review the attached Special Construction Proposal. If acceptable, return a signed copy and a form of payment for the total charges in the amount of \$43,162.69. Please note, your job will not be scheduled until we are in receipt of the above.

Send all documents and payments to:

CenturyLink Asset Accounting - BART  
700 W Mineral Ave  
Room NM P29.31  
Littleton, CO 80120

Documents to include:

- Signed Proposal
- Payment

After we have received the above from you, we will return one fully executed copy for your records. The fully executed Special Construction Proposal will constitute the agreement between you and Centurylink for the Work. **NO ADDITIONAL TERMS AND CONDITIONS WILL BE ACCEPTED.**

If you are providing a Purchase Order as a form of payment, please sign, date and return the Purchase Order for the amount of \$43,162.69.

Any questions regarding the scheduling of the work to be performed or decisions to cancel the work, please contact CenturyLink representative, James Edwards at 651 312 5315.

If you are interested in an electronic payment option, Electronic Funds Transfer (EFT) is available and instructions will be provided to you upon request.

Asset Accounting Operations  
Email: [sconstr@CenturyLink.com](mailto:sconstr@CenturyLink.com)  
720-578-8671  
303-707-9970 fax

enclosures

A handwritten signature in the bottom right corner of the page.

**Doug**

---

**From:** Doug  
**Sent:** Tuesday, June 05, 2012 4:41 PM  
**To:** 'connie.kassian@centurylink.com'  
**Subject:** FW: RDO Drawings  
**Attachments:** 12071 Site.pdf; 12071C.pdf; 12038C.pdf; 12038 Site.pdf

Connie,

We have begun dirtwork so we need to take care of line quickly.....Doug

---

**From:** Taylor Bruhschwein [<mailto:tbruhschwein@lja-1.com>]  
**Sent:** Tuesday, June 05, 2012 4:00 PM  
**To:** Troy Tooz; Doug  
**Subject:** RDO Drawings

Civil drawings and site drawing from the RDO projects.

Taylor Bruhschwein  
**Lightowler Johnson Associates, Inc.**  
700 Main Avenue  
Fargo, ND 58103

Phone: (701) 293-1350  
Cell: (701) 290-0835

**Doug**

---

**From:** Doug  
**Sent:** Wednesday, June 06, 2012 1:39 PM  
**To:** 'Kassian, Connie'  
**Cc:** Tracy Tooz  
**Subject:** RE: RDO Drawings

Connie,

Please forward your easement paperwork and cost to myself or Tracy Tooz ( property owner. [tracyt@toozconstruction.com](mailto:tracyt@toozconstruction.com) ). How soon can you get line relocated?.....Doug

---

**From:** Kassian, Connie [<mailto:Connie.Kassian@CenturyLink.com>]  
**Sent:** Tuesday, June 05, 2012 5:21 PM  
**To:** Doug  
**Cc:** 'mailto:tbruhschwein@lja-1.com'; Kaiser, Dan  
**Subject:** FW: RDO Drawings

Hi Doug,

Today we received notification that RDO's building is being constructed thru an existing cable/utility easement that is located south of Oxy, USA's building, Dickinson, ND. In reviewing the attachments, a utility easement needs to be shown on the site plan and recorded in the court house or an easement can also be signed by the property owner and recorded. We will also need the billing information for relocation costs of our facilities and a site visit is required. We will expedite as quickly as possible.

Thank you for your quick response and getting the attachments to us for review.

Respectfully,  
**CONNIE M. KASSIAN**  
ENGINEERING & CONSTRUCTION  
CenturyLink/Qwest  
1101 16th St. NE  
Mandan, ND 58554  
701-222-6889 OFFICE  
701-426-9685 WIRELESS  
701-663-3428 FAX  
[connie.kassian@centurylink.com](mailto:connie.kassian@centurylink.com)



**Unifying Principles:** Fairness, Honesty & Integrity, Commitment to Excellence, Positive Attitude, Respect, Faith and Perseverance

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**From:** Doug [<mailto:dsarsland@toozconstruction.com>]  
**Sent:** Tuesday, June 05, 2012 5:41 PM  
**To:** Kassian, Connie  
**Subject:** FW: RDO Drawings

Connie,

We have begun dirtwork so we need to take care of line quickly.....Doug

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Phone: (701) 293-1350  
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## Doug

---

**From:** Doug  
**Sent:** Tuesday, June 12, 2012 8:46 AM  
**To:** connie.kassian@centurylink.com  
**Subject:** rdo site

Connie,

What is the status of the line relocation at our project on 33<sup>rd</sup> st west?.....We are moving dirt and need it moved.....Doug

## Doug

---

**From:** Doug  
**Sent:** Wednesday, June 13, 2012 6:30 AM  
**To:** 'Kassian, Connie'  
**Cc:** Tracy Tooz  
**Subject:** RE: rdo site

Connie,

Tracy has already given you that information with his e – mail, we need that line moved – what is the schedule?.....Doug

---

**From:** Kassian, Connie [<mailto:Connie.Kassian@CenturyLink.com>]  
**Sent:** Tuesday, June 12, 2012 5:22 PM  
**To:** Doug  
**Subject:** RE: rdo site

I was out in Dickinson today to get the reroute measurements and research the land....I will be working up an estimate.....Please forward to me billing information...site address, billing address, name to contact, contact's phone number, fax number, and contact's email address ..thanks

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## Doug

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**From:** Doug  
**Sent:** Tuesday, June 19, 2012 9:43 AM  
**To:** 'Kassian, Connie'  
**Subject:** RE: rdo site

Connie,

Bad news, the line just got hit with a piece of equipment, approx. ½ the line is broke.....please contact me asap.....701 – 260 8668.....Thanks.....Doug

---

**From:** Kassian, Connie [<mailto:Connie.Kassian@CenturyLink.com>]  
**Sent:** Monday, June 18, 2012 7:55 PM  
**To:** Doug  
**Cc:** Tracy Tooz  
**Subject:** RE: rdo site  
**Importance:** High

Hi Doug,

The relocation estimate/agreement you should see in the next couple of days, as soon as we receive payment we will begin preparing the construction prints.

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**Sent:** Wednesday, June 13, 2012 7:30 AM  
**To:** Kassian, Connie  
**Cc:** Tracy Tooz  
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I was out in Dickinson today to get the reroute measurements and research the land....I will be working up an estimate.....Please forward to me billing information...site address, billing address, name to contact, contact's phone number, fax number, and contact's email address ..thanks

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