

OVERHEAD OVERLASH FACILITIES MAINTENANCE AGREEMENT

This Agreement (this “**Agreement**”) is entered into the _____ day of _____, 2021 (the “**Effective Date**”), by and between the City of Mesa, an Arizona municipal corporation (the “**City**”), and Qwest Corporation dba CenturyLink QC (the “**CenturyLink**”), collectively referred to herein as the “**Parties**,” or individually as a “**Party**.”

RECITALS:

- A. City is responsible for managing its streets, highways, walkways, alleyways and City-owned property, and it has a substantial government interest in ensuring that all utilities located on such property are designed, installed, constructed, maintained, and repaired in a manner that will protect the public and property managed on behalf of the public.
- B. CenturyLink provides telecommunications service within the boundaries of the City pursuant to a grant of authority made to it or its lawful predecessors before the effective date of the Arizona Constitution, and CenturyLink’s facilities include overhead lines attached to poles owned by City’s electrical utility (“**City Poles**”), CenturyLink, and third-party utilities (“**Third-Party Poles**”).
- C. CenturyLink’s use of City Poles is governed by a “**Joint Use Contract**” between City and CenturyLink’s predecessor in interest dated November 26, 1940 (the “**Joint Use Agreement**”). CenturyLink’s use of Third-Party Poles is governed by applicable agreements with the pole owners. Additionally, CenturyLink’s placement, use, maintenance, repair, and design of all overhead lines on City property whether attached to City Poles, Third-Party Poles, or CenturyLink’s own poles—also is subject to all applicable provisions of City Code, State and Federal law, and the City’s Engineering and Design Standards. This Agreement is subject to and shall not operate to amend, supersede, or modify the Joint Use Agreement, or any provision of City Code, State and Federal law.
- D. The City’s Engineering and Design Standards do not allow the construction of overhead lines in areas with new development. In areas with existing overhead facilities and in the absence of new development, the City requires the undergrounding of such facilities where it can be accomplished. Consistent with this active undergrounding effort, the City’s Engineering and Design Standards prohibit the placement of new independent overhead lines and overlash, even in areas with existing overhead facilities.
- E. CenturyLink desires to expand the network of fiber optic service offered to business and residential consumers within the City. The planned expansion of fiber optic service will occur primarily in established areas within the City, which currently lag other areas of the City in terms of access to options for high-speed internet connections. Therefore, CenturyLink’s overlash plans will be especially beneficial to the City’s residents in those neighborhoods. The planned facilities would primarily serve low to moderate income neighborhoods as defined by the Department of Housing and Urban Development (HUD).
- F. In light of the foregoing, the Parties desire to enter into this Agreement to ensure the orderly

development and maintenance of the proposed overlashing.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Recitals. The Recitals set forth above are acknowledged and agreed by the Parties to be accurate and correct and are incorporated herein by reference.
2. Compliance with Applicable Laws. CenturyLink and City agree that at all times each will comply with all applicable laws concerning CenturyLink's use of City right-of-way and City property, including but not limited to, applicable provisions of City Code, City Engineering and Design Standards, statutes and regulations of the State of Arizona, and Federal laws and regulations.
3. Overlashing Permits. This Agreement does not grant nor guarantee permission to overlash fiber on overhead strands. In addition, although CenturyLink maintains an annual "blanket" permit for routine work performed over and in City right-of-way and City property, the blanket permit also shall not authorize fiber overlashing. City will consider requests to overlash fiber on existing overhead strands on an individual basis, and such work shall not proceed unless and until City issues a permit specific to each request (an "Overlashing Permit").
4. Minimum Overlashing Permit Requirements: City will not grant a request for an Overlashing Permit if at any time CenturyLink is not in compliance with this Agreement. An Overlashing Permit shall contain such terms and conditions as the City (in its sole and absolute authority and discretion) deems appropriate and necessary given the size, scope, location, and conditions of the proposed work. Nevertheless, each Overlashing Permit shall, at a minimum, require that CenturyLink:
 - 4.1 Overlash only on existing, active overhead strands;
 - 4.2 Perform all work in compliance with Mesa City Code, applicable City policies, Maricopa Association of Governments ("MAG") Uniform Standard Specifications and Details for Public Works Construction, Mesa Standard Details and Specifications (Mesa Amendments to MAG), Mesa's Engineering and Design Standards, National Electric Code (NEC), National Electric Safety Code (NESC), American Public Power Association (APPA) Safety Manual, and OSHA regulations;
 - 4.3 Submit the details, plans and specifications for the proposed work for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction;
 - 4.4 Pay applicable permitting and traffic control fees, and all other lawful fees and

charges;

- 4.5 Remove any damaged, dead, or abandoned strands, cables, bagged or equipment owned by CenturyLink on the proposed structures on which overlashing work will be performed;
- 4.6 Remove all “dog bone” and slack cable in excess of 5 feet attached to the poles on which overlashing will be performed;
- 4.7 Where CenturyLink owns a topped pole, remove the topped pole on any span receiving overlashing work. No overlashing shall be permitted on any topped pole, and all existing strands, cables, and equipment on topped poles shall be transferred to a new pole prior to overlashing;
- 4.8 Not install new poles, mid-span poles, or new down-guys in conjunction with any overlashing work (for purposes of this paragraph, “new” shall not include replacement or repair of existing structures). In the event make-ready pole construction will not remedy safety or clearance issues, the entire span will be underground to comply with City standards;
- 4.9 Overlash no more than a single bundle of fiber optic cable with no more than 216 fiber count;
- 4.10 Place all fiber splice enclosure and storage loops in vaults or enclosures;
- 4.11 In connection with the overlashing project, CenturyLink shall arrange its lines, cables, overlash, and other appurtenances, in such a manner as to cause no unreasonable physical interference with the use of the public or private property by any person. In the event of such physical interference, all fiber optic cables shall be placed underground to meet NESC or NEC standards and clearances;
- 4.12 Undergrounding of overlashed facilities and the allocation and responsibility for the costs associated with such undergrounding shall be governed by existing City, state, and federal laws and any applicable provisions of the Joint Use Agreement, provided, however, that where applicable local, state, or federal law would require that City assume the cost of undergrounding the existing overhead facilities to which the overlashed fiber is attached, CenturyLink shall assume any additional cost the undergrounding of the overlashed fiber adds to such project.
- 4.13 Hold harmless, indemnify and defend City and its officers, officials, agents, and employees for, from and against any and all claims, demands, fines, penalties, losses, expenses, damages, obligations, liabilities, suits, actions, causes of action, proceedings, assessments, judgments and costs of every kind and nature (including attorneys’ fees, experts fees and court costs) for injury to or death of any person, and for damage, destruction, or loss, consequential or otherwise, to

any property, real or personal, including without limitation, property owned, occupied, used or enjoyed by City, the public, or any other person or entity, resulting or arising, in whole or in part, from the CenturyLink's activity under the Overlashing Permit, excepting instances in which the damage or injury is determined to have been caused by City's sole and exclusive gross negligence.

5. City-Wide Maintenance Program. CenturyLink's existing facilities include overhead strands, cables, and equipment located throughout the City. The City has a substantial governmental interest in ensuring that existing facilities do not cause harm to its citizens and public or private property. The safety of the general public and the ability of the City to provide solid waste pickup and fire access is a priority. To that end, for all CenturyLink overlashed facilities within the City of Mesa, CenturyLink agrees to the following:

- 5.1 Maintain its aerial strands, cables, pedestals, manholes, and equipment in an orderly and workmanlike manner;
- 5.2 Follow all of the requirements of the annual blanket permit when addressing temporary lines;
- 5.3 Annually inspect the overlashed facilities to confirm that the facilities meet all applicable standards to verify all overhead facilities comply with NESC standards and the overhead facilities have not delashed;
- 5.4 CenturyLink shall arrange its lines, cables, overlash, and other appurtenances, in such a manner as to cause no unreasonable physical interference with the use of the public or private property. When the City provides CenturyLink with notice of facilities that fail to meet applicable City or NESC standards, CenturyLink will address those conditions within five business days following such notice. CenturyLink shall reimburse the City for all documented costs incurred as a result of non-compliant conditions not cured during that five-day period. Where, however, non-compliant conditions damage the City's real or personal property, disrupt City services, or require the dispatch of emergency personnel, then CenturyLink shall reimburse the City for all documented costs incurred as a result, including, but not limited to: Inspection Fees identified on the City's Schedule of Fees, police and fire services, idled solid waste equipment, and damage to the City's real and personal property.
- 5.5 The City maintains a Solid Waste Low Wire Report identifying wires that conflict with solid waste services. CenturyLink shall resolve low cable issues identified in the report by either undergrounding the aerial cable if pole clearances are unattainable or raising the cables on the pole within thirty business days of receiving such a report. CenturyLink shall pay the Inspection Fees identified on the City's Schedule of Fees and reimburse the City for all documented costs incurred as a result of non-compliant conditions not cured within that thirty-day period, including, but not limited to: police and fire services, idled solid waste equipment, and damage to the City's real and personal

property. Additionally, CenturyLink will pay an Unauthorized Construction Fee per the City's Fee Schedule if conditions are not corrected within ninety business days;

- 5.6 If, following the notice and opportunity for cure described in sections 5.4 and 5.5, the City expends resources in response to downed or sagging cables which require attention due to public safety or solid waste needs and those conditions are not caused or exacerbated by the acts or omissions of the City or its agents, contractors, or representatives, then CenturyLink will reimburse City its documented reimbursable costs. Reimbursable costs include staff time expended coordinating with CenturyLink and other utilities, solid waste or emergency vehicle idle time, labor, material and other applicable expenses.
 - 5.7 CenturyLink shall submit an annual inspection report and location exhibits identifying the overloading maintenance activities within the City to the City's Right of Way Manager. Additionally, CenturyLink shall provide documentation as requested by the City to establish CenturyLink's compliance with the various requirements and provisions of this Agreement. If CenturyLink determines that it must provide proprietary information in order to respond to City's request for documentation and inspection, then it shall so designate such documents prior to its production.
6. Facilities in Mesa Electric Territory. When performing overloading work in territory served by Mesa Electric, CenturyLink agrees that it shall:
- 6.1 Abide by all provisions of the Joint Use Agreement, including compensating Mesa Electric for make-ready work on poles owned by Mesa Electric or the City, including any work required to accommodate CenturyLink's equipment or to comply with applicable City standards, such as (but not limited to): rearrangement and/or transfer of facilities or existing attachments, inspections, engineering services, permitting services, tree trimming, pole replacement and construction, and facility removal;
 - 6.2 Maintain and construct down-guy shielding at its own expense;
7. Undergrounding and Relocation. CenturyLink shall comply with lawful City requests for CenturyLink to underground or relocate its facilities consistent with state and federal law, the JUA, and NESC standards. Any allocation of costs for such undergrounding shall also be governed by and consistent with these standards. Such undergrounding, protection, support, disconnection, or removal shall be at CenturyLink's expense except where CenturyLink has an easement, statutory right, or other legal right to occupy the public rights-of-way impacted by such undergrounding requests, and the legal effect of those land rights places responsibility for such expense on the City. CenturyLink shall respond to the City's prior rights request within thirty business days of receiving the request. If CenturyLink does not respond to the prior right request within the time specified, the City will escalate to CenturyLink legal at 931 14th Street, 12th floor, Denver Colorado 80202. If CenturyLink does not disconnect, remove,

or relocate its facilities within three months of receiving a request from the City to so, then City may perform such work on its own and CenturyLink shall reimburse the City for its actual costs incurred.

8. Term. The term of this Agreement is that period of time, commencing on the Effective Date, and terminating on that date that is twenty (20) years after the Effective Date, unless terminated earlier pursuant to this Agreement or are expressly stated in this Agreement as surviving Term.
9. Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default; or, if such default is of a nature is not capable of being cured within 30 days, the Defaulting Party shall notify the Non-Defaulting Party of such and so long as the Defaulting Party commences performance and diligently pursues to completion the cure, the Defaulting Party may have additional time up to, but not exceeding, 90 days to cure the default. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.
10. Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for the breach of any provision of this Agreement. If a Party is in default and fails to cure within the time periods permitted in Section 11 above, the Non-Defaulting Party shall have the option to exercise either of the following remedy's:
 - 10.1 To seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post a bond or other security, requiring the Defaulting Party to undertake and to fully perform its obligations under this Agreement; or
 - 10.2 To terminate this Agreement or revoke any individual Overlapping Permit.
11. Termination for Public Need. The City may terminate this Agreement or revoke the permit for any individual Overlapping Permit at any time upon thirty-days notice, provided the City can show that such termination is necessary to satisfy a public need or to accommodate public infrastructure.
12. General Provisions.
 - 12.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten days after its full execution by the Parties.
 - 12.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the

U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa
20 East Main Street, Suite 500
Mesa, Arizona 85211
Attn: Right of Way Manager

With copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: City Attorney

CenturyLink: CenturyLink QC
2120 N. Central Avenue
Phoenix, Arizona 85004
Email: jeff.mirasola@lumen.com
Attn: Government Affairs

With copy to: CenturyLink QC
931 14th Street, 12th Floor
Denver, Colorado 80202
Email: tim.goodwin@lumen.com
Attn: Government Affairs Counsel Arizona

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 12.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. The prevailing Party shall be entitled to recover its attorneys' fees and other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action.

- 12.4 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.
- 12.5 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.
- 12.6 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.
- 12.7 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
- 12.8 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.
- 12.9 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.
- 12.10 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.
- 12.11 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms

of A.R.S. § 38-511.

- 12.12 Severability. If any provision(s) of this Agreement is declared void or unenforceable, such provision(s) shall be severed from this Agreement, which shall otherwise remain in full force and effect.
- 12.13 Amendments. Any change, addition or deletion to this Agreement must be by written amendment executed by City and CenturyLink and approved by the City Council. Within ten (10) days after any amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

“City”

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

By: _____
Elizabeth Huning, City Engineer

APPROVED AS TO FORM

By: _____
James Smith, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Christopher J. Brady, the City Manager of the City of Mesa, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"CenturyLink"

Qwest Corporation dba CenturyLink QC

By: Chad Hager

Its: Director, Local Network

By: [Signature]

Its: Director Local Network

Date: 2-23-2021

[STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 23rd day of FEBRUARY, 2021, by Chad Hager, the Director Local Network of CenturyLink, a LLC: QWE, who acknowledged that he/she signed the foregoing instrument on behalf of CenturyLink.

[Signature]
Notary Public

My commission expires:

APRIL 13, 2024

