

Subject: Resolution #669 - Approval of Agreement with CenturyLink For Lease of City Utility Poles

Dept. Origin: Planning Department

Prepared by: Jennifer Robertson
 City Attorney's Office

For Agenda of: February 16, 2018

Exhibits: Attached Resolution and Pole Lease Agreement

Proposed Council Action:

Consider Approval of Resolution Authorizing Mayor to a Pole Lease with CenturyLink

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>JSR/1-10-18</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

In 2005, the City of Ruston entered into a one-year pole lease agreement with Qwest for placement of communications equipment on the City's utilities poles. CenturyLink is the subsequent entity of Qwest. Although the 2005 pole agreement was only for one year, Qwest, then CenturyLink has continued to utilize the utility pole space and pay annual rent to the City. The City has been engaged in renegotiating and updating the pole lease agreement for quite some time. The parties finally reached agreement last year and CenturyLink has executed the Agreement and it is ready for approval by the City Council.

The annual rate for the pole lease has been increased to \$17.88 per pole in use. (See Section 4.1.) CenturyLink currently is using 121 of the City's 149 poles, so the annual rent for the first year (2018) shall be \$2,163.48. The rent will increase annually in an amount equal to CPI-U for Seattle, Tacoma, Bremerton or 3 percent, whichever is greater. In addition, CenturyLink is required to pay the City \$2,500 to reimburse a portion of the costs of negotiating this Agreement. (See Section 4.6.) The City must receive the \$2,500 reimbursement prior to executing the Agreement. Resolution #669 includes this requirement in Section 1.

The Agreement is for a period of 10 years. (Section 7.) The Agreement can be terminated for default that remains uncured after notice from the City. The Agreement also includes requirements to underground or remove equipment if the City is removing all poles from an area. (Section 15.) The Agreement contains an indemnification provision whereby CenturyLink indemnifies the City. (Section 16.) CenturyLink is required to have insurance of \$1 million (\$2 million aggregate). (Section 17.)

FISCAL CONSIDERATION

The City will receive annual rent for the use of the poles in the amount outlined above (\$2,163.48 for Year 1) as well as a one-time \$2,500 as partial reimbursement for the negotiation costs of preparing and negotiating the Agreement.

RECOMMENDATION / MOTION

If the City Council desires to authorize this agreement, it may do so by passing the attached Resolution #669.

MOTION: I move passage of Resolution #669 authorizing the Mayor to execute an agreement with CenturyLink for lease of City utility poles.

RESOLUTION NO. 669

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CENTURYLINK FOR LEASE OF CITY UTILITY POLES FOR COMMUNICATIONS EQUIPMENT.

WHEREAS, in 2005, the City of Ruston entered into a one-year pole lease agreement with Qwest for placement of communications equipment on the City's utilities poles; and

WHEREAS, although the 2005 pole agreement was only for one year, Qwest (now CenturyLink) has continued to utilize the utility pole space and pay annual rent to the City; and

WHEREAS, after extensive negotiations, a new Pole Lease Agreement has been finalized and has been executed by CenturyLink; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Pole Lease Agreement in substantially the form that is attached to this Resolution as Exhibit "1";

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the Pole Lease Agreement with CenturyLink in substantially the form attached hereto as Exhibit "1". The Agreement shall not be executed by the City until after receipt of the negotiation fee in Section 4.6 of the Agreement.

RESOLVED this 16th day of January, 2018.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

RESOLUTION NO.: _____ 669 _____

EXHIBIT “1”

Pole Lease Agreement

Between

City of Ruston

and

CenturyLink

**MASTER POLE ATTACHMENT AGREEMENT BETWEEN
QWEST CORPORATION D/B/A CENTURY LINK QC
AND
CITY OF RUSTON**

THIS MASTER POLE ATTACHMENT AGREEMENT (“Agreement”), dated as of _____, 2017, is made by and between the City of Ruston, a municipal corporation of the State of Washington, (hereinafter referred to as "City"), and Qwest Corporation d/b/a Century Link QC, a corporation organized under the laws of the State of Colorado (hereinafter referred to as "Company"), whose principal business address is 100 CenturyLink Drive, Monroe, LA 71203.

RECITALS:

WHEREAS, Ruston is a municipal corporation located in Pierce County, State of Washington that owns and operates its own electrical utility; and

WHEREAS, as part of operating an electrical utility in its boundaries, Ruston owns all of the utility poles (which presently number at 149 poles) that are located in the city boundaries; and

WHEREAS, there are no utility poles in Ruston that are owned by any other party; and

WHEREAS, on September 19, 2005, Ruston and Qwest Communications, Inc. (“Qwest”) entered into a “Joint Pole Use Agreement” the terms of which governed Qwest’s use of Ruston’s utility poles for the payment of rent and other consideration; and

WHEREAS, the Agreement between Qwest and Ruston expired on September 19, 2006; and

WHEREAS, the parties need to enter into a new agreement to define the appropriate rental payment and other terms for allowing the use of Ruston’s utility poles; and

WHEREAS, CenturyLink may use the City’s utility Poles to provide both telecommunications and Cable Services within the City, provided however that a cable franchise agreement is secured prior to providing Cable Service; and

WHEREAS, with the evolving technology and increased competitiveness for communications and other services, the City’s poles are serving more users which can lead to non-aesthetic appearance;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows;

AGREEMENT:

SECTION 1. SCOPE

This Agreement governs all attachments of Company's cable/wire communication system, including but not limited to fiber optic cable, copper cable, coaxial cable, risers, and related equipment ("Equipment" herein) now or hereafter made to any and all utility poles owned by the City of Ruston (individually a "Pole," collectively, the "Poles"), with or without City's consent.

A copy of the City boundaries is attached hereto as Exhibit A. All utility poles located within these boundaries are wholly owned by City.

SECTION 2. ISSUANCE OF PERMIT

City agrees that Company may, subject to the terms of this Agreement and subject to the issuance of individual permits under Chapter 14.08 of the Ruston Municipal Code ("Permit") as herein set forth, make use of Poles for the purpose of maintaining Equipment thereon for the transmission of any lawful communications and IPTV services purpose. Existing Equipment that is attached to City poles made in accordance with the "Joint Pole Use Agreement" dated September 19, 2005 between the City and the Company were previously authorized. Any modification of those attachments or any new attachments will be subject to the Permit requirements of this Agreement as herein set forth.

SECTION 3. APPLICATION FOR ATTACHING EQUIPMENT

3.1 If Company in the future desires to attach any other new Equipment or upgraded Equipment to any City Pole, Company shall submit to City the application for Street Excavation Permit under Chapter 14.08 RMC. The Company shall describe in detail:

- (a) The type of Equipment to be attached;
- (b) The Poles affected by the new Equipment to be attached;
- (c) The amount of space desired on each Pole affected by the new Equipment;
- (d) The weight of the new equipment;
- (e) The proposed location of the Equipment on the affected Poles;
- (f) The action that Company intends to take to accommodate any additional strain that will be imposed upon the affected Poles by the Equipment; and
- (g) The action that the Company proposes to take to make the addition of the new equipment aesthetically pleasing, including removal of excess wires/cables belonging to the Company, using technology to make the equipment smaller or less noticeable, etc.

- 3.2 Each application shall also include working sketches or maps correctly identifying each Pole to which the Equipment is to be attached and any other information (for example, with regard to the proposed nature, appearance, circuit arrangement and line sags of the Equipment) requested by City.
- 3.3 City will make a good faith effort to process applications in an expeditious manner. Once an application is approved, it will be returned to the Company as a Permit. As part of the application to expand or enlarge any attachment to a pole, Company will provide calculation and analysis of the load on the poles performed and signed/stamped by a professional engineer to which an expansion/enlargement is sought. If the load is too much for the existing pole as determined by the professional engineer and accepted by City, then Company at its sole option may either place the lines underground or reimburse the City for the actual cost of replacing the pole, including the costs of installation. In addition, any redundant lines of Company that are on the poles shall be removed at the time that the expansion/enlargement is installed. Such reimbursement shall be paid prior to the installation of the expansion/enlargement by Company.

SECTION 4. FEES

- 4.1 Company shall pay City fees for the attachment of Equipment to the Poles at the rate of \$17.88 per pole per year for each pole that is used by Company for any part of the year. Such fee shall be adjusted annually in an amount equal to the CPI-U for the Seattle, Tacoma Bremerton area, or three (3) percent, whichever is greater. Such increase shall take effect on January 1st of each year during the term of this Agreement.

The City owns 149 poles and the Company has attachments on 121 poles, so the annual rent for Year 1 of this agreement will be \$2,163.48 for communications equipment.

- 4.2 Company's obligation to pay the Annual Rate for its Equipment attached to City Poles shall commence on the effective date of this Agreement, and shall be for the balance of the calendar year.
- 4.3 City shall invoice Company annually on or before December 31. Company shall pay each such undisputed invoice within forty-five (45) days after Company's receipt thereof.
- 4.4 Annually, the City may verify the number of poles in use by Company and make a tabulation of the total number of its Poles on which Company has specifically permitted Equipment as of December 31 of the prior year. Any Pole to which Company has attached Equipment after the effective date of this Agreement that is not identified in a Permit shall be billed at three times the current Annual Rate.
- 4.5 In addition to the amounts described in Section 4.1, Company will pay all applicable, and lawful, value-added, sales, use, excise and other taxes, duties, imposts, fees or charges (collectively "Taxes") properly levied or imposed on it by a duly constituted and authorized taxing or other governmental authority with respect to the Company's use of

the Poles whether or not such amounts are required to be collected by City under applicable law.

- 4.6 Company agrees to reimburse the City for the costs of preparing and negotiating this Agreement in the amount of \$2,500. Payment of this invoice is a condition of the execution of this Agreement.

SECTION 5. INTENTIONALLY DELETED

SECTION 6. LATE CHARGES AND INTEREST

Company shall pay to City interest, compounded monthly, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any unpaid undisputed fees or other undisputed amounts due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by Company.

SECTION 7. TERM AND EXTENSIONS

- 7.1 This Agreement shall continue in effect for a period of ten (10) years from the effective date hereof. If the City and Company are negotiating a new agreement in good faith at the date of expiration, the Agreement shall remain in effect until a new agreement is executed. Neither expiration of this Agreement, nor termination pursuant to Section 8 below shall relieve the Company of any obligations that are unsatisfied at the time of expiration or termination.
- 7.2 The Company has the right to remove its Equipment, at its sole expense, at any time on or before the expiration or termination of the Agreement. Upon expiration or termination of the Agreement, Company shall remove its Equipment from the Poles as follows: Company shall remove at least 20% of its Equipment from the Poles in each of the following five (5) years after expiration or termination, so that five (5) years after expiration or termination, all Equipment of the Company shall have been removed from the Poles. The Company shall remove its Equipment from the Poles without damaging any other Equipment owned by any other party. Company shall remain liable for and pay to the City all fees and charges under this Agreement until it removes all of its Equipment from the Poles. However, if the City undergrounds lines in an area or corridor during the post-termination period, then Company shall either wholly remove the lines in that area or corridor prior to the removal of the City's poles or move those lines underground in accordance with Section 15.

SECTION 8. TERMINATION.

- 8.1 If Company shall default in any of its material obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the City, the City may suspend the rights of the Company insofar as concerns the granting of future Equipment attachments and if such default shall continue for a period of ninety (90) days after such suspension, the City may forthwith terminate this Agreement; provided, however, that a default shall not have occurred so long as the Company in good faith has commenced to cure within said time period and thereafter diligently pursues such cure to

completion. The diligent pursuit of the cure shall in no case take longer than 180 days from commencement of cure to completion. Upon termination, the Equipment removal and pole restoration provisions contained in Section 7.2 apply.

- 8.2 If Company fails or refuses to timely relocate its Equipment as required by Sections 14 and 15 below, or materially breaches this Agreement, then City may elect to follow the default provisions of section 8.1.
- 8.3 Upon termination, the Equipment removal and pole restoration provisions contained in Section 7.2 above apply. Nothing in this Section shall reduce the rights of the City to remove Company's Equipment in accordance with any other section of this Agreement.

SECTION 9. REQUIREMENTS FOR ATTACHMENT OF EQUIPMENT

- 9.1 Equipment attached to Poles made under this Agreement shall not disturb or conflict with the electrical infrastructure of City or with any other Equipment owned by any other party that is located on the Pole. At the City's sole discretion, it may move, rearrange, or adjust City's distribution system to provide space to accommodate Company's Equipment, but all such work shall be done by City at the actual and reasonable expense of Company.
- 9.2 Company shall use the permit process under Chapter 14.08 RMC in Section 3 for installing its Equipment on the City of Ruston's Poles. If space is not available for Company's Equipment on any Pole, even by way of Make Ready Work as outlined in Section 11.1(a), no Permit for such pole attachment shall be issued. However, City shall provide Company non-discriminatory access to any Pole unless there is insufficient capacity or for reasons of safety or reliability.
- 9.3 Equipment attached to Poles after the effective date of this Agreement are to be made only as approved by City, and shall be in accordance with requirements of the State of Washington Electrical Construction Code and National Electric Safety Code, and any applicable City of Ruston codes as now in force and as revised or changed in the future.
- 9.4 All messenger cables must have sufficient strength and capacity to carry the original cable and subsequent cables either through over-lash or co-lash as permitted by Ruston Municipal Code. The total number of cables on each messenger shall not exceed the requirements set forth in Ruston Municipal Code.
- 9.5 All Equipment attachments as defined in Section 1, made after the effective date of this Agreement and any existing Company Equipment on which the Company physically performs an operations or maintenance function after the effective date, must be identified by a tag.

SECTION 10. PERFORMANCE OF WORK

- 10.1 The term "Work" in this Agreement is defined as all work that the Company is responsible for performing, as required by City in connection with this Agreement, including but not limited to the attachment, maintenance, repair, relocation and removal

of Equipment, and including but not limited to all requirements set forth in Sections 3, 9, 10, 11, 12, 13, 14 and 15 hereto.

- 10.2 Company shall perform the Work in a professional and skillful manner and comply in full with National Electrical Safety Code (NESC) and the State of Washington Electrical Construction Code. Company shall ensure that the Work and the Equipment are in all respects safe, meet applicable code specifications, free from all faults and defects in workmanship, material, and design, and in conformance with the requirements of this Agreement.
- 10.3 Company shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of Section 9 and Paragraph 10.2). If Company fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, within forty-five (45) days after receipt of written request by City to do so, City, upon prior written notice, may (but is in no way required to) perform such Work and make such corrections and replacements at Company's actual and reasonable expense. In the event City determines that the Company's performance of Work, or failure to perform Work after written request by City, has created an emergency or imminent hazard likely to cause immediate bodily harm or death, City will notify the Company by phone or electronic means that it must resolve the hazard immediately. In such event, Company shall resolve the hazard within twenty-four (24) hours. The Company acknowledges that it bears the sole responsibility and liability related to its Equipment, and agrees that except to the extent known to the City, the City has no obligation to notify the Company of a hazardous condition hereunder.
- 10.4 INTENTIONALLY DELETED.
- 10.5 Company shall, at all times, avoid damaging the City's Poles, and shall keep work areas in a neat, clean and safe condition, clear of rubbish, refuse and other debris. Upon completion of any portion of the Work, Company shall promptly remove all rubbish, refuse and other debris and all Equipment and surplus materials. If Company fails to do so, City may perform such work at Company's actual and reasonable expense. Nothing in this section obligates the City to perform any work under this Agreement.

SECTION 11. MAKE READY WORK

- 11.1 Make Ready Work includes the following work, which City requires be performed solely to accommodate attachment of Company's Equipment, at the Company's sole cost and expense, either prior to the Company's performing its Work, or upon City's request:
- (a) Electrical work necessary to provide sufficient space and clearance on or between Poles, pursuant to Paragraph 10.2; and
 - (b) Tree trimming and other work necessary to clear vegetation.

- 11.2 After Company submits its application showing a proposed route for City review, City shall determine the need for Make Ready Work, shall prepare a detailed list of the required Make Ready Work, and shall submit the list in writing to Company. Company is required to perform this Make Ready Work to the City's satisfaction. Nothing in this Agreement shall prohibit Company from proposing alternate routes to avoid Make Ready Work.
- 11.3 City will not install wood cross arms to provide space for communications or other Equipment. City is solely responsible for determining height standards and condition of Poles pursuant to the NESC and the State of Washington Electrical Construction Code. All replacement Poles must meet the pole restrictions required by applicable Municipal Codes, City Construction Guidelines, and current engineering practices. City will not replace Poles in areas where utilities are located underground and further will not replace poles to provide space for communications, except under the following conditions:
- (a) If the Pole in question must be replaced due to poor condition, then replacement with a 35' Pole if not used for electric lines or a 45' pole if used for electric lines and/or if the Pole has current Company equipment located thereon, (a Standard Height Pole) will be at City's expense. City will replace such Poles in the course of its overall Pole replacement schedule, however, poles which create an imminent hazard will be replaced as soon as feasible by the City. City will advise the Company of such schedule. If Company desires an expedited replacement, Company must notify City in writing within ten (10) calendar days that it is requesting an expedited replacement. In such case as this request is granted in the sole discretion of the City, Company will be responsible for paying City all labor charges necessary to expedite the replacement, including but not limited to contracting with an authorized vendor and overtime charges.
 - (b) If the Pole is not in condition to warrant replacement but currently meets City's needs and requirements for height, then replacement with a Standard Height Pole, within restrictions imposed by the Ruston Municipal Code or other local codes, will be at Company's expense.
- 11.4 This Agreement does not apply to Make Ready Work that must be performed by other entities that have equipment that may be attached to the Pole(s).

SECTION 12. GUYS

Unless otherwise directed by City, Company shall install guys and anchors necessary to support the additional strain imposed on any Pole by the Equipment. Guy markers shall be installed and meet the visibility requirements as set forth in Section 10.2. If Company fails to install such guys or anchors after written notice from City and City installs or replaces guys or anchors to support the strain imposed by the Equipment, Company shall reimburse City for the actual and reasonable cost of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).

SECTION 13. MAINTENANCE

Company shall maintain all Equipment attached to any Pole in good and safe condition and state of repair.

SECTION 14. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES

Transfer of Company's attached Equipment as required by City due to the Pole(s) being relocated replaced, or removed shall be made by Company at Company's own expense within sixty (60) days after receipt of written or electronic notice by City. If Company fails or refuses to perform any Work required by this Agreement or to make any such changes in location of Equipment attachments as required by City, City may follow the default provisions of Section 8.1 above. When such Equipment will be located underground, then the provisions of Section 15 below apply, including permitting the City to remove Company's Equipment under 15.2(c).

SECTION 15. UNDERGROUNDING

15.1 If City plans to install its electrical distribution system underground in an area the Company serves, or has potential for serving, Company, in accordance with all applicable laws, shall reasonably cooperate with, and not unreasonably interfere with, City in the planning, engineering, and underground installation of the Equipment.

15.2 For Areas where the utilities are located underground or will be moved underground, City and the Company agree to the conditions stated below:

(a) Company understands that Ruston is a view community and provides electrical power to its residents. The long-term plans of the City are to move all utilities underground and remove all utility poles from the City rights of way for the purpose of enhancing safety, improving the rights of way and increasing reliability of its utilities. In the areas where the City's electrical distribution facilities are currently underground, there are no Poles to which the Company can attach Equipment. The City plans to systematically remove all poles from the right of way as underground facilities are constructed. After completion of this process there will be no Poles to which the Company can attach Equipment and any Company Equipment in that area must be undergrounded at the Company's sole expense except as otherwise provided by law.

(b) If Company has existing underground facilities in the City, the Company will place its wireline Equipment currently attached to Poles in its underground facilities, if capacity exists, whether or not City Poles exist in those areas. Where Company has no existing underground facilities, or where no capacity exists or where Equipment cannot be buried, City agrees to allow the Company to remove its Equipment from the City's Poles that will be removed and follow normal procedures for attachment to the remaining Poles in the City until those Poles are replaced by underground facilities. The Company agrees that when the City is moving its electrical facilities underground, the Company shall install its own separate underground facilities at the

same time that City performs its undergrounding work. If the Company wants to joint-trench with City at the time City performs its undergrounding work, costs shall be shared per City's standard cost sharing agreement in use at the time of the construction. City and Company agree that work shall be scheduled to minimize disruption to the surrounding neighborhood and any associated costs shall also be shared by the parties, and any third parties involved in same, pro rata.

- (c) Should Company ignore or delay City's request for undergrounding of the Company's facilities, the Company hereby gives City permission to remove Company's Equipment from the Poles without further notice. Under these conditions, the Company will reimburse City for the cost of removal.
 - (d) If the undergrounding of utilities is required by the City solely for aesthetic purposes, then RCW 35.99.060(3)(c) allowing Company to seek reimbursement for the relocation would apply.
- 15.3 In addition to the above, the Company agrees to convert its overhead system to underground within one hundred and eight (180) days after the aforementioned underground facilities are built and ready for Company's occupancy.
- 15.4 City acknowledges that Company has a right under state law to construct and maintain lines of telephone in the State of Washington, including the right to place poles and aerial lines on private property and in public rights-of-way pursuant to Washington Constitution, Article XII, § 19 and RCW 80.36.040, and subject to the City's right to impose certain requirements deriving from its local zoning and police powers and relating to the use of public rights-of-way pursuant to RCW 35.99.040, and that nothing in this Agreement prohibits such rights.
- 15.5 Company acknowledges that Chapter 14.06 RMC, to the extent consistent with state law, and Chapter 35.99 RCW, require Company to move its Equipment underground at its sole expense when the City deems it reasonably necessary for construction, alteration, repair, system improvement, or improvement of the right-of-way for purposes of public welfare, health or safety.

SECTION 16. RELEASE, INDEMNITY AND HOLD HARMLESS

- 16.1 Company shall defend, indemnify and hold the City, its officers, official, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the activities or operations performed by the Company or on the Company's behalf arising out of or in connection with the attachment, relocation, or removal of any Equipment attached to any Pole, the performance of any Work or Make Ready Work, the operation of any Equipment related to the Company's system, or the acts or omissions of Company or any of its suppliers or contractors of any tier, the respective successors and assigns of Company or any such suppliers or contractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on Company's behalf in connection with said Equipment

attachments, performance of Work, or operation of Company's system, except for injuries and damages caused by the sole negligence of the City.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE COMPANY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

A "contractor of any tier" means any contractor, sub-contractor, sub-sub-contractor or any contractor of any level or kind doing work for the Company regardless of how that contractor is hired or engaged; provided, however, that a contractor of any tier shall not include City, or any level of contractor hired by City to perform work for City pursuant to this Agreement.

- 16.2 With the exception of the Parties' indemnification obligations, neither Party shall be liable to the other for any claim or cause of action requesting or claiming special, incidental, indirect, punitive, reliance or consequential damages. Any claim or cause of action requesting or claiming for such damages is specifically waived and barred, whether or not such damages were foreseeable or a Party was notified in advance or the possibility of such damages.
- 16.3 To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply to and for the benefit of the Indemnitees. **If it is determined that RCW 4.24.115 applies to this Agreement, the Company agrees to defend, indemnify and hold harmless the Indemnitees to the maximum extent permitted thereunder, and specifically for the Company's negligence concurrent with that of the Indemnitees to the full extent of the Company's negligence.**
- 16.4 City is willing to permit Equipment to be attached to the Poles for the fees described in Section 4 only in consideration of and in reliance upon such release, indemnity and hold harmless.

SECTION 17. INSURANCE

- 17.1 Company shall procure and maintain continuously for the term of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Company's behalf arising out of or in connection with the attachment, maintenance, relocation, or removal of any Equipment attached to any Pole, the performance of any Work or Make Ready Work, the operation of any Equipment related to the Company's system, or the acts or omissions of Company or any of its suppliers or contractors of any tier, the respective successors and assigns of Company or any such suppliers or contractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on

Company's behalf in connection with said Equipment attachments, performance of Work, or operation of Company's system.

No Limitation. Company's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Company to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

17.2 Minimum Scope of Insurance.

The Company shall obtain insurance of the type described below:

- (a) Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 or a substitute form providing equivalent coverage, and shall cover bodily injury, property damage, completed operations and products liability. The City shall be included as an additional insured under the Company's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage.
- (b) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

17.3 Minimum Amounts of Insurance.

The Company shall maintain the following insurance limits:

- (a) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, bodily injury, property damage, and \$2,000,000 completed operations, and products aggregate limit.
- (b) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

17.4 Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability Insurance:

- (a) The Company's insurance coverage shall be primary insurance (but only for the actions of Company and for those whom Company is responsible) as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Company's insurance and shall not contribute with it.

17.5 Acceptability of Insurers.

Insurance shall be placed with insurers with a current A.M. Best rating of not less than (A-VII) licensed to conduct business in the State of Washington.

17.6 Verification of Coverage.

The Company shall make available to the City certificates or other evidence of insurance and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Company within thirty (30) days of the execution of this Agreement. Failure to provide these certificates or evidence of insurance is a material breach of this Agreement and entitles the City to terminate this agreement upon thirty (30) days notice in accordance with Section 8 above. Evidence of Licensee's insurance is available at www.centurylink.com/moi.

17.7 The Company shall ensure that any subcontractor performing any Work pertaining to this Agreement or any Permit issued to Company shall be contractually obligated by the Company to assume the requirements of SECTIONS 16 and 17 herein.

17.8 The Company shall promptly advise the City Clerk of all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Company's Equipment. Copies of all accident or other reports made to any insurer by the Company shall be furnished to City by mail at the address listed in Section 19.

SECTION 18. EASEMENTS

18.1 The Company shall, at its sole expense, obtain all public and private approvals, easements and rights-of-way necessary to construct, operate and maintain its Equipment on public or private property before attaching to the City's Poles. The Company agrees to provide evidence of same to the City upon written request.

18.2 This Agreement shall not be construed as requiring City to obtain any easement for the benefit of the Company.

18.3 Company shall secure from property owners, at its own expense, any easement necessary to cross private property in order to connect to Poles.

SECTION 19. NOTICES AND OTHER COMMUNICATIONS

19.1 Except as otherwise provided herein, any notice, request, approval, consent, instruction, direction or other communication given by either party to the other party pursuant to this Agreement shall be in writing and shall be delivered by personal delivery, by first class U.S. mail or by nationally recognized overnight courier service to the parties at the following respective addresses:

To City:

City of Ruston

Attn: City Clerk

5117 N. Winnifred Street

Ruston, WA 98407

~~TownClerk@Ruston.gov~~ TownClerk@RustonWA.org

~~(253)-759-3554~~ (253) 759-3544

To Company:

Qwest Corporation d/b/a CenturyLink QC

Real Estate Transaction and Analysis

600 New Century Parkway

Mailcode 2C970

New Century, KS 66031

Attn: Real Estate Manager

and to

CenturyLink Law Department

1801 California Street

Denver, CO 80202

Attn: Network Legal Group

- 19.2 Notwithstanding the foregoing, City requires the Company to deliver, by mail or personal delivery, a hard copy of any documents containing an original signature.
- 19.3 All notices will be deemed received: (a) upon actual receipt if delivered personally to the designee listed above; or (b) five (5) business days following first class mailing.
- 19.4 Either party may from time to time designate a new address for notices.

SECTION 20. COMPLIANCE

- 20.1 In the performance of the Work and this Agreement, Company shall comply with, and shall ensure that the Equipment attachments, the Work, and all of Company's suppliers and contractors of any tier comply with, all applicable:
- (a) Laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, of any governmental authority;
 - (b) Industry standards and codes; and
 - (c) City's construction guidelines, specifications, rules, and regulations which apply to Company's Work.

Company shall furnish such documents as may be reasonably required to effect or evidence compliance.

SECTION 21. NONWAIVER

The failure of City to insist upon or enforce strict performance by Company of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

SECTION 22. ASSIGNMENT; SUCCESSORS AND ASSIGNS

Company shall not assign or transfer this Agreement without the written notice to, and written consent of, City, except to an affiliate, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, Company may assign this agreement to any entity that controls, is controlled by, or is under common control with, Company and to any entity that purchases all or substantially all of Company's assets located in City's boundaries. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Upon notice of request of such assignment or transfer, City shall respond in writing to such request either denying the assignment or transfer or approving the assignment or transfer. Company's failure to provide notice of its request to assign or transfer and/or failure to obtain City's consent pursuant to this Section will be considered a material breach pursuant to Section 8 herein.

SECTION 23. SURVIVAL

The obligations imposed on Company under Sections 4, 6, 7.2, 8, 16, 17, 19, 21, 24 and 25 of this Agreement shall survive the default, completion, termination or cancellation of this Agreement.

SECTION 24. ENTIRE AGREEMENT

- 24.1 The entire Agreement and any exhibits attached thereto shall consist of the general terms and conditions contained in this Agreement.
- 24.2 The rights and obligations of the parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the parties, and nullifies and supersedes any and all prior Agreements, with respect to the attachment of Equipment to the Poles.
- 24.3 This Agreement may not be modified except by a written document executed contemporaneously herewith or subsequent hereto signed by both parties.

24.4 If a court of competent jurisdiction finds any word, phrase, sentence, clause, section of this Agreement to be invalid or unenforceable, such invalidity shall not affect the validity of any other word, phrase, sentence, clause or section of this Agreement.

SECTION 25. APPLICABLE LAW AND VENUE

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Pierce County Superior Court, Pierce County, Washington, or the U.S. District Court, Western District in Tacoma, unless the parties agree in writing to an alternative dispute resolution process. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

SECTION 26. CHANGE OF LAW

The terms, condition, and rates of this Agreement were composed in order to effectuate the legal requirements and/or parameters in effect at the time the Agreement was produced. In the event that any of the terms, conditions, and/or rates herein, or any of the laws or regulations that were the basis or rationale for such terms, conditions, and/or rates in this Agreement are invalidated, modified or stayed by any state, federal regulatory, or legislative bodies or courts of competent jurisdiction, the Parties shall expend diligent efforts to arrive at a written amendment regarding the appropriate conforming modifications to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:
Qwest Corporation d/b/a CenturyLink QC

CITY:
City of Ruston

Date Signed: JAN 5 2018

Date Signed: _____

Address: **100 CenturyLink Drive**
Monroe, LA 71203

Address: **5117 N. Winnifred Street**
Ruston, WA 98407

Name: **Danett Kennedy**

Name: **Bruce Hopkins**

Signature: 

Signature: _____

Title: **Sr. Manager**

Title: **Mayor of Ruston**

Attest:

Ruston City Clerk

Approved as to form:



Ruston City Attorney