



BEFORE THE CITY COUNCIL FOR THE
CITY OF ADAIR VILLAGE, OREGON

In the Matter of Granting a Franchise to Qwest)
Corporation DBA CenturyLink to Operate and)
Maintain a Telecommunications System in the)
City of Adair Village, Oregon)

ORDINANCE NO. 2018 - 01

WHEREAS, this matter having come before the City Council of Adair Village on August 7, 2018 upon recommendation of the City Administrator; and

WHEREAS, Qwest corporation d/b/a Centurylink QC (“CenturyLink” or “Company”), is a regulated public utility that provides electric power and energy to the citizens of the City of Adair Village (the “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City and PacifiCorp wish to agree to the terms and conditions by which PacifiCorp will use the public ways of the City;

THE CITY OF ADAIR VILLAGE CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Grant of Franchise. The City hereby grants to CenturyLink the right, privilege and authority to construct, maintain, operate, upgrade, remove, and relocate its cables and related appurtenances (“Facilities”) in, under, along, over and across the present and future streets, alleys, land, easements, and public ways of the City (“Public Ways”), for the purpose of providing telecommunication services to the City’s inhabitants. Notwithstanding the foregoing, the City Manager or his/her designee shall have the reasonable authority to prescribe which Public Ways will be used and the location of Facilities within the Public Way, as may be reasonably necessary to minimize public inconvenience.

SECTION 2. Acceptance by CenturyLink. Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file an unqualified written acceptance (“Acceptance”) thereof with the City Recorder; otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The Term (“Term”) of this Franchise is four (4) years commencing on July 1, 2018 and ending on June 30, 2022. At the end of the Term, the Franchise granted herein may be renewed upon mutual agreement of the parties.

SECTION 4. Franchise Fee. From and after the date of CenturyLink's Acceptance of this Ordinance and until its expiration, CenturyLink will pay the City five percent (5%) of CenturyLink's local exchange access service Gross Revenue (as defined in ORS §§221.515 and 403.105), in accordance with ORS § 221.515. Payment shall be made annually within sixty (60) days after the end of the calendar year during the Term of this Franchise. Such payment made by CenturyLink will be accepted by the City of Adair Village in payment of any license, privilege or occupation tax or fee for revenue or regulation, franchise fee, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter, or other forms of excise or revenue taxes based upon or measured by revenues, employees, payroll, property, facilities or equipment of CenturyLink to be imposed by the City of Adair Village upon CenturyLink during the Term of this Franchise. However, CenturyLink shall not deduct charges and penalties imposed by the City for noncompliance with the Franchise, ordinances, or permit conditions from the franchise fee required by this Franchise.

SECTION 5. Records Inspection. CenturyLink shall make available to the City, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that is provided to the City or its agent and/or that the City or its agent reviews *in camera* is confidential and proprietary, shall require a commercially reasonable non-disclosure agreement before disclosure, and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the City shall be immediately returned to CenturyLink following review. The City and any City agent will not make copies of such information.

SECTION 6. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted CenturyLink herein.

SECTION 7. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law. The City agrees, before passage, to promptly notify CenturyLink of any such changes potentially applicable to this Franchise.

SECTION 8. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by CenturyLink of its Facilities. CenturyLink shall defend, indemnify and hold harmless the City, its agents, officers and employees from any and all claims, demands, and damages of any kind, including attorney's fees which may arise, from any negligent act or omissions of CenturyLink, its agents, officers or employees, in connection with the its operations pursuant to this Franchise. The City shall: (a) give prompt written notice to CenturyLink of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien. CenturyLink shall not be subject to liability for any

settlement made without its consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees. Notwithstanding any other term or condition of this Franchise, in no event shall either party be liable or responsible for any special, consequential or incidental damages arising hereunder.

SECTION 9. Insurance Requirements. CenturyLink will maintain in full force and effect for the Term of the Franchise, at CenturyLink's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Oregon, protecting it against liability because of personal injury and property damage occasioned by the operation of the System by CenturyLink. Such insurance will be in an amount not less than \$1,000,000.00. CenturyLink will also maintain Worker's Compensation coverage throughout the Term of this Franchise as required by law. Evidence in the form of a certificate of insurance will be provided to the City upon request.

SECTION 10. Annexation. When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to CenturyLink: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.

SECTION 11. Plan, Design, Construction and Installation of CenturyLink's Facilities.

11.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

11.2 CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed or materially alter any rights or obligations of this Franchise. CenturyLink will provide as-built route maps of new Facilities placed in the Public Ways pursuant to a permit issued by the City. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, not otherwise in material conflict with the rights and obligations of this Franchise, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs.

11.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City, not otherwise in material conflict with the rights and obligations of this Franchise.

11.4 If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or

public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

11.5 CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground Facilities or replacing existing underground Facilities, each party shall first notify the other of such work and allow the other party, at its own expense, to share the trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench or unreasonably delay project completion.

11.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's poles, wires, conduits, conductors, pipes, and appurtenances.

11.7 CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by the City until a separate pole attachment agreement has been executed by the parties.

SECTION 12. Relocation of Facilities.

12.1 Relocation for the City. CenturyLink shall, upon receipt of advance written notice of not less than thirty (30) days, protect, support, temporarily disconnect, relocate, or remove any CenturyLink property located in a Public Way when required by the City consistent with its police powers. CenturyLink shall be responsible for any costs to CenturyLink associated with these obligations to the same extent as other users of the respective Public Way. Any money and all rights to reimbursement from the State of Oregon or the federal government to which CenturyLink may be entitled for work done by CenturyLink pursuant to these obligations shall be the property of CenturyLink.

12.2 Relocation for a Third Party. CenturyLink shall, at the request of any person holding a lawful permit issued by the City, or on the City's request for a project benefitting a third party or third party utility, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, as applicable, any CenturyLink property, provided that the cost of such action is borne by the person, third party, or third party utility requesting it and CenturyLink is given reasonable advance written notice. In such situation, CenturyLink may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no less than forty five (45) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

12.3 Alternatives to Relocation. CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting Facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in

writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases, including the end of the Term or any renewal term, have the right to abandon the Facilities.

SECTION 13. Vegetation Management. CenturyLink shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 14. Revocation of Franchise for Noncompliance.

14.1 In the event that the City believes that CenturyLink has not complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

14.2 CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

14.3 In the event that CenturyLink does not comply with subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

14.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3, determines that CenturyLink is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

14.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to CenturyLink. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall

cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

14.6 Notwithstanding the foregoing provisions in this Section 14, CenturyLink does not waive any of its rights under applicable law.

SECTION 15. No Waiver of Rights. Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 16. Transfer of Franchise. CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, sharing of rights and obligations, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness.

SECTION 17. Entire Agreement; Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and CenturyLink and formally adopted by the City Council as an ordinance amendment. This Franchise and all attachments hereto constitute and represent the entire agreement and understanding between the parties hereto and replaces any previous agreement, understanding or negotiation between the parties with respect to the subject matter hereof.

SECTION 18. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or (b) upon receipt or refusal after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City:
City Administrator
6030 William R. Carr Ave.
Adair Village, OR 97330

CenturyLink:
Franchise Rights-of-Way Attorney
931 14th St., 9th Floor
Denver, Colorado 80202

With copy to:
CenturyLink
c/o NIS Contract Management
1025 Eldorado Blvd.
Broomfield CO. 80021

SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 20. Binding Agreement; Choice of Law. This Franchise shall be binding upon the heirs, successors, administrators and assigns of each of the parties. This Franchise shall be interpreted under the laws of the State of Oregon.

SECTION 21. Effective Date. Passed by the City Council and approved by the Mayor of the City of Adair Village the ____ day of _____, 2018 This ordinance shall become effective upon signature by the Mayor.

City of Adair Village, Oregon, _____

CITY OF ADAIR VILLAGE

MAYOR

CITY ADMINISTRATOR

Approved as to Form:

City Attorney

First Reading: August 7, 2018

Second Reading: By Title

City Recorder: _____