



CITY OF CHANDLER OVERLASH AGREEMENT ISSUED TO QWEST CORPORATION
D/B/A CENTURYLINK QC

City of Chandler Document No. _____
 City Council Meeting Date: _____

THIS AGREEMENT ("Agreement") is issued by the City of Chandler, an Arizona municipal corporation ("City") to Qwest Corporation dba CenturyLink QC ("CenturyLink"), a Colorado corporation. (City and CenturyLink are each a "Party" and collectively the "Parties") effective _____ ("Effective Date").

RECITALS

A. City oversees the streets, highways, walkways, alleyways ("Public Right of Way"), and City-owned property (collectively "Public Property"), and it has a substantial government interest to ensure all utilities located on such Public Property are designed, installed, constructed, maintained, and repaired in a manner that will protect the public and Public 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 CenturyLink and third-party utilities (collectively "Incumbent Facilities"). From time to time, CenturyLink desires to overlash cable (such cable hereinafter referred to as the "Overlashed Cable") onto overhead lines, and this Agreement sets forth the terms and conditions of doing so.

C. CenturyLink's use of Incumbent Facilities is governed by applicable agreements with the pole owners. Additionally, CenturyLink's placement, use, maintenance, repair, and design of all overhead lines on Public Property whether attached to City poles, Third-Party poles, or CenturyLink's own poles is subject to all applicable provisions of City Code, State, and Federal law, and the City's Engineering and Design Standards.

D. To the extent any of CenturyLink's affiliates have entered into agreements with the City, this Agreement is not subject to and shall not operate to amend, supersede, or modify any such agreements, or any provision of City Code, State, and Federal law.

E. The City's Engineering and Design Standards and City Code 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 and City Code prohibit the placement of new independent overhead lines and overlash, even in areas with existing overhead facilities.

F. 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.

G. In light of the foregoing, the Parties desire to enter into this Agreement to ensure the orderly development and maintenance of the proposed overlash consistent with the City Code and the City's Engineering and Design Standards.

H. The City cites the following as its authority to enter into this Agreement: A.R.S. §§ 9-581-583, the Chandler City Charter, and Chandler City Code Chapter 46. By entering this Agreement, CenturyLink does not concede the validity of this statement of authority and expressly reserves all of its available rights and remedies under applicable law.

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:

SECTION 1. DEFINITIONS

For this Agreement, unless the context otherwise requires, the following terms, phrases, words, and their derivatives have these meanings. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The terms, phrases, words, and their derivatives used in this Agreement have the meanings given in Chapter 46 of the Chandler City Code as amended. If a conflict or ambiguity exists among the definitions in Arizona Revised Statutes, the Chandler City Code, and this Agreement, the definitions in the following order prevail and control: (1) Arizona Revised Statutes; (2) Chandler City Code; (3) this Agreement. Additional definitions for this Agreement include:

"ACC" means the Arizona Corporation Commission.

"Agreement" means this Overlash Agreement.

"A.R.S." means Arizona Revised Statutes, as amended.

"CenturyLink" means Qwest Corporation dba CenturyLink QC, a Colorado corporation.

"City" means the City of Chandler, Arizona.

"City Council" means the Council of the City of Chandler.

"Day" means calendar day unless noted otherwise.

"Encroachment Permit" means the nonexclusive permission granted by the City to CenturyLink within the Public Property for the specific location of the Incumbent Facilities and includes fees (if any) for the specific location, and other terms and conditions in accordance with the City Code, applicable Rights-of-Way construction regulations, and other applicable law.

"Environmental Laws" means all federal, state, and local laws, ordinances, rules, regulations, statutes, and judicial decisions now or subsequently in effect, in any way relating to or regulating human health, or safety, or industrial hygiene, or environmental conditions, or protection of the environment, or prevention or cleanup of pollution or contamination of the air, soil, surface water, or ground water.

"FCC" means the Federal Communications Commission.

"Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

"Overlashed Cable" means cable installed on overhead lines by CenturyLink pursuant to this Agreement.

"Overlashing Permit" means the nonexclusive encroachment permit granted by the City to CenturyLink within the Public Property to install Overlashed Cable as contemplated in this Agreement.

"Pre-existing Environmental Condition" means the presence, emission, disposal, discharge, or release of any Hazardous Substance at, in, on, under, or about the Incumbent Facilities where Overlashed Cables have been installed, however caused, existing prior to the placement of the Overlashed Cables within Public Property, whether the nature and extent of such contamination is known or unknown at the time.

"Provider" means a telecommunications corporation that constructs, installs, operates, or maintains telecommunications facilities or interstate telecommunications services in the Public Rights-of-Way.

"Public Property" means Public Right-of-Way and City-owned Property, collectively.

"Public Rights-of-Way" means all roads, streets, alleys, and all other dedicated public rights-of-way and public utility easements located within the City's corporate boundaries.

"Telecommunications" has the same meaning as defined in A.R.S. § 9-581(4), as amended.

"Telecommunications Corporation" has the same meaning as defined in A.R.S. § 9-581(5), as amended.

"Telecommunications Services" has the same meaning as defined in A.R.S. § 9-581(6), as amended.

SECTION 2. RECITALS

2.1 Incorporated by Reference. The recitals set forth above are acknowledged and agreed by the Parties to be accurate and correct and are incorporated herein by reference.

SECTION 3. ENCROACHMENT PERMIT FOR OVERLASHING

3.1 Overlapping Permits. This Agreement does not grant nor guarantee permission to overlap fiber on overhead strands. In addition, although CenturyLink maintains an annual "blanket" permit for routine work performed over and in Public Rights-of-Way and City property, the blanket permit also shall not authorize fiber/cable overlapping. City will consider requests to overlap fiber/cable 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.

3.2 Minimum Overlapping Permit Requirements: City will not grant a request for an Overlapping Permit if at any time CenturyLink is not in compliance with this Agreement. An Overlapping Permit shall be consistent with the encroachment permits authorized in City Code Chapter 46 and contain such terms and conditions as the City (in its reasonable discretion, and subject to applicable laws, including but not limited to the Telecommunications Act of 1996) deems appropriate and necessary given the size, scope, location, and conditions of the proposed work. Nevertheless, each Overlapping Permit shall, at a minimum, require that CenturyLink:

3.2.1 Overlap only on Incumbent Facilities;

3.2.2 Perform all work in compliance with lawful provisions of the Chandler City Code, applicable and lawful City policies, Maricopa Association of Governments ("MAG") Uniform Standard Specifications and Details for Public Works Construction, Chandler Standard Details and Specifications (Chandler Amendments to MAG), Chandler's Engineering and Design Standards, National Electric Code (NEC), National Electric Safety Code (NESC), American Public Power Association (APPA) Safety Manual, and OSHA regulations;

3.2.3 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;

3.2.4 Pay applicable permitting and traffic control fees, and all other lawful fees and charges;

3.2.5 During construction and design activities CenturyLink will review in its records and in the field all the aerial plant that is being overlashed and will remove any that CenturyLink in its commercially reasonable discretion deems to be defective or permanently nonfunctioning.

3.2.6 Any cabling more than five (5) feet resulting from new overlapping, which is normally stored in a fiber optic storage product sometimes known as a "snowshoe" or "dog bone", shall be alternately located in below-ground fiber vaults. Aerial storage placement may be allowed if approved by the City Engineer based on such factors as: (A) when placement of a below-ground fiber vault is not feasible due to existing surface conditions; (B) lack of pole quadrant space to accommodate needed risers within one pole span (either side); (C) lack of ground space to accommodate the installation of fiber vault placement or where fiber vault placement impedes the normal function of the right-of-way movement of refuse trucks through alleyways, etc.). In such event, excess aerial storage will be limited to a maximum of 100 feet on each side of the installation.

3.2.7 Where CenturyLink owns a topped pole, remove the topped pole on any span receiving overlash work. No overlash 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 overlash. This applies in double-pole situations. A pole will not be considered a double pole if it is more than 20 feet from another utility pole.

3.2.8 Not install new poles, mid-span poles, or new down-guys in conjunction with any overlash 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.

3.2.9 The overall diameter of all microduct and fiber optic cabling at any aerial plant location shall not exceed three inches (3") and the diameter of the additional duct/conduit and cabling shall be measured before it is overlash to the existing aerial plant.

3.2.10 For overlash aerial plant, the installation of overhead service drops is allowed only to properties with an existing overhead electrical service.

3.3 No Unreasonable Interference. In connection with the overlash 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, CenturyLink will take prompt remedial action. Provided, however, CenturyLink must take commercially reasonable steps to complete all such remedial action within 30 days of written notice as provided in Section 19.15.

3.4 Undergrounding Overlash Facilities. Undergrounding of overlash facilities and the allocation and responsibility for the costs associated with such undergrounding shall be governed by existing City, state, and federal laws. Provided, however, where applicable local, state, or federal law requires the City to assume the cost of undergrounding existing overhead facilities to which the Overlash Cable is attached (but not the Overlash Cable itself), CenturyLink will pay any additional cost that undergrounding of the Overlash Cable adds to such project.

3.5 City-Wide Maintenance Program. CenturyLink's existing facilities include overhead strands, cables, and equipment located throughout the City. The City has a fundamental governmental interest to preserve, promote, and protect public health, safety, and welfare. To that end, for all CenturyLink overlash facilities within City of Chandler corporate boundaries, CenturyLink agrees to the following:

3.5.1 Maintain its aerial strands, cables, pedestals, manholes, and equipment in an orderly, safe, and workmanlike manner.

3.5.2 Follow all applicable requirements of the City of Chandler Utility Manual and supplements thereto when addressing temporary lines.

3.5.3 Periodically, but in accordance with industry standards and practice, inspect overlash 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;

3.6 Non-Compliance with NESC Standards. When CenturyLink receives notice that CenturyLink's overlash facilities fail to meet applicable NESC standards, CenturyLink must cure these conditions within ten (10) business days following receipt of such notice. CenturyLink must reimburse the City within 10 business days of CenturyLink's receipt of an invoice from the City for all actual, reasonable, out-of-pocket, documented costs the City incurred as a result of CenturyLink's failure to cure the non-compliant NESC conditions within 10 business days as required under this Agreement.

3.7 Low Wire Report; Non-Compliance. The City maintains a Solid Waste Low Wire Report identifying wires that conflict with solid waste services. Within thirty (30) business days of receiving such report, CenturyLink shall resolve low overlash cable issues identified in the report by either undergrounding the aerial cable if pole clearances are unattainable or raising the cables on the pole. CenturyLink shall pay the inspection fees identified on the City's Schedule of Fees and reimburse the City for all actual, reasonable, out-of-pocket, documented costs and damages including, but not limited to, police and fire services, idled solid waste equipment and personnel, and damage to City's real and personal property incurred as a result of CenturyLink's failure to timely cure the non-compliant condition.

3.8 Annual Report. CenturyLink shall submit an annual inspection report and location exhibits identifying the overlying maintenance activities within the City to the City's Development Services Department. Additionally, Century Link 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 to respond to City's request for documentation and inspection, then it shall so designate such documents prior to its production.

SECTION 4. RESERVED

SECTION 5. PERMISSION GRANTED

5.1 Permission to Overlash. Subject to the provisions of this Agreement, the Chandler City Charter, the Chandler City Code, and Arizona and federal law, under an Overlapping Permit the City grants to CenturyLink nonexclusive and revocable rights and nonexclusive and revocable privileges as set forth in this Agreement to construct, install, operate, and maintain its Overlashed Cables in the Public Rights-of-Way and on other City-owned property.

5.1.1 At any time during the term of this Agreement, CenturyLink may apply to the City for Overlapping Permits that set forth the specific location of CenturyLink's relevant Incumbent Facilities or third-party pole(s), authorized permitting fees (if any) for the specific location, and other authorized terms and conditions. The City may approve, deny, or conditionally approve CenturyLink's Overlapping Permit application based on the following but not exclusive reasons: (i) public health, safety, and welfare; and (ii) other considerations in accordance with the City Code, applicable construction regulations, and other applicable law.

5.1.2 Subject to the permission of the affected property owner, this Agreement also authorizes CenturyLink to place its Overlashed Cables on property owned by third parties, such as an electric utility company or other private property owners. Provided; however, the Incumbent Facilities installed or constructed by CenturyLink on private property satisfy applicable Public Rights-of-Way Construction regulations. Upon request from the City, CenturyLink must promptly furnish to the City documentation of the third party's permission. By executing this Agreement, the City does not waive any rights that City may have against any public utility or other third party to require such owners to obtain the City's prior approval for such uses of their property or facilities, or that revenues received by any public utility or other property owner from CenturyLink be included in the computation of the use fees owed by such parties to the City.

5.1.3 No component or part of CenturyLink's Overlashed Cables may be installed, constructed, located on, or attached to any property within the City until CenturyLink has applied for and received approval for an Overlapping Permit under Chapter 46 of the Chandler City Code. Additionally, CenturyLink must comply with all other provisions of the Chandler City Code including, but not limited to, Chapter 35 related to zoning, Chapter 47 related to off-site construction, and other applicable City regulations.

5.1.4 Any right or privilege claimed under this Agreement by CenturyLink for any use in the Public Rights-of-Way and on other City-owned property for overlying is subordinate to any City prior or subsequent lawful occupancy or use or any other governmental entity and is subordinate to any prior easements. Provided; however, nothing in this Agreement extinguishes or otherwise interferes with the Parties' property rights established independently of this Agreement, including any of CenturyLink's rights which predate this Agreement.

5.1.5 Nothing in this Agreement will be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining the City's facilities in the Public Rights-of-Way or City-owned property, and for any or more of such purposes or any other lawful purpose requiring CenturyLink, at CenturyLink's expense and no expense to the City, to remove, relocate, or abandon in place CenturyLink's Incumbent Facilities to accommodate the City's projects and activities to the extent otherwise allowed by and in accordance with applicable law. The City will not be liable for CenturyLink's lost revenues, however caused, due to any City activity or City project in the Public Rights-of-Way, when such costs or lost revenues result from the construction, operation, or maintenance of City facilities and any other lawful City project or activity in the Public Rights-of-Way; provided, however, the City's activities and projects that result in such costs or lost revenues to CenturyLink are conducted in accordance with applicable laws and regulations.

SECTION 6. APPROVAL AND TESTING

6.1 Any changes to the Overlashed Cables must be approved in writing by the City Engineer's designee, which approval will not be unreasonably withheld or delayed.

6.2 CenturyLink must retain at CenturyLink's cost an independent testing service to perform the applicable MAG tests on newly installed Overlashed Cables as requested by City. All testing results must be sent to the City within five (5) business days of CenturyLink's possession or knowledge of the results.

SECTION 7. PERMIT CHANGES

7.1 If CenturyLink desires to change the location of any of the Overlashed Cables, including any related facilities or equipment, from the location depicted in initial Overlashing Permit application(s), CenturyLink must submit revised plans to apply for and obtain approval for an amendment to the Overlashing Permit prior to installation and construction of the Overlashed Cables.

SECTION 8. SCOPE

8.1 Requirements. This Agreement satisfies the requirements of, and is in accordance with, the provisions of Chapter 46 of the Chandler City Code.

8.2 Compliance with Laws. Century Link must comply with all applicable laws as amended from time to time including but not limited to, the Chandler City Code, the Chandler Charter, and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for CenturyLink to comply with any law or regulation of the FCC or the Arizona Corporation Commission ("ACC") to engage in the business activities anticipated by this Agreement, CenturyLink must comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement. Provided; however, no such law or regulation of the FCC or ACC may enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

8.3 Reports. Upon request, CenturyLink will provide to City copies of any communications and reports submitted by CenturyLink to the FCC or any other federal or state regulatory commission or agency with jurisdiction into any matters that directly affect this Agreement.

SECTION 9. FEES, CHARGES, DAMAGE TO THE PUBLIC RIGHTS-OF-WAY AND OTHER CITY-OWNED PROPERTY

9.1 Payment of Fees. CenturyLink will be solely responsible for the payment of all fees and charges as provided in this Agreement, including those set forth below.

9.2 Failure to Pay. CenturyLink agrees that if it fails to pay any amounts owed to the City by the time prescribed for payment, CenturyLink must pay interest on the amounts owed, at the rate of one percent (1%) per month.

9.3 Invoice and Payment Information:

9.3.1 The City will send invoices for fees and charges under this Agreement to CenturyLink at the following address:

Invoicing contact information:
RE: Job Number:
Email: epermits@centurylink.com

9.3.2 CenturyLink will send payment to the City under this Agreement made payable to the "City of Chandler" at the following address:

City of Chandler
P.O. Box 4008 Mail Stop 403
Chandler, AZ 85244-4008
ATTN: Development Services
Phone: 480-782-3000
Email: tuf@chandleraz.gov

9.4 Taxes. CenturyLink must obtain any required business/sales tax licenses and pay any applicable City, county, and state transaction privilege and use tax.

9.5 Permit Fees and Construction Costs. In addition to the fees and taxes set forth herein above, CenturyLink must pay those fees and charges for the overlash permit application, inspection, testing, plan review, pavement damage fees, and any other fees adopted by City and applicable to persons doing work in the Public Rights-of-Way or on other City-owned property. Additionally, if both Parties agree, the City may retain outside inspectors or other persons to review and inspect CenturyLink's plans, specifications, and construction of the Incumbent Facilities. CenturyLink agrees to reimburse the City for its actual, reasonable, out-of-pocket costs incurred in connection therewith.

9.6 Reserved.

9.7 Damage to Public Property. Whenever the installation, removal, or relocation of any of CenturyLink's Overlashed Cable is required or permitted under this Agreement, and such installation, removal, or relocation causes damage to Public Rights of Way or other City-owned property, CenturyLink at its sole cost and expense must promptly, but within 30 business days repair and return Public Property in which the Overlashed Cables components are located to a safe and satisfactory condition in accordance with applicable laws, with provisions in the City of Chandler Utility Manual and the MAG and the City's supplements to MAG, reasonably satisfactory to the City Engineer, ordinary wear and tear excepted. If CenturyLink does not repair the Public Property as just described or otherwise timely and properly dispute its obligation to do so, then City shall have the option, thirty (30) days after CenturyLink's receipt of prior written notice, to perform or cause to be performed such reasonable and necessary work on behalf of CenturyLink and to charge CenturyLink for the actual, reasonable, out-pocket costs incurred by the City at City's standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment accompanied by explanation of cost and fees incurred by City, CenturyLink must, within thirty (30) days, reimburse City for such costs or otherwise timely and properly dispute such reimbursement obligations.

SECTION 10. TERM OF AGREEMENT

10.1 The term of this Agreement will be for five (5) years from the Effective Date. The term may be renewed for additional five-year terms upon the Parties' mutual written agreement. Notwithstanding the foregoing, expiration of this Agreement shall not impact Overlashed Cable permitted during the Term of this Agreement, and such Overlashed Cable shall continue to be governed by the terms and conditions of this Agreement.

SECTION 11. ACCEPTANCE AND EFFECTIVE DATE

11.1 Written Acceptance. CenturyLink's execution of this Agreement constitutes CenturyLink's acceptance of the Agreement as granted and CenturyLink's agreement to be bound by and to comply with and to do everything, which is required of the CenturyLink by this Agreement. CenturyLink's signature must be acknowledged before a notary public. This Agreement is effective upon execution by both Parties.

11.2 Validity of Agreement. CenturyLink must acknowledge that as a condition of acceptance of this Agreement, CenturyLink was required to be represented throughout the negotiations of the Agreement by its own attorneys and CenturyLink had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. CenturyLink has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, CenturyLink acknowledges and accepts the right and authority of City to execute this Agreement, to issue this Agreement and to enforce the terms herein.

SECTION 12. INSURANCE AND INDEMNITY

12.1 Insurance Responsibility. During the entire term of this Agreement, CenturyLink must insure its property and activities and must provide insurance and indemnification as follows. CenturyLink must procure and maintain, and must cause its contractors to procure and maintain as provided in Section "12.2" below, until all their respective obligations have been discharged, insurance against claims for injury to persons or damage to property that may arise from or in connection with CenturyLink's obligations under this Agreement and CenturyLink's activities including, but not limited to, the installation, construction, relocation, removal, repair, operation, and maintenance of the Overlashed Cables by CenturyLink, its agents, representatives, employees, or contractors. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to

protect CenturyLink from liabilities that might arise out of this Agreement by CenturyLink, its agents, representatives, employees or contractors, and CenturyLink is free to purchase such additional insurance as may be determined necessary.

12.2 Minimum Scope and Limits of Insurance: CenturyLink must provide coverage with limits of liability not less than those stated below.

12.2.1 Commercial General Liability – Occurrence Form

Said insurance must also include coverage for products completed operations, independent contractors, personal injury, property damage, and advertising injury.

Products – Completed Operations Aggregate	\$10,000,000
Each Occurrence	\$10,000,000

The policy must be endorsed to include the following additional insured language: "The City of Chandler, its agents, representatives, officers, directors, officials, employees, and volunteers must be covered as an additional insured with respect to liability arising out of the activities performed by CenturyLink." This endorsement may not contain an exclusion or limitation of completed operations coverage as regards the additional insured except with respect to the stated aggregate limits of liability. The policy may not exclude the explosion/collapse/underground ("xcu") hazard. CenturyLink may obtain all insurance limits through any combination of primary and excess or umbrella liability insurance.

12.2.2 Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of work under this Agreement.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

The policy must contain an "MCS-90" endorsement providing for clean-up of pollution conditions arising from transported product, if the work performed under the Agreement requires the transportation of any Hazardous Substances by motor vehicle. The policy must also be endorsed to include the following additional insured language: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by CenturyLink, including automobiles owned, leased, hired, or borrowed by CenturyLink".

12.2.3 Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Policy must contain a waiver of subrogation against the City of Chandler.

12.2.4 Pollution Liability:

Per Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

The policy must be endorsed to include the following additional insured language: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers must be covered as an additional insured with respect to liability arising out of the activities performed by CenturyLink." The policy must include coverage for: (a) cleanup of sudden or accidental pollution conditions arising from the Overlashed Cables, as defined in the Agreement; (b) cleanup of new conditions arising from CenturyLink's operations and use of Public Rights-of- Way or City-owned property under this Agreement and third-party claims for on and off-site bodily injury and property damage. CenturyLink warrants that any retroactive date under the policy must precede the Effective Date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

12.3 Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions: CenturyLink's insurance coverage must be primary insurance and non-contributory with respect to the obligations that CenturyLink has undertaken under this Agreement. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, volunteers, and employees, for losses arising from work performed by the CenturyLink under this Agreement.

12.4 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be canceled or materially changed except after thirty (30) days prior written notice has been given. Such notice must be sent directly to the addresses listed below and must be sent by email or certified mail, return receipt requested:

City of Chandler
 Attention: Development Services Department
 P.O. Box 4008, Mail Stop 405
 Chandler, Arizona 85244-4008
 Phone: (480) 782-3000
 Email: tuf@chandleraz.gov

With a copy to:

Office of the City Attorney
 Attention: Risk Management
 175 South Arizona Avenue
 P.O. Box 4008 Mail Stop 602
 Chandler, Arizona 85244-4008
 Phone: (480) 782-4640
 Fax: (480) 782-4652
 Email: legal.notices@chandleraz.gov

12.5 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect CenturyLink from potential insurer insolvency.

12.6 Verification of Coverage: CenturyLink must furnish City with certificates of insurance (ACORD form or equivalent approved by City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement. All certificates required by this Agreement must be sent directly to the City of Chandler Development Services Department with a copy to Risk Management at the addresses listed in Section 12.4. The Agreement number and description are to be noted on the certificate of insurance. At City's request, CenturyLink must make redacted copies of all insurance policies required by this Agreement available for City's review through a representative and at a location within Maricopa County, Arizona designated by the City.

12.7 Contractors: CenturyLink's certificate(s) must include all contractors as additional insureds under its policies or contractors must maintain separate insurance as determined by CenturyLink and contractors must include City of Chandler as an additional insured, however, contractor's limits of liability must not be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

12.8 Approval: Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Office of the City Attorney, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

12.9 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement or any and all permits and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, CenturyLink and all other persons using, acting, working, or claiming through or for CenturyLink (if they or their subcontractor, employee, or other person or entity hired or directed by them participated in any way in causing the claim in question) must jointly and severally indemnify, defend, and hold harmless City and all other Additional Insureds for, from, and against any and all claims or harm to the extent arising

from CenturyLink's use of the Public Rights-of-Way or other City-owned property or interests granted to CenturyLink under this Agreement (the "Indemnity"). Without limitation, the Indemnity must include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines, or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) to the extent arising from CenturyLink's use of the Public Rights-of-Way or other City-owned property pursuant to this Agreement or any and all Permits, or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement by CenturyLink, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents, or other persons upon or using the Public Rights-of-Way or other City-owned property or surrounding areas as a result of CenturyLink's exercise of its interests under this Agreement, except to the extent caused by City or any other Additional Insured or anyone for whose mistakes, errors, omissions, or negligence City may be liable. Notwithstanding the foregoing, the Indemnity does not apply to: (i) Claims arising from the sole negligence, gross negligence, or intentionally wrongful acts of City; or (ii) Claims that the law prohibits from being imposed upon the indemnitor.

12.10 Risk of Loss. Except to the extent caused by the City's or its agent's or contractor's negligence, gross negligence, or intentionally wrongful act, CenturyLink assumes the risk of all loss, damage or claims related to CenturyLink's use of the Public Rights-of-Way or other City-owned property for overlying under this Agreement. CenturyLink must be responsible for all damage to its property and equipment related to this Agreement unless caused by the negligence, gross negligence, or intentionally wrongful acts of the City or its agents or contractors.

12.11 Insurance to be Provided by Others. CenturyLink must cause its contractors or other persons occupying, working on or about, or using the Public rights-of-Way or City-owned property under this Agreement to be covered by their own or CenturyLink's insurance as required by this Agreement. The required policy limits for commercial general liability insurance provided by such persons must be \$1,000,000 for each occurrence, \$1,000,000 for products and completed operations annual aggregate, and \$2,000,000 general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the Public Rights-of-Way or on other City-owned property (such as CenturyLink's consulting design engineers).

SECTION 13. TRANSFER OF AGREEMENT

13.1 No Assignment Without Consent. This Agreement and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of the City by an ordinance or resolution passed by the Chandler City Council, which consent will not be unreasonably withheld or delayed. Any agreement that is assigned or otherwise transferred pursuant to this Section must be equally subject to all the obligations and privileges of this Agreement including any amendments, which will remain in effect, as if the assigned Agreement was the original Agreement.

13.2 No Lease Without Consent. The Agreement must not be sublet or assigned, nor must any of the related rights or privileges be leased, assigned, sold, or transferred, either in whole or in part, nor must title, either legal or equitable, or any right, or property interest pass to or vest in any person other than CenturyLink, by act of the CenturyLink or operation of law, without the written consent of City, which consent will not be unreasonably withheld or delayed. Prior to any proposed assignment becoming final, CenturyLink must seek the City's consent.

13.3 Notice to City. The approval of any change in ownership interest must include an assignment agreement signed by the assignee, CenturyLink, and City. CenturyLink must provide City a copy of the deed, Agreement, mortgage, lease, or other written instrument evidencing such sale, transfer, or lease, certified, and sworn to as correct by the CenturyLink. CenturyLink must notify the City within 60 days of any change in mailing address.

13.4 Binding on Assignee. After assignment, this Agreement, including any amendments, shall be binding on the assignee to the full extent that it was binding upon CenturyLink.

13.5 Conditional Ownership. Nothing in this Section prohibits a pledge, hypothecation, mortgage, or similar instrument transferring conditional ownership of all or part of CenturyLink's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of CenturyLink, the lender may assume the rights and obligations of the CenturyLink. The Lender may not transfer or change control of the Agreement without submitting the change to the City for approval. If the lender does continue operation on any basis at any time, the lender shall be subject to all provisions of the Agreement. No later than three years after assumption of control by the lender, the lender must apply to the City for the

right to continue assumption of control or to transfer the Agreement. Application by the Lender for approval of assumption of control or transfer must be subject to consent by the Chandler City Council that may not be unreasonably denied or withheld. A "Lender" for the purposes of this Agreement does not include a CenturyLink, person, or corporation, or other entities that operate cable television Incumbent Facilities or fiber optics telecommunications Incumbent Facilities as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.

13.6 Assignee Warranty. Notwithstanding the foregoing, prior consent will not be required for transfer to any company which owns or controls, is owned or controlled by, or under common control with the CenturyLink, provided that, no such transfer will be valid unless CenturyLink and the proposed transferee submit a binding Agreement and warranty to the City stating that:

13.6.1 The proposed transferee has read, accepts, and agrees to be bound by the terms of the Agreement.

13.6.2 The proposed transferee assumes all obligations, liabilities, and responsibility pursuant to the Agreement for the acts and omissions of CenturyLink, known and unknown, for all purposes, and agrees that the transfer will not permit it to take any position or exercise any right which CenturyLink could not have exercised; and

13.6.3 The transfer will not substantially diminish the financial resources available to the CenturyLink.

13.7 Transfer Description. Prior to executing such transfer described in this Section, CenturyLink and the proposed transferee must submit to the City a description of the nature of the transfer and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the CenturyLink. CenturyLink may be required to pay a new application fee of \$3,000 to cover the legal, administrative, and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer.

SECTION 14. NON-EXCLUSIVE RIGHTS

14.1 Non-Exclusive Rights. This grant is not exclusive, and nothing herein contained may be construed to prevent City from granting other like or similar grants or privileges to any other person, firm, or corporation, or to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

14.2 Priority Rights. Any and all rights granted to CenturyLink under this Agreement (which, for clarity, are limited to overlashing) must be exercised at CenturyLink's sole cost and expense and are subject to the prior and continuing right of City to use all the Public Rights-of-Way and other City-owned property concurrently, with any other person or persons, and further such rights to overlash will be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title that may affect the Public Rights-of-Way and on other City-owned property. Nothing in this Agreement will be construed to grant, convey, create, or vest a perpetual real property interest in land to CenturyLink, including any fee or leasehold interest, easement, or any franchise rights, other than as specified in Overlashing Permits issued, hereunder.

SECTION 15. PUBLIC SAFETY

15.1 Public Safety Violation. CenturyLink, its affiliates, agents, employees, contractors, successors, assigns, and representatives must comply with and perform each obligation required of CenturyLink as set forth in this Agreement. CenturyLink's failure to cure a Public Safety Event of Default as described in this Agreement within five (5) business days from the receipt of notice from the City constitutes a "Public Safety Violation" by CenturyLink.

15.2 Public Safety Events of Default. All Overlashing Permits issued to CenturyLink under this Agreement are approved upon the condition that each of the following events will be deemed a "Public Safety Event of Default" for CenturyLink's failure to perform or satisfy the following material obligations:

15.2.1 If CenturyLink fails to make timely payment of the fees and charges required under any Overlashing Permit granted by the City, except to the extent CenturyLink submits a timely, valid, good faith dispute related to same.

15.2.2 If CenturyLink fails to comply in all material respects with published public health, safety, or welfare law or regulation required by the Chandler City Code and that applies to Public Property while performing Overlashing work.

15.2.3 If CenturyLink violates any material term or condition of any Overlashing Permit.

15.2.4 If CenturyLink fails to obtain the appropriate Overlashing Permit to perform work on Public Property.

15.3 City's Remedies for CenturyLink's Public Safety Violations. Upon the occurrence of any Public Safety Violation, City may, at its option, exercise at CenturyLink's expense any or all or any combination of the following cumulative remedies in any order at City's option: (i) revoke the relevant Overlashing Permit(s). The City's revocation does not terminate CenturyLink's obligations arising during the time simultaneous with or prior to the revocation, and in no way terminates any of CenturyLink's liability related to any breach of this Agreement; (ii) assert, exercise, or otherwise pursue any and all other rights or remedies, legal or equitable, to which City may be entitled; and (iii) Impose civil sanctions as lawfully provided in Chandler City Code.

15.4 Public Safety Violations; Civil Sanctions. The City Manager is authorized to issue notices of violation of this Agreement, prosecute such violations as provided in Chandler City Code sec.1-8, and may take those measures necessary to promote, preserve, and protect public health, safety, and welfare within the Public Rights-of-Way and City-owned property. The City Manager may issue warnings for Public Safety Violations by CenturyLink under this section in its reasonable discretion. The City Manager will issue notice to CenturyLink as listed in Section 19.15.

15.5 Failure to Pay Civil Sanction. Failure of CenturyLink to pay a civil sanction upon final adjudication of the civil action as provided by law may result in the automatic termination of this Agreement and any such party may be prohibited from obtaining additional licenses or permits until all outstanding civil sanctions have been dismissed or paid in full.

15.6 Non-waiver. CenturyLink acknowledges CenturyLink's obligation to comply with this Agreement. No failure by City to demand any performance required of CenturyLink under this Agreement, and no acceptance by City of any imperfect or partial performances under this Agreement, will necessarily excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with these terms and conditions. No acceptance by City of payments or other performances hereunder will, in and of themselves, be deemed a compromise or settlement of any right City may have for additional, different, or further payments or performances as provided for in these terms and conditions. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by CenturyLink will not necessarily be deemed or considered as a continuing waiver for future similar events and will not operate to bar or otherwise prevent City from declaring a default for any succeeding or continuing material breach either of the same condition or covenant or otherwise. No statement, bill, or notice by City or CenturyLink concerning payments or other performances due hereunder, or failure by City to demand any performance hereunder, will excuse CenturyLink from compliance with its obligations nor estop City (or otherwise impair City's ability) to, subject to this Agreement and applicable law, correct such notice or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) will be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision or matter being waived and specifically stating the scope of the waiver.

15.7 Reimbursement of City's Expenses. CenturyLink must pay to City within 30 days after receipt of City's demand all actual, reasonable, and documented amounts expended or incurred by City in performing CenturyLink's obligations (upon CenturyLink's failure to perform the same after notice from City) together with interest thereon at the rate of 10% per annum from the date expended or incurred by City.

SECTION 16. ABANDONMENT

16.1 Abandonment; Removal of Facilities. In the event that the use of certain Overlashed Cables and the aerial facilities to which they are overlashed is discontinued for a continuous period of two (2) years for reasons other than Force Majeure and CenturyLink does not have near-term plans to begin using them again, or in the event such Overlashed Cables have been installed in any Public Rights-of-Way or other City-owned property in material breach of the requirements of this Agreement without cure after notice, CenturyLink must promptly, upon being given 60 days' written notice from the City, begin removal of the Overlashed Cables from the Public Rights-of-Way and other City-owned property, subject to Section 16.2, below. In the event of such removal, CenturyLink must promptly restore the Public Rights-of-Way and other City-owned property or other area from which such property has been removed to a condition reasonably satisfactory to the City subject to the City's customary practice to review upon request of CenturyLink. As a minimum, CenturyLink must restore the Public Rights-of-Way and other City-owned property to a condition as existed prior to the removal of the Overlashing Cables, ordinary wear and tear excepted.

16.2 Permanent Abandonment. If the subject Overlashed Cables remain in the Public Rights-of-Way and other City-owned property following the events described in Section 16.1, above, 180 days after the City has given notice to remove them, such Overlashed Cables may be considered permanently abandoned consistent with C.C.C. §§ 46-2.9, 46-8.12(K), the Utility Permit Manual, Transportation and Development Policy TDP-275, and any other applicable law.

SECTION 17. AGREEMENT REVOCATION, ALTERATION, SUSPENSION

In addition to the remedies set forth in Section 15, the City may revoke, alter, or suspend this Agreement as follows.

17.1 Events of Default. In addition to the remedies listed in C.C.C. chapter 46 and subject to these terms and conditions, this Agreement may, after City Council consideration, be revoked or suspended by the City as the City deems necessary for any of the following events of default following the cure period specified in Section 17.2: (i) CenturyLink's failure to maintain any faithful insurance coverage, or pay any fees or taxes due and owing as required under this Agreement; (ii) CenturyLink's failure to comply with an applicable law, rule, or regulation related to the Overlashed Cable, this Agreement, or as required by the appropriate regulatory authority; (iii) fraud by CenturyLink, in its conduct or relations under this Agreement; (iv) CenturyLink's willful or grossly negligent violation of this Agreement; (v) permanent or temporary suspension of CenturyLink's services for a period of 180 or greater consecutive calendar days by the United States or the State of Arizona for any authorizations legally required for CenturyLink to own, operate, maintain, or construct the Overlashed Cable; (vi) If CenturyLink is the subject of a voluntary or involuntary bankruptcy, receivership, insolvency, or similar proceeding or if any assignment of any of CenturyLink's property is made for the benefit of creditors or if CenturyLink is not regularly paying its debts as they come due in concert with such a proceeding; and (viii) If City is exposed to any liability, obligation, damage, cost, expense, or other claim of any description for which is not liable and for which CenturyLink is obligated pursuant to this Agreement to indemnify, defend, and hold harmless the City, unless CenturyLink gives prompt statement or notice to City of CenturyLink's commitment to indemnify, defend, and hold City harmless against such claim and CenturyLink does in fact promptly commence and continue to indemnify, defend, and hold City harmless against such claim to the extent required under this Agreement.

17.2 Additional Cure Period. Due to the gravity of the events of default listed in Section "17.1", CenturyLink is provided additional time (when compared to Section 15) to cure these events of default. If any of the foregoing events in Section "17.1" occur, CenturyLink must cure the default within 60 days after receipt of notice from the City. CenturyLink will be held in material breach under this Section "17": (i) if CenturyLink fails to cure the event of default listed in Section "17.1" within 60 days after notice from the City; or (ii) if an event of a default listed in Section "17.1" cannot be cured within 60 days after notice from the City and CenturyLink fails to begin and diligently pursue to cure the default.

17.3 City Determination; City Council Consideration. If CenturyLink is held in material breach as provided in Section "17.2", the City will notify CenturyLink as provided in Section 19.15 of the City's determination to terminate, postpone for a period, or proceed with the revocation, alteration, or suspension of this Agreement. As part of this determination, the City will state the principal reasons that support the City's determination. CenturyLink may appeal the City's determination as provided in Chandler City Code sec.1-7 within (10) ten business days from the date of the determination. If CenturyLink fails to timely appeal the City's determination or if CenturyLink's appeal fails, the City may proceed to terminate, postpone for a period, or proceed with the revocation, alteration, or suspension of this Agreement by presenting this matter to the Chandler City Council for consideration at the Council's next regularly scheduled Council meeting. The City will send a written statement of proposed action by certified U.S. mail, return receipt requested, to CenturyLink as provided in Section 19.15. The written statement of proposed action must include the date and time of the City Council meeting and the principal reasons for the proposed action. The City Council may take any final action the Council deems necessary and prudent related to this Agreement.

SECTION 18. EFFECT OF EXPIRATION, REVOCATION, OR TERMINATION OF AGREEMENT

18.1 Services. Upon expiration, revocation, or termination of this Agreement for any reason, CenturyLink may enter good-faith negotiations with the City or other governmental authority for a period of 180 days from the date of expiration, revocation, or termination to obtain a license, permit, or other approval or agreement that may be lawfully required to allow CenturyLink to continue overlying within the Public Rights-of- Way and other City-owned property.

18.2 Holding Over. In any circumstance whereby CenturyLink continues to have Overlashed Cable within the Public Rights-of-Way and other City-owned property after the expiration of this Agreement, the CenturyLink's hold over operates as a renewal or extension of this Agreement on a year-to-year basis that may be terminated by the City upon 60 days' written notice to CenturyLink prior to the end of each such extension year, or by CenturyLink upon 60 days' written notice to the City prior to the end of each such extension year.

SECTION 19. GENERAL CONDITIONS

19.1 Agreement Administrator and Enforcement. In all matters of Agreement administration, the City Manager has authority to reasonably determine CenturyLink's compliance with the terms and provisions of the Agreement, and in the event of non-

compliance, to exercise any or all the remedies included in this Agreement. The City Manager shall make such determinations in good faith and earnestly seek input and relevant information from CenturyLink when doing so.

19.2 Right of Inspection of Construction. The City may inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

19.3 Right of Intervention. The City may intervene in any suit or proceeding related to or arising out of this Agreement to which CenturyLink is party, and CenturyLink may not oppose such intervention by the City.

19.4 Public Records Acknowledgment. Notwithstanding any provision in this Agreement, CenturyLink acknowledges and understands that the City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121 et seq.).

19.5 Permission of Property Owner Required. This Agreement does not convey the right to install any part of CenturyLink's Overlashed Cables on private property.

19.6 Compliance With Laws. Each Party must comply with all federal, state, and City ordinances, resolutions, rules, and regulations related to the rights and duties granted CenturyLink under this Agreement.

19.7 Non-Enforcement by the City. CenturyLink will not be relieved of its obligation to comply with any of the provisions of this Agreement by reason of the City's failure to insist upon or to seek compliance with any term and condition.

19.8 Agreement Documents. CenturyLink must provide the City insurance certificates as required by the Agreement within 90 days of the Effective Date. The Agreement granted is not legally operative until all of CenturyLink's requirements in this Section are completed. In the event CenturyLink does not timely satisfy these, this Agreement will be deemed null and void unless CenturyLink's period to comply is extended by the Council.

19.9 Survival of Warranties. CenturyLink's representations and warranties made as part of the grant of this Agreement, or any permit issued under this Agreement survive termination or revocation of this Agreement.

19.10 Hazardous Substances. CenturyLink will, at its own cost, be responsible for proper investigation and management of all Hazardous Substances under its control, including Hazardous Substances CenturyLink uses, generates, or disposes of, and must comply with all Environmental Laws to carry out its obligations under this Agreement. In the event CenturyLink releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup, or remedial measures to be taken, CenturyLink must, at its sole cost and expense, promptly undertake such required actions. If CenturyLink discovers a Pre-existing Environmental Condition, CenturyLink will immediately notify the City in writing as provided in Section 19.15.

19.11 Right of Cancellation. CenturyLink acknowledges that this Agreement is subject to cancellation by the City under A.R.S. § 38-511.

19.12 Covenant Against Contingent Fees. CenturyLink warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council, or any employee of the City has any interest, financially or otherwise, in this Agreement. For breach or violation of this warranty, the City has the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

19.13 Independent Contractor. Any provision in this Agreement that may appear to give the City the right to direct CenturyLink or CenturyLink the right to direct the City as to the details of accomplishing the work or to exercise a measure of control over the work means that the party will follow the wishes of the other party as to the results of the work only.

19.14 Jurisdiction; Governing Law; Venue. As a condition of the grant of this Agreement, CenturyLink acknowledges and accepts that CenturyLink is subject to personal and subject matter jurisdiction of Arizona state courts. Arizona law governs this Agreement, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding to enforce this Agreement must be instituted in a court located in Maricopa County, Arizona.

19.15 Delivery, Procedure of Notices and Communications. All notices, consent, or other communication under this Agreement must be in writing and: (i) delivered in person; or (ii) sent by electronic mail and deposited in the United States mail, postage prepaid certified mail, return receipt requested; or (iii) deposited with any commercial air courier or express service and addressed as follows:

To CenturyLink:	CenturyLink QC Attention: Government Affairs 2120 N. Central Ave. Phoenix AZ 85004 Email: jeff.mirasola@lumen.com
With a copy to:	CenturyLink QC Attention: Network Legal Department 931 14th St., Floor 12 Denver, CO 80202 Email: brandon.porter@lumen.com
To the City:	City of Chandler Attention: Development Services Department P.O. Box 4008, Mail Stop 405 Chandler, Arizona 85244-4008 Phone: (480) 782-3000 Email: tuf@chandleraz.gov
With a copy to:	Office of the City Attorney 175 South Arizona Avenue P.O. Box 4008 Mail Stop 602 Chandler, Arizona 85244-4008 Phone: (480) 782-4640 Fax: (480) 782-4652 Email: legal.notices@chandleraz.gov

Notice will be deemed received at the time it is personally served on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) calendar days after the notice is deposited in the United States mail as evidenced by the certified mail receipt. Any period stated in a notice will be computed from the time the notice is deemed received unless noted otherwise. Any party may change its mailing address, phone number, email address or the person to receive notice by notifying the other party as provided in this Section. Notices sent by electronic mail must also be sent by certified mail to the recipient at the above address.

19.16 Organization/Employment Disclaimer. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, agreement, or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the Parties will be only those expressly set forth in this Agreement.

19.17 Entire Agreement; Amendment; Waivers. This Agreement, along with any Overlapping Permits issued hereunder that are consistent with the terms and conditions of this Agreement, constitute the entire agreement between the City and CenturyLink with respect to the transactions contemplated therein and supersede all prior negotiations, communications, discussions, and correspondence, whether written or oral, concerning the subject matter hereof (i.e., overlapping). No supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless executed in writing by the Parties. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provisions, whether similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless expressly executed in writing by the Party making the waiver.

19.18 Right of Parties. Nothing in this Agreement, whether express or implied, is intended to confer any right or remedies under or by reason of this Agreement on any persons other than the Parties to this Agreement and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any person who

is not a party to this Agreement, nor will any provisions in this Agreement give any persons not a party to this Agreement any right of subrogation or action over or against any Party to this Agreement.

19.19 Construction. This Agreement is the result of negotiations between the Parties, none of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions of this Agreement will be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular the plural. The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to "Sections" herein refer to the sections and paragraphs of this Agreement unless specifically stated otherwise. The section and other headings contained in this Agreement are inserted for convenience of reference only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation of this Agreement.

19.20 Severability. If any covenant, condition, term, or provision of this Agreement is held to be illegal, or if the application of this Agreement to any person or in any circumstances to any extent be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, condition, term, or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, must not be affected, and each covenant, term, and condition of this Agreement is valid and enforceable to the fullest extent permitted by law.

19.21 Cooperation and Further Documentation. Each of the Parties agree to provide the other with such additional and other duly executed documents as are reasonably requested to fulfill the intent of this Agreement.

19.22 Force Majeure. For the purpose of any of the provisions of this Agreement, neither CenturyLink nor the City, as the case may be, will be considered in breach of or in default of their obligations under this Agreement as a result of the delay in performance of such obligations due to unforeseeable causes beyond its control and not caused by its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, acts of the Salt River Project, acts of Maricopa County, acts of the State of Arizona or any of its departments, acts of any railroad, fire, floods, epidemics, pandemics, strikes, lock outs, freight embargoes, and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of CenturyLink's and the City's obligations, as the case may be, will be extended for the period of the delay, provided that the Party seeking the benefit of this provision will timely notify the other Party in writing of the cause or causes. If notice by the Party claiming such extension is sent to the other Party more than 30 days after commencement of the force majeure event, the period of delay will be deemed to commence 30 days prior to the giving of such notice.

19.23 On-Call Assistance. CenturyLink must be available 24 hours a day, seven days a week to City staff of any City department with jurisdiction over CenturyLink's activities related to problems or complaints resulting from the installation, operation, maintenance, or removal of the Overlashed Cables. City may report any such issues by calling UNICall at 1-866-864-2255.

19.24 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any party who fails, or whose contractors fail, to comply with A.R.S. § 23-214(A). Therefore, CenturyLink and each contractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of this Agreement and may be subject to penalties up to and including revocation of the Agreement. City retains the legal right to inspect the papers of CenturyLink's or contractor's employees who provide services under this Agreement to ensure that CenturyLink and its contractors comply with this warranty.

19.25 Lawful Presence Requirement. A.R.S. §§ 1-501-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

19.26 Written Acceptance. CenturyLink's execution of this Agreement constitutes CenturyLink's acceptance of this Agreement as granted and its agreement to be bound by and to comply with the terms and conditions of this Agreement.

19.27 Data Confidentiality and Data Security. As used in this Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting

minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to CenturyLink as part of the terms and conditions of this Agreement. Except as specifically provided in this Agreement, CenturyLink must not divulge data to any third party without the City's prior written consent. These prohibitions do not apply to the following data: (i) data which was known to the CenturyLink prior to the Effective Date; or (ii) data which was acquired by the CenturyLink in its performance under this Agreement and which was disclosed to the CenturyLink by a third party, who to the best of the CenturyLink's knowledge and belief, had the legal right to make such disclosure and the CenturyLink is not otherwise required to hold such data in confidence; or (iii) data which is required to be disclosed by virtue of law, regulation, or court order, to which the CenturyLink is subject. CenturyLink assumes all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the CenturyLink, its employees, agents, or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court.

19.28 Personal Identifying Information. Data Security. Personal identifying information, financial account information, or restricted information, whether electronic format or hard copy, must be secured and always protected by each Party. At a minimum, each Party must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. If data collected or obtained by a Party or its agents in connection with this Agreement is believed to have been compromised, that Party or its agents must immediately notify the other Party. Each Party agrees to reimburse the other Party for any costs incurred by such other Party to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. The obligations of Holder under this Section must survive the termination of this Agreement.

19.29 Public Emergency. City shall have the right, because of a public emergency, to sever, disrupt, or otherwise destroy the Overlashed Cables of CenturyLink without any prior notice to CenturyLink, if the action is deemed reasonably necessary by the City Manager, Fire Chief, Police Chief, City Street Transportation Director, Public Works Director or Water Services Director. A public emergency may be any condition which, in the opinion of any of the officials named, poses an immediate material threat to the lives or property of the residents of the City or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc. CenturyLink will be notified by the City of the public emergency and the action taken by the City as soon as reasonably possible. CenturyLink shall be responsible for repair at its sole expense of any Overlashed Cables damaged pursuant to any such action taken by City.

19.30 Inspection and Audit of Agreement Provisions. All books, accounts, reports, files, and other records related to or arising out of this Agreement (collectively "Records") are subject at all reasonable times to inspection and audit by the City, including for five years after the expiration or termination of this Agreement. CenturyLink must produce the Records at a mutually agreed to time and location within Maricopa County, Arizona.

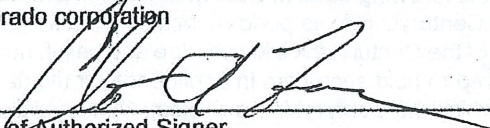
19.31 Authority. Each Party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into, and bind such Party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties duly execute and agree to be bound by this Agreement as of the Effective Date.

CITY OF CHANDLER, an Arizona municipal
corporation

QWEST CORPORATION d/b/a CENTURYLINK QC,
a Colorado corporation

Mayor

By: 
Name of Authorized Signer

Title: VP Network Implementation

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk