

**LICENSE AGREEMENT
For Public Use and Improvements**

This License Agreement (the “Agreement”) is made this 12th day of January , 2021 (“Effective Date”) by and between the City of Flagstaff, Arizona, an Arizona municipal corporation (“City”) and Qwest Corporation, a Colorado corporation (“Qwest”).

RECITALS

- A. Qwest owns property located on the north side of West Aspen Avenue between Leroux and Beaver Streets, Assessor Parcel Number 100-19-002, in downtown Flagstaff known as 112 Beaver, Flagstaff, AZ (“the Qwest Property”).
- B. The City would like to use a portion of Qwest Property, approximately 12 feet in depth and 58 feet in width (700 square feet), as shown in Exhibit A (“the License Area”) for the public use and improvements more fully described in Section 3 below.
- C. Qwest is willing to give the City a license to use the License Area, and has determined that there will be sufficient parking spaces left for Qwest’s current operational needs.

NOW, THEREFORE, in consideration for the promises set forth herein the parties agree as follows:

1. Grant of License and Permissible Uses

Qwest hereby grants a non-exclusive revocable license to City to use the License Area for public use and for construction and maintenance of improvements as further described herein; provided, however, Qwest will have the right to continue to use the driveway through the License Area. The intention is to provide an enjoyable outdoor space for the public in downtown Flagstaff.

2. Consideration

Qwest is granting this license without charging a license fee, in consideration for the City undertaking improvements as further described herein.

3. Improvements

3.1 Public Improvements. City at its expense may construct public improvements in the License Area, which may include bicycle parking, an arbor or shade structure, benches, sculptures or public art, landscaping, and other compatible streetscape elements that will be owned by City (“Public Improvements”). Upon completion, City will own all Public Improvements. Upon the termination of this Agreement, City at its sole expense shall remove all Public Improvements and return the License Area to the same or comparable condition it was in as of the Effective Date. If agreeable to both parties and approved in writing, Qwest may allow abandonment of all or some Public Improvements in place.

3.2 Qwest Improvements. City at its sole expense may undertake the following improvements that will be owned by Qwest (“Qwest Improvements”):

- 3.2.1 Replace the existing chain link fence at the back-of-sidewalk along Aspen Avenue with a new decorative wall or fence to separate the parking lot from the License Area.
- 3.2.2 Replace a portion of the asphalt driveway with decorative paving.
- 3.2.3 Install a new manual gate across the driveway between the parking lot and the License Area to allow vehicle ingress/egress to the parking lot from Aspen Avenue for Qwest employees.
- 3.2.4 A 6-foot wide passageway will be provided between the Qwest building and the License Area to allow pedestrian access between the parking lot and the Aspen sidewalk for Qwest employees. A gate will be installed across the front of the passageway.

Each Qwest Improvement will be completed within ninety (90) days following its commencement and will be in compliance with applicable standards, ownership will transfer the Qwest Improvement to Qwest by a bill of sale in a form similar to that attached to this Agreement as Exhibit B.

3.3 Selection of Improvements and Cooperation. City will consult with Qwest to confirm both Public Improvements and Qwest Improvements are satisfactory to Qwest. Qwest will reasonably cooperate with City in obtaining any necessary permits or approvals for the Public Improvements and Qwest Improvements.

3.4 Construction. City shall use reasonable efforts to minimize inconvenience to Qwest employees during construction. Qwest and City shall meet and agree in advance upon the construction schedule for both the Qwest Improvements and Public Improvements. City may not block the Qwest driveway for more than five (5) days continuously during construction or repair work, and if during this time Qwest needs to access the driveway to install an emergency generator, the City will immediately accommodate such access.

4. City Maintenance Obligations.

4.1 Public Improvements. City will maintain the Public Improvements in good condition and repair throughout the License term. The City will promptly commence repair of all damage to the Public Improvements, and will remove or paint over any graffiti or other marks that are placed on the Public Improvements following seven (7) business days written notice from Qwest that the Public Improvements have been vandalized. The City may seek cost recovery for damage from any persons responsible. Qwest understands that City may need to procure materials or services for the work.

4.2 Qwest Improvements. City will remove or paint over any graffiti or other marks that are placed on the public facing side of the Qwest Improvements following notice from Qwest that the Qwest Improvements have been vandalized. Qwest understands that City may need to procure materials or services for the work.

4.3 Obstructions. City will maintain the driveway and pedestrian passageway free of obstructions at all times, except when Qwest has consented in advance in writing to allow temporary obstruction of these areas.

4.4 Snow Removal. The City may, if convenient, remove snow from the entire License Area, but nothing herein shall be construed as establishing a duty for the City to do so. City will not cause snow to be pushed into or deposited in the driveway and pedestrian passageway, or onto Qwest property. Qwest will have no obligation to remove the snow from the License Area except to the extent required under applicable municipal ordinance.

5. Qwest Maintenance Obligations.

5.1 Qwest Improvements. Qwest will be responsible for the maintenance and repair of the Qwest Improvements, except for graffiti removal and marks as set forth in section 4.2. Except in the event of an emergency, the Qwest Improvements shall not be removed during the License term without the prior consent of City, such consent not to be unreasonably withheld, conditioned or delayed.

5.2 Snow Removal. Notwithstanding the foregoing in Section 4.4, Qwest will be responsible for snow removal in the driveway and pedestrian passageway within the License Area as needed for its business operations. Qwest will not cause snow to be pushed into or deposited in the License Area.

6. Term of Agreement

The term of this Agreement commences on the Effective Date and will continue for a period of twenty (20) years, unless sooner terminated as set forth herein.

7. Termination

7.1 City may terminate this Agreement for convenience upon at least 30 days written notice to Qwest.

7.2 Qwest may terminate this Agreement for convenience upon at least 180 days written notice to City.

7.3 Either party may terminate this Agreement upon material breach of the other party following 30 days prior written notice to the other party provided such 30-day period shall be extended such longer period as is reasonably necessary to effect a cure and so long as the defaulting party is diligently and continuously attempting such cure.

8. Removal of Public Improvements.

Upon termination or expiration of this Agreement City at its expense shall remove all Public Improvements and restore the License Area to the same or comparable condition it was in as of

the Effective Date. If agreeable to both parties and approved in writing, Qwest may allow abandonment of all or some Public Improvements in place.

9. Modification

This Agreement may be modified only by a written instrument executed by duly authorized representatives of the parties.

10. Attorney's Fees

In the event of any dispute related to this License, the parties will meet in person and in good faith attempt to resolve their concerns. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs, in an amount as determined by the Court upon consideration of the factors as set forth in A.R.S. § 12-341.01.B.

11. Indemnification

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

City will assume the risk of, be responsible for, and release, indemnify and hold harmless Qwest and its agents, officers, employees, shareholders, successors and assigns (collectively, the "Indemnified Parties") from and against, any and all losses, costs, injuries (including injuries to person or property and, in the case of injury to a person, including death resulting therefrom), damages, liabilities and claims (each a "Claim") arising out of, or in any way relating to: (a) the use of the Licensed Area by City or any of its agents, representatives, vendors, employees, guests, invitees or by any other third party (each a "City Party") during the License Term; or (b) the breach of this Agreement by City or any City Party during the License Term. Furthermore, City covenants not to sue any of the Indemnified Parties for any such Claims. City's obligation to indemnify the Indemnified Parties under this Agreement includes the duty to defend against any Claims with counsel acceptable to Qwest and to pay any judgments, settlements, costs, fees and expenses, including reasonable attorneys' fees, incurred by any of the Indemnified Parties in connection with such defense. The provisions of this Section 11 will survive the expiration or earlier termination of this Agreement

12. Acceptance of Licensed Area.

City has personally inspected the Licensed Area and accepts the Licensed Area AS IS, WHERE IS, in its condition existing as of the Effective Date with all faults, and without any representation or warranty whatsoever from Qwest, express or implied, oral or written, as to the suitability of the

Licensed Area for City's particular purpose or any other matter. City will bear the risk of loss or damage to any of City's personal property in, on or about the Licensed Area.

13. Insurance.

Notwithstanding any City-liability or any City-indemnity obligations, and without limiting the same, City will obtain and maintain, at its own cost and expense, the following types of insurance coverage for the Event: (a) Commercial General Liability insurance (form CG 0001 10 01 edition or newer) for claims for bodily injury or death and property damage with combined single limits of not less than \$1,000,000 per occurrence and an aggregate of \$2,000,000. If the Event includes the serving of food and/or alcoholic beverages, these limits will be not less than \$2,000,000 per occurrence and an aggregate of \$4,000,000 including coverage for host liquor liability if alcoholic beverages will be served at the Event; (b) Workers' Compensation insurance with statutory limits as required in Arizona and Employer's Liability coverage with limits not less than \$100,000 per occurrence; and (c) Comprehensive Automobile Liability insurance covering the operation and maintenance of all owned and non-owned motor vehicles, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

14. Certificates of Insurance and Waiver of Subrogation.

City will forward to Qwest certificates of insurance evidencing all required coverages at least 10 days prior to the Event Date. The certificates will provide that: (a) Qwest is named as an additional insured on each Commercial General Liability and Comprehensive Automobile Liability policy; and (b) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by Qwest. City waives any right it may have against Qwest for any loss or damage to any of the City Parties arising from any cause covered by any insurance required to be carried under this Agreement, or is carried, by City.

15. Assignment or Sublicense.

City may not assign or transfer this Agreement or the License, or sublicense all or any part of the Licensed Area.

156 Compliance with Laws.

City will not and will not permit anyone else to use, generate, manufacture, produce, store, discharge or dispose of on, under or about the Licensed Area any hazardous substances. City will comply with and observe all laws, ordinances, codes, orders, rules, regulations and requirements of every governmental authority having jurisdiction over the Licensed Area pertaining to City's use and occupation of the Licensed Area and exercise of its rights and obligations under this Agreement.

17. Notice.

Any notice, consent, approval, request or authorization and the like (collectively, "Notice") required or permitted under this Agreement must be in writing. Notice may be delivered by

certified mail, return receipt requested, postage prepaid (and be deemed effective on the date shown on the return receipt) or by a nationally recognized overnight delivery service (and be deemed effective as of the date on the confirmation of delivery form) to the parties at the following addresses:

To Qwest:

Lumen Technologies
1025 Eldorado Boulevard
Broomfield, CO 80021
Attn: Vice-President of Real Estate

To City:

City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Attn: Real Estate Manager

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

City of Flagstaff

Qwest Corporation

for


Kimberly Sweatt (Dec 7, 2021 10:35 CST)

Greg Clifton, City Manager

Name: Kimberly Sweatt

Dated: 1-12-2022

Title: Director of Real Estate Transactions and Analysis

Dated: Dec 7, 2021

Attest:

City Clerk

Approved as to form:

City Attorney

EXHIBIT A

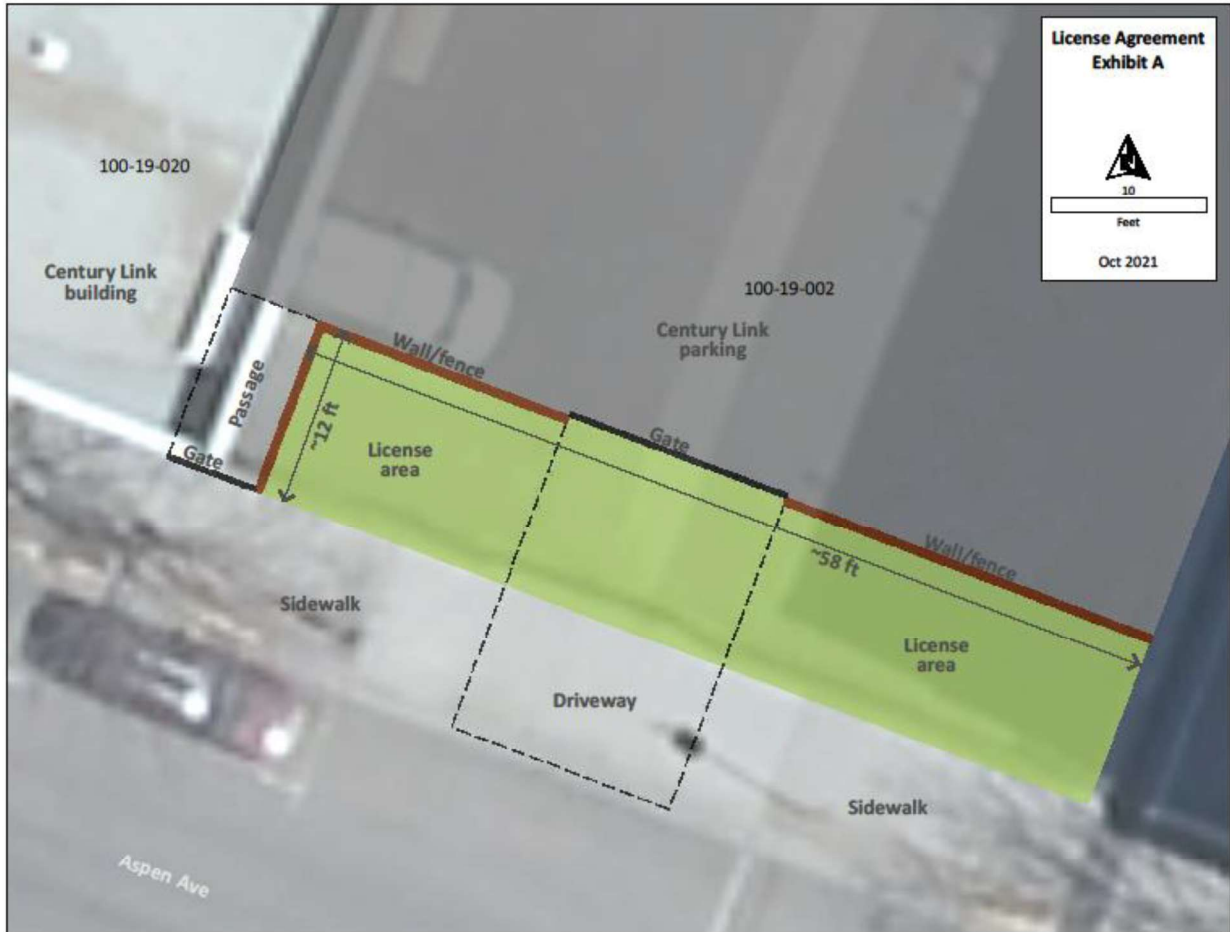


EXHIBIT B

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"), does hereby transfer, sell, set over and assign unto _____ ("_____"), its successors and assigns, all of City's right, title and interest n and to all of the equipment, fixtures and other items of personal property listed in *Exhibit "A"* attached hereto and located within the real property described in *Exhibit "A-1"* attached hereto and incorporated herein by this reference (collectively, the "Personal Property").

City shall warrant and defend title to the Personal Property only with respect to the acts of City and no other party.

Dated as of the ____ day of _____, 2021.

**CITY OF FLAGSTAFF,
an Arizona municipal corporation**

**By
Name
Title**