

RESOLUTION NO. 1654

**A RESOLUTION OF THE CITY OF CENTRAL POINT, OREGON GRANTING A  
NON-EXCLUSIVE FRANCHISE TO QWEST CORPORATION D/B/A CENTURY  
LINK QC**

**RECITALS:**

1. The City of Central Point holds rights-of-way in trust for the public and has the responsibility and home-rule authority to manage and conserve the capacity of such rights-of-ways.
2. The City of Central Point is authorized by Chapter 221 of the Oregon Revised Statutes, the City of Central Point Charter and the Central Point Municipal Code to regulate, and receive compensation from, utilities occupying right-of-way within the City.
3. CenturyLink provides telecommunications services and infrastructure, and pursuant to applicable federal and state law has requested the City enter into a 10-year franchise agreement for Telecommunications Infrastructure in the City.
4. The City Council finds the proposed franchise agreement meets the conditions of federal and state law, and is in compliance with Central Point Municipal Code 12.40.

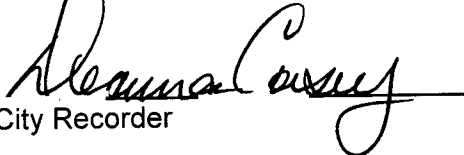
The City of Central Point resolves:

**Section 1. Franchise Agreement Adopted by City Council:** The Franchise Agreement attached hereto between the City of Central Point and CenturyLink is hereby adopted by the City Council and approved for signature by the City Manager.

Passed by the Council and signed by me in authentication of its passage this 14<sup>th</sup> day of January, 2021.

  
Mayor Hank Williams

ATTEST:

  
City Recorder

TELECOMMUNICATIONS FRANCHISE AGREEMENT  
CENTURY LINK – CITY OF CENTRAL POINT

This Franchise Agreement authorized pursuant to Central Point Municipal Code Chapter 12.40, is entered into between the City of Central Point (City) and Grantee (defined below) effective January 14, 2020.

Section 1. As used in this Agreement, the following words and phrases shall mean:

City: The City of Central Point, Oregon.

City Manager: The City Manager or his or her designee.

Facilities: All pipelines, conduits and associated structures owned by Grantee for use by Grantee in providing telecommunications services to the inhabitants and City of Central Point.

Grantee: Qwest Corporation, d/b/a CenturyLink QC, its successors and assigns.

Public way: Any highway, street, road, alley, public right-of-way or utility easement for public use under control of the City within the corporate limits of the City now existing and as annexed during the term of this Franchise.

Gross revenues: As defined in ORS §§221.515 and 403.105.

Section 2. A reliable source for telecommunications services is in the public interest of the City and its inhabitants. Therefore, subject to the provisions and restrictions of this Agreement and the Code of Central Point, the City grants to Grantee the non-exclusive privilege to locate, construct, operate and maintain its facilities in the public way.

Section 3. Except as provided in this section, Grantee's facilities shall be installed underground except along those routes existing at the time of enactment of this Agreement or where infeasible, as mutually agreed upon by both parties. Subject to the City Manager's authority and pursuant to City's police powers to prescribe which public ways will be used and the location within the public way, it shall be lawful for Grantee to make all necessary excavations in any public way for the purpose of locating, constructing, operating and maintaining its facilities. Grantee's use of the public way and all construction by Grantee shall comply with the applicable standard specifications and special provisions of the City Code and all other applicable Federal, State and local laws and regulations, and Grantee and the City shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2013), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952. No work affecting the public way shall be done by the Grantee without first obtaining the permits required by the City, which may include plan submittal and approval before work begins. During the approval process, Grantee shall bear the burden of proof regarding the infeasibility of installing facilities underground along new routes when requesting customary above-ground facilities; under such circumstances, the City and Grantee will work together in good faith to reach a mutually

agreeable solution consistent with this Section 3.

Section 4. New plans will be furnished promptly for any additions or modifications.

Section 5. Nothing in this Agreement shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any public way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the free use by Grantee of its facilities; however, the City's rights shall be paramount, subject to its police powers and applicable state and federal law.

Section 6. The City shall have the right to require Grantee to change the location of any facility within the public way when the City determines that the public convenience requires such change, and the expense thereof shall be paid by Grantee, provided the City's request is (a) not unreasonable or discriminatory in nature, (b) is consistent with a lawful exercise of the City's police power, and (c) subject to applicable state and federal law. If the City has funding for the relocation, City will allow Grantee to participate and seek funding from the original source as a reimbursable party. Further, the Grantee shall not be required to relocate for any third party unless the third party agrees to fund the Grantee for such relocation and such request does not harm the Grantee, as provided in Section 7 below.

If the City requires Grantee to relocate its facilities located within the City, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the public way. City shall give Grantee written notice to relocate its facilities at least 180 days prior to the date established by the City as the deadline for relocation or as reasonably agreed to by the parties due to the scope of the relocation. Within 60 days following receipt of such notice, Grantee shall do any necessary field investigation and furnish the City with a plan showing the exact location of all of Grantee's facilities in the construction area and showing necessary adjustments and reasonable time requirements. Thereafter, the City will furnish Grantee with final improvement plans and a schedule which allows Grantee a reasonable time to complete the relocation of its facilities.

Should Grantee, due to its gross negligence, fail to relocate any such facilities by the date established by the above-referenced final improvement plans and schedule, the City may effect such relocation at its own risk. The work shall be done by a qualified contractor and not cause any outage to the Grantee's system. The reasonable, direct and verifiable expense thereof shall be paid by Grantee. Grantee shall pay the City's charges for such work within 60 days after receipt of City's statement of charges, subject to Grantee's rights to pursue legal and equitable remedies.

Section 7. Should it ever become necessary to permanently or temporarily rearrange, or permanently or temporarily relocate Grantee's facilities at the request of a private person or business to the City, Grantee shall perform such rearrangement or relocation as expeditiously as possible upon receipt of reasonable written notice from the person or business desiring the temporary change of the facilities if such notice meets all of the following requirements:

- (a) approved by the City Manager in writing,

(b) provides all necessary information about the project,

(c) provides that the costs incurred by Grantee in making the change be borne by the person or business giving said notice,

(d) provides that the person or business giving notice shall indemnify and hold harmless the Grantee and City of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such change of Grantee's facilities, and

(e) full payment has been made by the person or business requesting the relocation to Grantee, unless Grantee provides written confirmation that it waives such requirement.

Section 8. Grantee shall at all times maintain all of its facilities in a good state of repair. Any damage to the public way caused by Grantee shall be promptly repaired by Grantee at no cost to the City. Grantee shall have a local representative available at all times through the local utility coordinating notification center, whether it be the Rogue Basin Utilities Coordinating Council, the Oregon Utility Notification Center, or any such successor authority, to locate Grantee's facilities for persons who need to excavate in the public way. Should Grantee fail to maintain or repair any such facilities by the date established by the City, the City may affect such repair at its own risk, and the reasonable and verifiable expense thereof shall be paid by Grantee. Procedures and costs shall be as in Section 6 above.

Section 9. Grantee shall indemnify and hold harmless the City from any and all damages of any kind or character to the extent caused by the location, installation, operation and maintenance of the Grantee's facilities in the City by Grantee or its contractors, except to the extent caused by the City's or a third party's negligence, recklessness or willful misconduct. Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

Section 10. In consideration of the privileges and franchise granted, Grantee shall pay as compensation for the use of the public way seven percent (7%) of the gross revenue collected by Grantee from its customers for local access telecommunications services provided within the corporate limits of the City.

Said franchise fee shall not be in addition to any other special license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's telecommunications business or the exercise of this franchise within the corporate limits of the City, and the amount due to the City under any other special license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting therefore the amount of said franchise fee paid hereunder. A deductible "special" tax or charge is one that is levied only on Grantee or only on utility companies.

Grantee shall not deduct any general business taxes or general sales taxes levied or collected by the City. Grantee shall not deduct charges and penalties imposed by the City for noncompliance

with charter provisions, ordinances, resolutions or permit conditions from the franchise fee payment required by this section. Nothing contained herein shall relieve the Grantee from the requirement to pay a system development charge properly imposed by the city in the appropriate cases consistent with applicable law, and such system development charges shall not reduce the franchise fee. Except as required by the City's moratorium on pavement cuts, Grantee shall not be required to pay any permit fees or similar charges for street opening, installations, construction and the like.

Grantee's payment shall be paid quarterly on or before April 30, July 31, October 31 and January 31 computed on the gross revenues accruing during the previous quarter or portion thereof immediately preceding these dates. Grantee shall pay a pro rata fee for the last annual payment the date of termination in addition to any other sums due the City and shall make such payment within 30 days of termination.

With each franchise fee payment, the Grantee shall furnish a statement setting forth the amount and calculation of the payment. The statement shall detail the revenues received by the Grantee from its operations within the City and shall specify the nature and amount of all exclusions and deductions from such revenues claimed by the Grantee in calculating the franchise fee.

Section 11. Payment not received within thirty (30) days from the due date shall be assessed interest at the rate of one percent (1%) compounded monthly from the due date. Except as otherwise required or allowed by law or rule, no portion of this franchise fee shall be noted separately on any bill to any customer or user of services or commodities furnished by Grantee. The look-back period for overages and underages shall be thirty-six (36) months from the due date of the payment. Subject to the thirty-six (36) month look-back period, no acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. Subject to the thirty-six (36) month look-back period, all amounts paid shall be subject to confirmation and re-computation by the City provided that such audit and computation is completed within thirty- six months of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the look-back period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished.

Grantee agrees to reimburse the City for:

- a) The reasonable costs of such confirmation if the City's re-computation discloses that Grantee has paid 95% or less of the franchise fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit; or
- b) One-half of the reasonable costs of such confirmation if the City's re-computation discloses that Grantee had paid more than 95% but less than 98% of the franchise fees owing for the period at issue.
- c) The City's costs which may be reimbursed under this section shall not exceed

\$5,000.00 per audit or financial review.

- d) If the City determines that Grantee made any underpayment, and that the underpayment exceeded five (5%) percent of the amount due, Grantee shall pay interest compounded at the rate of one (1%) percent over the existing prime rate as set by the bank with which the City contracts for its banking services, compounded monthly. Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received unless Grantee disputes the City's findings as provided for in subsection (f).
- e) If the City determines that Grantee has made any overpayment, it shall immediately refund such overpayment to Grantee.
- f) If Grantee disputes the City's determination of underpayment, Grantee shall notify City of such a dispute within fifteen (15) days of City's written notification to Grantee of its determination of underpayment.
- g) All Grantee's books, maps, and records directly concerning its gross revenues under this franchise and its calculation of franchise fee payments to the City shall be open for inspection by the proper officers or agents of the City at Grantee's office, upon no less than fifteen (15) days prior written notice, during normal business hours to determine the amount of compensation due the City under this franchise. and shall be kept so as to accurately show the same until final resolution.

Section 12. Payment of this franchise fee shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantees that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge, and subject to applicable state and federal law.

Section 13. Grantee shall secure and maintain the following liability insurance policies insuring both Grantee and City, its elected and appointed officers, officials, agents and employees as coinsured during the term of this agreement:

Bodily Injury/Death	\$3,000,000
Property Damage	\$4,000,000
Automobile Liability	\$1,000,000
Workers' Compensation	\$1,000,000
Explosion/Collapse/ Product Hazard	\$3,000,000

Grantee's memorandum of insurance can be viewed at [www.centurylink.com/moi](http://www.centurylink.com/moi).

Section 14.

**14.1** This Franchise shall continue and be in force for a term of ten (10) years from the effective

date and shall renew automatically for one additional term of ten (10) years unless written notice is given by either party 12-months prior to the end of the original term of its intent to terminate the franchise, or unless terminated as provided below.

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

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

**14.4** In the event that Grantee does not comply with subsection 14.3, above, unless the parties agree to an extension of the time provided in subsection 14.3, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide Grantee at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

**14.5** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.4, determines that Grantee is noncompliant with this Agreement, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief;  
or
- C. In the case of substantial noncompliance with a material provision of the Agreement, seek to revoke the Franchise in accordance with subsection 14.6.

**14.6** Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Grantee including a statement of all reasons for such revocation. Grantee shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Grantee an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. Grantee may appeal the City's determination to the Circuit Court in Jackson County, Oregon, which shall have the power to review the decision of the City *de novo*. Such appeal must be filed within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Agreement in lieu of revocation.

Section 15. This Franchise is not transferable. Nothing herein shall be interpreted to limit Grantee's rights to use contractors, nor its right or responsibility, as applicable, to allow other entities to use portions of its telecommunication system; in such instances, neither notice to nor

consent from the City shall be required.

Notwithstanding anything to the contrary within the terms of this Franchise, Grantee shall have the right to assign its rights and interest under the Franchise to its subsidiaries, affiliates or successor legal entities or to the subsidiaries or affiliates of Grantee without notice or consent.

Section 16. The City Manager is authorized to act for the City in all matters pertaining to this Franchise. Grantee may appeal any action of the City Manager to the City Council by giving written notice thereof within twenty-one (21) days after Grantee was notified of such action. The City Council will hear the appeal and render a final decision within thirty (30) days after the notice of appeal is given.

Section 17. Whenever any notice is to be given pursuant to this Agreement, it shall be effective on the date it is sent in writing by registered or certified mail, addressed as follows:

To the City:           City Manager  
                          City of Central Point  
                          140 S. Third Street  
                          Central Point, OR 97502

To Grantee:           Qwest Corporation, dba CenturyLink QC  
                          ATTN: ROW/NIS Manager  
                          100 CenturyLink Drive  
                          Monroe, LA 71203

With copies of default notices to:  
                          ATTN: Legal Department  
                          931 14th Street  
                          Denver, CO 80202

Notice of change of address may be given in the same manner as any other notice.

Section 18. This franchise supersedes all prior franchises between City and Grantee.

Section 19. Proprietary information as identified and provided by the Grantee to the City under this Agreement is entitled to protection as trade secrets and shall be governed by confidentiality procedures pursuant to ORS 192.501, ORS 192.502 and under any other applicable State or Federal laws. At Grantee's request, the City agrees to execute Grantee's Non-Disclosure Agreement prior to the release of any information Grantee deems is of a confidential nature.

Section 20. This Agreement shall be governed by Oregon law. Nothing in this Agreement is intended to be inconsistent with the State or Federal Law. Further neither the City nor Grantee waives any rights granted under State or Federal Law by agreeing to this Agreement. If any clause, sentence, or section of this Agreement, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the



remainder, as a whole or any part thereof, other than the part declared invalid.

Section 21. This franchise does not authorize Grantee to operate a cable television system or provide video programming, as defined by 47 U.S.C.A §522 (Supp. 1997). In the event that Grantee wishes to add cable television services to the list of services, as regulated by the Federal Communications Act of 1934, as amended, Grantee agrees that it must negotiate an additional agreement with the City setting forth the terms and conditions governing such service.

Section 22. Grantee shall comply with all applicable federal and state laws. Grantee shall comply with all applicable City ordinances, CPMC 12.40, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority. Grantee shall pay any charges and penalties imposed by City for noncompliance with Charter provisions, ordinances, resolutions or permit conditions.

Grantee  
Qwest Corporation, d/b/a CenturyLink QC

City of Central Point

By:  
Its:

By:  
Its: