

ORDINANCE NO. 2023-18

AN ORDINANCE TO GRANT A FRANCHISE TO QWEST CORPORATION D/B/A CENTURYLINK QC ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES (“CENTURYLINK” or “FRANCHISEE”) TO OPERATE AND MAINTAIN A COMMUNICATIONS SYSTEM (“THE SYSTEM”) IN THE CITY OF LAKE POINT, UTAH (“THE CITY”)

A resolution of the City granting to CenturyLink and its affiliates a non-exclusive franchise to install, operate and maintain the System in, on, over, upon, along, and across the public rights of way of the City, prescribing certain rights, duties, terms, and conditions with respect thereto and establishing an effective date.

WHEREAS, CenturyLink has requested that the City grant it the right to install, operate, and maintain the System within the public ways of the City; and

WHEREAS, the City has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions.

NOW, THEREFORE, the City Council of Lake Point, Utah does resolve as follows:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.
- B. “City” means Lake Point, Utah.

C. "Communication(s) Service" shall mean any communications services, communications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries a signal over fiber optic cable or copper cable. Communication Service shall also include non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. "Communication(s) System", "System", or "Facilities" shall mean the Franchisee's fiber optic and/or copper cable system constructed and operated within the City's public ways and shall include all cables, wires, fibers, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City's public ways designed and constructed for the purpose of providing Communication Service.

E. "FCC" means the Federal Communications Commission or any successor governmental entity hereto.

F. "Franchise" shall mean the initial authorization, or renewal thereof granted by the City, through this ordinance or subsequently adopted ordinance, which authorizes construction and operation of the Franchisee's Communication System and associated Facilities for the purpose of offering Communications Service.

G. "Franchisee" means CenturyLink, or the lawful successor, transferee, assignee, or affiliate thereof.

H. "Person" means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

6. "Public Way" shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the City and the Franchisee

the use thereof for the purposes of installing or transmitting the Franchisee's Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System. Public Way shall not include any easement or property dedicated to or owned by the City that is granted or reserved for the City's exclusive use and not for use by third parties or the public (such as easements for City utility or drainage facilities) and not including City parks, buildings or other spaces not associated with City-owned rights-of-way.

J. "Service Area" means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee's Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System, and to provide Communications Service.

Section 3. Construction Permits Required.

- 6.** Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain any permit required pursuant to the ordinances of the City presently existing or as amended from time to time.
- 6.** Unless otherwise provided in said permit, and except under the emergency circumstances described in Section 10, the Franchisee shall give the City at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all lawful, duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right (for clarity, beyond those specified in Section 2), title, or interest in

the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of ten (10) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days' notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to unreasonably physically interfere with the Franchisee's Communication Facilities, provided that the City shall not be liable for any interference with Franchisee's Communication Facilities caused by a third party. In the event that unreasonable physical interference or disruption occurs, the City Engineer will assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same consistent with the City's police powers, including the dedication, establishment, maintenance, and improvement of all new public ways, which shall become subject to this Franchise.

Section 7. Maps and Records. After initial construction of the System is complete or within a reasonable time after the effective date of this Franchise for those portions of the System that are already in place, and upon completion of any extension, expansion, reconstruction, or relocation of the System, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer and agreed to by the Franchisee. These plans and maps shall be provided at no cost to the City. Franchisee shall make available to the City at one of the Franchisee's offices, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than annually, such relevant information pertinent only to enforcing the terms of this Ordinance in such form and at such times as Franchisee can reasonably do so. Subject to applicable laws, any information that Franchisee provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to Franchisee following review, without duplication, unless Franchisee grants the City written permission to duplicate the information.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah. The Franchisee shall be solely responsible for the Franchisee's compliance with such safety regulations when the Franchisee is performing any work in the public ways, regardless of whether such compliance is expressly made a condition of any permit or other authorization by the City.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By June 1 of each calendar year, or such other date as the City and the Franchisee may agree upon from year to year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this Franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

D. All Facilities constructed or installed by Franchisee under the authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law and local zoning ordinances and regulations. Franchisee shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit for the City as set forth hereinabove. Such permits shall not be unreasonably withheld, conditioned or delayed by the City. Franchisee will provide plans of new facilities to be placed in the Public Ways or other public places pursuant to a permit issued by the City. Franchisee will abide by all applicable ordinances, rules, regulations and requirements of the City consistent

with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance.

E. To the extent practical and consistent with any permit issued by the City, all facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable and lawful rules, ordinances, and regulations of the City. It is the policy of City to reasonably limit the number of poles within City limits, and as such, where applicable, communications lines will be placed on existing power or communications poles, or be placed underground, to mitigate circumstances where there are poles on both sides of the road.

F. Franchisee shall comply with all Blue Stakes laws and rules.

Section 9. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the Public Ways restore the surface of said Public Ways and any other property that may be disturbed by the work to at least the same condition the Public Way or property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected area at its sole cost and expense according to the time and terms specified in the permit issued by the City in accordance with the applicable ordinances of the City. The Franchisee shall coordinate the timing, inspection, approval, and other terms of such restoration work with the City Engineer or other designated person with the City.

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any Public Way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

Section 11. Relocation. In the event that at any time during the term of this Franchise, the City shall lawfully elect to alter or change any Public Way requiring the relocation of Franchisee's Facilities, then in such event, Franchisee, within ninety (90) days of Franchisee's

receipt of written notice by the City (unless the City approves a longer amount of time pursuant to a reasonable request by Franchisee, which approval shall not be unreasonably withheld), shall remove, relay and relocate the same at its own expense; except that Franchisee shall, in all cases, have the right, in Franchisee's sole discretion, to abandon its Facilities in place, in lieu of relocation. City shall not be liable for any damage or loss due to or arising out of City's reasonable and lawful actions under this Section or due to or arising out of Franchisee's failure to timely remove, relay, and/or relocate its Facilities.

In the event the City requests relocation efforts from the Franchisee for aesthetic purposes, the City agrees to pay all costs associated with relocation. The requirement to install the Facilities underground rather than on poles and through overhead lines pursuant to a valid exercise of the City's police power for reasons of public health, safety, or welfare shall not be considered an aesthetic purpose if imposed on all franchisees with aerial facilities in the relevant area. Franchisee shall not be required to pay for the relocation of Franchisee's Facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is request solely for aesthetic purposes, in cases where the original location of the Franchisee Facilities was approved by the City through the permitting process.

Franchisee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building, provided: (a) the expense of such temporary removal shall be paid by the person(s) requesting the same, and Franchisee shall have the authority to require payment in advance; and (b) the Franchisee is given not less than fifteen (15) business days' advance notice to arrange for such temporary line changes.

Facility relocations necessitated by private third parties shall be at the expense of such third parties, and Franchisee shall have the right and authority to require payment in advance of relocating.

Section 12. Trimming. Franchisee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with Franchisee's Facilities. Franchisee shall, when practical, provide notice to the City and to any property owner before commencing such work. Franchisee shall not be required to provide notice in advance of such work in emergency conditions.

Section 13. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Way, street, or public place, or endangers the public street, utilities or City-owned property, or significantly endangers the property, life, health, or safety of any individual, the City Engineer or

other designated City representative may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and Public Ways. Such action may include compliance within a prescribed time reasonably agreed to by the parties. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to materially comply with such directions, or if emergency conditions caused by such failure or refusal of Franchisee exist which require immediate, reasonable action to ensure public safety, the City may enter upon the property and take such lawful actions as are necessary to protect the public, the adjacent streets, utilities, Public Ways to maintain the lateral support thereof or actions reasonably regarded as necessary safety precautions, and the Franchisee shall be liable to the City for the direct, proportionate, reasonable costs thereof. City shall not be liable for any damage or loss, including interference with or disruption to Franchisee's Communication Services, due to or arising out of City's reasonable actions under this Section or due to or arising out of Franchisee's failure to timely correct the dangerous condition(s).

Section 14. Non-Liability of City for Acts of Franchisee. The City shall not at any time become liable or responsible to any third person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise to the maximum extent allowed by law. The Franchisee's obligation to indemnify the City is not limited or waived in any way by Franchisee's compliance or non-compliance with this Franchise, including the insurance requirements set forth herein. The City shall give prompt written notice to Franchisee of any such claim, demand, or lien with respect to which the City seeks indemnification hereunder; and shall permit Franchisee to assume defense of such claim, demand, or lien with legal counsel of Franchisee's choice.

Section 15. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the City for its inspection an insurance certificate or memorandum of insurance that includes the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such insurance certificate or memorandum shall evidence:

A. Comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than (1) \$2,000,000.00 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this Franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 16. Abandonment and Removal of the Franchisee's Communication

Facilities. Upon the expiration or termination of the rights granted under this Franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the Public Ways of the City within ninety (90) days, abandon the Facilities in place, or remove some Facilities and abandon other Facilities. Upon Franchisee's agreement to abandon Facilities in place, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

Section 17. Municipal Telecommunications License Tax. For the Franchise granted herein, Franchisee shall pay to the City, in accordance with the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated, of three and a half percent (3.5%) of Franchisee's gross receipts from telecommunications services attributed to the City as set forth in the Municipal Telecommunications License Tax Act, less any business license fee or business license tax enacted by the City. All payments shall be made to the Utah State Tax Commission unless otherwise agreed to in writing by the Parties:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Section 18. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise upon the written agreement of both

parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Franchisee consistent with this section herein.

Section 19. Forfeiture and Revocation.

A. Subject to the following notice and cure provisions, this Franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this Franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within (a) ninety (90) days of Franchisee's response, or (b) within a longer period of time if reasonably necessary under the circumstances, subject to the City's approval, which shall not be unreasonably withheld.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, except to the extent that the Franchisee has, through its own actions or inactions, contributed to the delay.

(3) If Franchisee does not timely respond to the City's cure notice or commence reasonable curative activities within a reasonable timeframe, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after such notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the Franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the Franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the

deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the Franchise to be terminated, subject to applicable federal and state law.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this Franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this Franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 20. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of Facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations to the extent the same are not preempted by federal or state law and unless compliance would cause the Franchisee to violate other requirements of the law.

Section 21. Survival. All of the provisions, conditions and requirements of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 13 Dangerous Conditions; 14 Non-Liability of City for Acts of Franchisee; 15 Insurance; 16 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this Franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 22. Severability. If any section, sentence, clause or phrase of this Franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise.

Section 23. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this Franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. As part of any assignment or transfer, Franchisee shall provide updated contact and notice information. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the Facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the Facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its Facilities to another, provided that Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating, or removing its Facilities pursuant to the terms and conditions of this Franchise.

Section 24. No Waiver of Rights. Neither the City nor the Franchisee shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves the any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

Section 25. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

Lake Point Recorder
Lake Point
1528 Sunset Rd.
Lake Point, UT 84074

Franchisee:

CenturyLink
ATTN: ROW/NIS Manager
1025 Eldorado Blvd
Broomfield, CO 80021

With a copy to:
CenturyLink
ATTN: Legal Department
913 14th Street
Denver, CO 80202

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 26. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this Franchise.

Section 27. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all its reasonable litigation costs and expenses, including reasonable attorney fees.

Section 28. Governing Law/Venue. This Franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this Franchise shall be with the Utah State Court in the county in which the City is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake City, Utah.

Section 29. Acceptance. Within sixty (60) days after its passage and approval of this Resolution, this Franchise shall be unconditionally accepted by the Franchisee by its signature on the Acceptance page attached hereto; otherwise the Ordinance and the rights herein granted shall be null and void.

Section 30. Effective Date. This Resolution shall be effective upon the date that the City approves it, subject to Acceptance by Franchisee as set forth in Section 29.

ADOPTED AND APPROVED this 9th day of August, 2023

LAKE POINT, UTAH

By 
Jonathan Garrard, Chair

ATTEST: 
Jamie Olson, City Recorder

ACCEPTED BY QWEST CORPORATION D/B/A CENTURYLINK QC

BY: 

TITLE: MANAGER NETWORK ROW

DATE: 8/16/2023