

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the date it is last signed by all parties (“Effective Date”) by and between Qwest Corporation, a Colorado corporation (“Licensor”) and the Deadwood Historic Preservation Commission, a department of the City of Deadwood (“Licensee”). Licensor and Licensee will sometimes be referred to in this Agreement collectively as the “parties.”

BACKGROUND:

A. Licensor owns a building having an address of 644 Main Street, Deadwood, SD 57732 (“Building”) and the real property upon which the Building and other Licensor-owned improvements are located (“Property”). Licensee is interested in obtaining from Licensor permission for Licensee itself, its agents and contractors, to access the Property and install six large format Historical Photographs (the “Artwork”) on an outer wall of the Building.

B. Licensor is willing to grant such permission to Licensee pursuant to the terms and conditions set forth in this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

1. **Artwork Location and Artwork.** The parties acknowledge and agree that: (a) the Artwork will be installed on the Gold Street side (south side) of the Building (“Artwork Location”). (b) The Artwork will be made of oracal and mounted on nudo designed to last and not require frequent replacement. (c) The style, size, shape, and design, of the Artwork and the Artwork Location is depicted on Exhibit A attached to and incorporated by reference into this Agreement. Licensee will not alter, change or replace the Artwork after its initial creation without the prior approval of Licensor, which approval will be in Licensor’s sole discretion.

2. **Grant of License.** Licensor grants to Licensee itself, its agents and contractors (Licensee, its agents and contractors, collectively, “Authorized Parties”) a revocable license (“License”) allowing: (a) ingress and egress over and across a portion of the Property as is reasonably necessary to access the Artwork Location; (b) the installation of the Artwork on the Artwork Location; and (c) the maintenance and upkeep of the Artwork. Such access, ingress and egress is limited to pedestrian access, ingress and egress, and will be exercised during the Term and/or Renewal Term only during the normal business hours Licensor has in effect for the Building. If Licensor requires, the Authorized Parties’ activities pursuant to this Agreement will be conducted in the presence of a representative designated by Licensor.

3. **Term and Termination.** The term of this Agreement will commence on the Effective Date and expire on the date that is the 5 years following the Effective Date (“Term”). The Agreement will auto-renew annually after the initial Term (“Renewal Term”). Notwithstanding the foregoing sentence in this Section 3, either party may

terminate this Agreement at any time during the Term or Renewal Term by providing at least 90 days prior written notice of termination.

4. **Standards, Legal Compliance and Maintenance.**

4.1 The Authorized Parties will perform any activities pursuant to this Agreement, including the installation of the Artwork, at its sole expense and in a safe manner and in compliance with all applicable law (including in compliance with all zoning requirements and Licensee will obtain any permits necessary for the installation and display of the Artwork from any applicable governmental authorities), and in such a manner so as not to unreasonably interfere with Licensor's business and activities occurring in the Building or upon the Property.

4.2 Licensee will perform any activities pursuant to this Agreement in compliance with all applicable law, including zoning codes and legal requirements for signage. Additionally, Licensee, at its sole cost and expense, will obtain and maintain in place for as long as this Agreement remains in effect any permits and licenses required by any applicable governmental authority for the installation and display of the Artwork.

4.3 Licensee will, at its sole cost, maintain the Artwork in good condition and repair, and in an aesthetically pleasing manner. As such, in the event the Artwork degrades due to weather, or is damaged or vandalized, or if any graffiti or other marks are placed on the Artwork from time to time, Licensee will promptly restore the Artwork. If Licensee fails to maintain and/or restore the Artwork in accordance with this Section 4.3, Licensor may, but will not be required to, do so itself at Licensee's cost, in which case Licensee will promptly reimburse Licensor for all reasonable, actual and documented costs it incurs in connection with such activities upon Licensee's receipt of an invoice from Licensor for such costs and expenses incurred.

5. **Damage.** In the event that Licensor, in its sole discretion, determines that the Building or Property or any portion of the same have been damaged by the actions of the Authorized Parties, Licensor will give notice of the same to Licensee. Thereafter, Licensee will promptly repair such damages at its sole cost and expense. If Licensee fails to make such repairs within 15 days of its receipt of notice of damage, Licensor may, but will not be required to, repair the damage itself, and Licensee will promptly reimburse Licensor for the reasonable, actual and documented costs Licensee incurs in repairing such damage upon Licensee's receipt of an invoice from Licensor for such costs incurred. Licensee's obligations under this Section 5 will survive for a period of one year after the expiration or termination of this Agreement.

6. **Release, Indemnity and Covenant Not to Sue.** Licensee, for itself and all other Authorized Parties, will assume the risk of, be responsible for, and release, indemnify and hold harmless Licensor and its respective 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 Building, Artwork

Location and Property by Licensee or any of the other Authorized Parties; (b) the breach of this Agreement by Licensee or any of the other Authorized Parties; (c) Licensee's exercise of its rights under this Agreement. Furthermore, Licensee, for itself and all other Authorized Parties, covenants not to sue any of the Indemnified Parties for any such Claims. Licensee's obligation to indemnify the Indemnified Parties under this Agreement includes the duty to defend against any Claims with counsel acceptable to Licensor 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 6 will survive the expiration or earlier termination of this Agreement.

7. **No Easement.** This Agreement constitutes and grants a license only and will not be constructed as an easement or an agreement or obligation to enter into an easement.

8. **Removal.** Upon the expiration or termination of this Agreement, Licensee will promptly remove the Artwork and restore the Artwork Location to the condition in which it existed as of the Effective Date (normal wear and tear excepted), and peaceably surrender the Artwork Location to Licensor.

9. **Insurance.**

9.1 During the Term and any Renewal Term, Licensee will obtain and maintain, and ensure that all other Authorized Parties obtain and maintain, with financially reputable insurers licensed to do business in the State of South Dakota and which are reasonably acceptable to Licensor, the following types and amounts of insurance coverage: (a) worker's compensation with an employer's liability limit of not less than \$500,000.00 per accident or disease; (b) commercial general liability insurance coverage with limits of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury, property damage and personal injury liability and \$2,000,000.00 aggregate, naming Licensor, its respective directors, officers, employees, agents or representatives as additional insureds; and (c) all risk property insurance covering not less than full replacement cost of Licensee's personal property at risk due to this Agreement.

9.2 Prior to entering onto the Property to commence the installation of the Artwork, Licensee will deliver to Licensor certificates of insurance evidencing all of the insurance coverages required under Section 9.1. The certificates will provide that: (a) Licensor be named as an additional insured on each Commercial General Liability and Comprehensive Automobile Liability policy; (b) 30 days prior written notice of cancellation, material change or exclusions to each policy shall be given to Licensor; and (c) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by Licensor. Licensee waives any right it may have against Licensor for any loss or damage to any of the Licensee Parties arising from any cause covered by any insurance carried by Licensee.

9.3 Licensee will look first to any insurance in its favor before making any claim against Licensor, its directors, officers, employees, agents or representatives for

recovery resulting from an injury to any person or damage to any property arising from any cause regardless of negligence, and does hereby release and waive to the fullest extent permitted by law, and will cause its insurers to waive, all rights of recovery by subrogation against Licensor, its directors, officers, employees, agents or representatives. Nothing will limit Licensee's liability to Licensor, its directors, officers, employees, agents or representatives to the limits of insurance certified or carried.

10. **Disclaimer of Warranties.** Licensee, for itself and all Authorized Parties, acknowledges that Licensor (or anyone on Licensor's behalf) has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, present or future, of, as, to, concerning or with respect to: (a) the value, nature, quality, physical or other condition of the Building, Property and Artwork Location; (b) the suitability of the Artwork Location, Property and Building for any activities and uses which Licensee may or plans to conduct on the Artwork Location, Property and Building; (c) the compliance of or by the Artwork Location, Property and Building or their operation with any laws, rules, ordinances, orders, decisions or regulations or any applicable governmental authority or body; (d) the habitability, merchantability or fitness for a particular purpose of the Artwork Location, Property and Building; (e) the manner or quality of the construction or materials incorporated into the Artwork Location, Property and Building; (f) the manner, quality, state or repair or lack of repair of the Artwork Location, Property and Building; and (g) any other matter with respect to the Artwork Location, Property and Building, and specifically, that Licensor has not made, does not make and specifically disclaims any representations regarding compliance with any environmental, protection, pollution, land use, zoning, development or impact laws, rules, regulations, orders, decisions or requirements. Licensee, for itself, all other Authorized Parties, and their respective successors and assigns, waives, releases, acquits and forever discharges each Licensor Indemnitee and their respective successors and assigns of and from any Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant or its successors and assigns now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Artwork Location, Building and Property.

11. **Default.** The failure of Licensee to perform any of its obligations under this Agreement that continues for a period of 15 days following Licensee's receipt of notice of non-performance from Licensor will constitute a default of Licensee. However, if the non-performance cannot reasonably be cured within the 15-day period, it will not be a default of Licensee under this Agreement if Licensee commences action to cure the non-performance within the 15-day period and proceeds with due diligence to fully cure the non-performance, but in no event will Licensee have more than 30 days from its receipt of notice of non-performance to fully cure the non-performance. In the event of a default of Licensee, Licensor may terminate this Agreement, seek injunctive relief (including specific performance) or money damages, as well as resort to any other remedies to which it is entitled under this Agreement, at law or in equity. All remedies to which Licensor is entitled are cumulative and are not exclusive of other remedies to which Licensor may be entitled. Use of one or more remedies by Licensor does not bar the use of any other remedy.

12. **Sublicense and Assignment.** Licensee will not voluntarily, involuntarily or by operation of law assign all or part of this Agreement or grant any sublicense regarding this Agreement without the prior consent of Licensors in each instance, which consent will be in Licensors' sole discretion. In the event Licensors sell or convey the Property and/or the Building: (a) Licensors either may terminate this Agreement or assign this Agreement to its successor; (b) Licensors will be released from any obligations and liability under this Agreement arising after such termination or assignment; and (c) Licensee will look solely to Licensors' successor after such assignment for satisfaction of Licensors' obligations and liability under this Agreement.

13. **Liens.** If any mechanic's, materialman's or other lien is filed against the Artwork Location, Building or Property by reason of work, labor, services or materials performed by, for or furnished to Licensee, Licensee will, within 30 days after Licensee's receipt of written notice of the lien filing, cause the lien to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise. The foregoing sentence will not be construed to limit Licensee's rights to contest the basis for the lien, provided the lien is discharged of record. If Licensee fails to discharge any lien within the 30-day period, Licensors may, upon delivery of notice to Licensee, remove the lien by paying the full lien amount, by bonding or in any other reasonable manner Landlord deems appropriate, without investigating the validity of the lien and irrespective of the fact that Licensee may contest the propriety or the amount of the lien, and Licensee will pay Licensors, within 30 days after Licensee's receipt of a demand from Licensors, the amount paid by Licensors to discharge the lien, together with reasonable, actual and documented expenses incurred in connection with the discharge, including reasonable attorneys' fees. Nothing contained in this Agreement will be construed as consent on the part of Licensors to subject Licensors' interest or estate in the Artwork Location, Building and Property to any lien or liability under applicable lien laws.

14. **Notice.** Whenever any notice, consent, approval, demand, request or authorization and the like (collectively, "Notice") is required or permitted under this Agreement, the same must be in writing. Notice must be sent by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service, to the parties at their respective addresses set forth below. Notice will be deemed effective on the date shown on the return receipt if Notice is given by certified mail or on the date shown on the confirmation of delivery form if Notice is given by overnight courier service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either party may change its address in this Section 14 by giving Notice of address change to the other party in the manner for giving Notice prescribed in this Section 14.

If Notice to Licensors:

Qwest Corporation
c/o Lumen Technologies
931 14th Street
Denver, Colorado 80202

Attn: Vice President of Real Estate
Bldg. # T64051

With a copy at the same time via email to:

Qwest Corporation
c/o Lumen Technologies
Real Estate Lease Administration
leaseadmin@lumen.com
Bldg. # T64051

If Notice to Licensee:

Deadwood Historic Preservation Commission
City of Deadwood
108 Sherman Street
Deadwood, SD 57732
Attn: Historic Preservation Officer

With a copy at the same time via email to:

Deadwood Historic Preservation Commission
City of Deadwood
Historic Preservation Officer
kevin@cityofdeadwood.com

15. **Miscellaneous.** (a) This Agreement contains all of the promises, agreements, conditions and understandings between the parties concerning the subject matter of this Agreement, and there are no oral agreements or understandings between the parties affecting this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties with respect to the subject matter of this Agreement; (b) Except as may be otherwise expressly allowed under this Agreement, no amendment, change or addition to this Agreement will be binding upon the parties unless it is in writing and signed by the parties; (c) The waiver by a party of any breach of any term, agreement or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, agreement or condition. No agreement, term or condition of this Agreement will be deemed to have been waived unless the waiver is in writing signed by the party charged with the waiver; (d) No payment by Licensee or receipt of payment by Licensor of payment of a lesser amount than the License Fees will be deemed to be other than on account, and no endorsement or statement on any check or on any letter accompanying any check will be deemed an accord and satisfaction; (e) If any term, covenant, agreement or condition of this Agreement or the application of the same to any person or circumstance is to any extent held invalid or unenforceable, the remainder of this Agreement or the application of that term, covenant, agreement or condition to any person or circumstance other than those as to which it is held invalid or unenforceable will not be

affected, and each such unaffected term, covenant, agreement or condition of this Agreement will be valid and enforced to the fullest extent permitted by law; and (f) This Agreement will be construed in accordance with and governed by the laws of the State of South Dakota.

16. **Counterparts and Electronic Mail Signatures**. This Agreement may be signed in one or more counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement that are photocopied or electronically stored or transmitted will be deemed to be originals, and both parties will accept and be bound by such signatures.

The parties have entered into this Agreement as of the Effective Date.

“Licensor”

“Licensee”

Qwest Corporation,
a Colorado corporation

Deadwood Historic Preservation
Commission, a Department of the
City of Deadwood

By: _____
Printed Name: LaRae D. Dodson
Title: VP of Real Estate and Fleet
Signature Date: _____

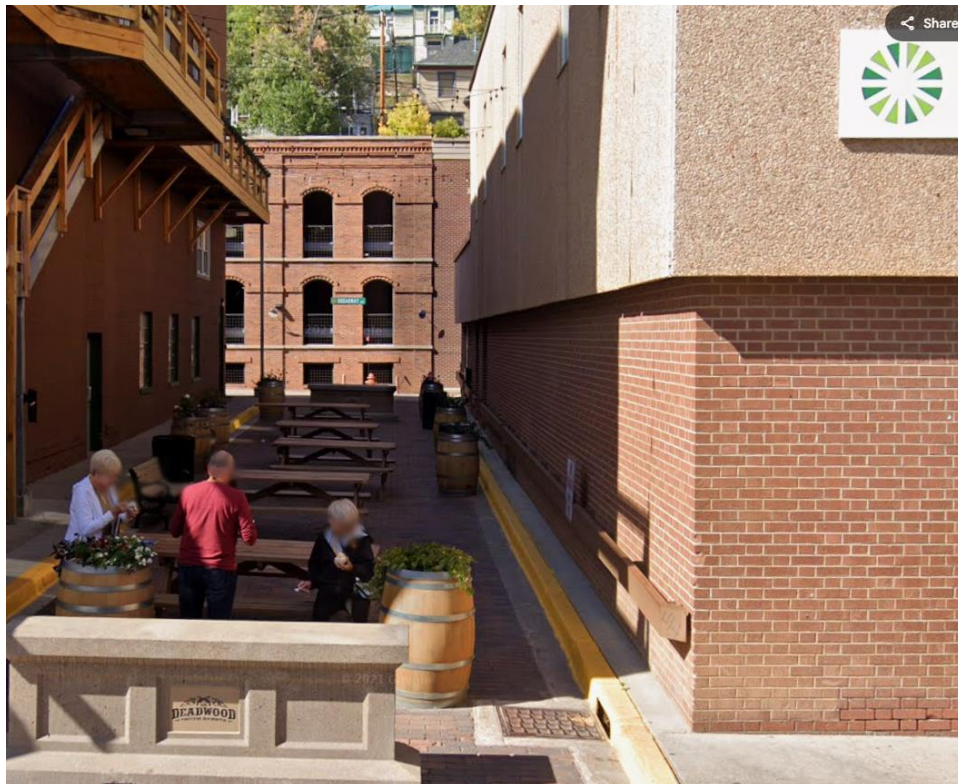
By: _____
Printed Name: _____
Title: _____
Signature Date: _____

EXHIBIT A TO LICENSE AGREEMENT

Artwork Location and Description

- Six historical photographic pieces (sizes shown below) will be installed by Licensee to the Gold Street side (south side) of the Century Link building
- Images will be of Historic Deadwood throughout the past 150 years
- Repairs, replacement, and maintenance of artwork by Licensee
- Display panels will be made of oracal and mounted on Nudo
- Display panels are designed to last and should not need to be replaced often

Quantity	Description
2	80.00 in x 60.00 in Oracal Top laminated with Oracal - 210 (use w/ oracal) Mounted on Nudo - 5 x 10
1	76.00 in x 60.00 in Oracal Top laminated with Oracal - 210 (use w/ oracal) Mounted on Nudo - 5 x 10
1	77.00 in x 60.00 in Oracal Top laminated with Oracal - 210 (use w/ oracal) Mounted on Nudo - 5 x 10
1	102.00 in x 60.00 in Oracal Top laminated with Oracal - 210 (use w/ oracal) Mounted on Nudo - 5 x 10
1	78.00 in x 60.00 in Oracal Top laminated with Oracal - 210 (use w/ oracal) Mounted on Nudo - 5 x 10



Gold Street – Deadwood SD (CenturyLink Building on right)