

DEVELOPMENT AGREEMENT FOR
BALDWIN PARKING LOT PROJECT

THIS DEVELOPMENT AGREEMENT FOR BALDWIN PARKING LOT PROJECT ("AGREEMENT") is made and entered into as of the date it is last signed by both parties ("Effective Date") by and between the City of Marshall, State of Minnesota, (hereinafter referred to as the City), and Qwest Corporation (hereinafter referred to as Qwest). City and Qwest will sometimes be referred to collectively in this Agreement as the parties.

Statement of Facts:

WHEREAS, Qwest is the owner of certain real property identified as Lot 4, Block 9, Original Plat to the City of Marshall, Lyon County, Minnesota, having an address of 305 W. Lyon Street, Marshall, MN 56258 ("Property"). The westerly 15 feet of said Property ("Access Tract") is used for access to private parking for Qwest employees, and also serves as driveway access for parking purposes for City of Marshall Vehicles and its' employees; and

WHEREAS, the Property , is subject to an that certain access easement between the parties hereto, pursuant to an Access Easement dated October 4, 1993 ("Access Easement"). A copy of said Access Easement is marked as Exhibit A and is attached hereto. Said Access Easement further obligates the City to provide for general maintenance, including snow removal, patching and cleaning of the Access Tract, subject to said Access Easement; and

WHEREAS, the City owns the adjacent property identified as Lot 5, Block 9, Original Plat to the City of Marshall, Lyon County, Minnesota. Said Lot 5 is identified as the public "Baldwin" parking lot for public parking purposes and said Lot 5 also provides for some private parking for the City of Marshall employees; and

WHEREAS, it is anticipated that a reconstruction project ("Project") of City owned Lot 5 property will be initiated in 2022, which project is scheduled to conclude prior to June 2, 2023. The Project will include the removal of the current bituminous and concrete surfacing and will also include the resurfacing of the Baldwin public and private parking lots:

Pursuant to the terms of this Agreement, it is anticipated that in addition to the City owned property, the Access Tract will be included in said resurfacing project and that all of the bituminous and concrete surfacing from the Access Tract will be removed and replaced pursuant to the construction agreement and terms of this Agreement. A drawing that identifies Lots 4-5, Block 9, Original Plat to the City of Marshall, and the Access Easement that is located over the Access Tract is marked as Exhibit B and is hereto attached.

Therefore, in conclusion of the factual statements as set forth above, the parties agree as follows:

Assumption of Costs and Waiver of Irregularity of Appeal: All costs for the Project will be paid 100% by the City. . Qwest expressly waives objection to any irregularity with regard to said improvement together with all further rights of appeal subject to the terms of this Agreement.

Conflicts of Interest. No member of the governing body or other official of City will have any financial interests, direct or indirect, in this Agreement or with the Project or any contract,

agreement or other kind of transaction contemplated to occur or to be undertaken thereof under or with respect thereto, nor will any such member of a governing body or other official take part in any decision directly related to this Agreement that effects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City will be personally liable to the City in the event of any default or breach by Qwest or its successors or any other obligations under the terms of this Agreement, unless determined otherwise by a court of competent jurisdiction.

Notice: Whenever any notice, consent, approval, demand, request or authorization and the like (collectively, "Notice") is required or permitted under the 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 delivery/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 delivery/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 by giving Notice of address change to the other party in the manner for giving Notice prescribed in this Section.

If Notice is to Lumen:

Qwest Corporation
c/o Lumen Technologies
1025 Eldorado Blvd., 31D
Broomfield, Colorado 80021
Attn: Vice President of Real Estate

With a copy at the same time and in the same manner to:

Qwest Corporation
c/o Lumen Technologies
100 CenturyLink Drive
Monroe, LA 71203
Attn: Real Estate Lease Administration
Lease ID: M73387

If Notice to City:

City of Marshall
Attn: Sharon Hanson, City Administrator
344 W. Main St.
Marshall, MN 56258

City acknowledges that it has conducted its own investigation of the Access Tract, and accepts the Access Tract in its "As-Is," "Where-Is" and "With-All-Faults" condition as of the Effective Date, and subject to all existing licenses, easements, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting the Access Tract or access to the same as of the Effective Date.

To the extent permitted by law, City will indemnify, defend and hold Qwest harmless from and against any and all claims, demands, losses, damages, penalties, fines, costs, expenses (including court costs and reasonable attorneys' fees), judgments, liabilities and causes of action of any nature whatsoever resulting from or relating to the Project or arising in any manner out of the acts or omissions of City or its agents, employees, representatives, contractors or any other persons acting under their respective direction or control in connection with this Agreement. City's obligations under this paragraph will survive the expiration or termination of this Agreement.

City acknowledges that Qwest (or anyone on Qwest'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 the physical condition, characteristics and attributes of the Access Tract, the suitability of the Access Tract for the Project and any activities and uses which City may or plans to conduct on the Access Tract with respect to the Project, and the compliance of or by the Access Tract with any applicable laws.

If in exercising its rights under this Agreement the City materially and adversely damages or disturbs the Access Tract or Qwest's adjacent Property, or any of Qwest's improvements on such adjacent Property or Access Tract (including but not limited to such improvements as curbing, equipment, pavement, but excluding the current bituminous and concrete surfacing removal on the Access Tract that is part of the Project), City will, at its sole cost and expense, promptly after receiving notice of such damage or disturbance from Qwest, repair such damage or disturbance at City's cost to Qwest's reasonable satisfaction, reasonable wear and tear excepted.

Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Successors and Interest. The terms of this Agreement are binding upon the parties and to their successors and assigns.

Counterparts and Electronic Mail Signatures. This Agreement may be signed in one or more identical counterparts, which together will constitute the same agreement. 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.

City and Qwest have entered into this Agreement as of the Effective Date.

Qwest Corporation,
A COLORADO CORPORATION

LaRae D. Dodson

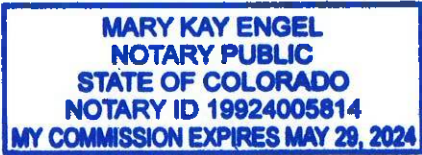
By: LaRae D. Dodson

Its: VP of Real Estate and Fleet

Signature Date: 6-30-22

STATE OF Colorado)
City and) SS.
COUNTY OF Broomfield)

The foregoing instrument was acknowledged before me this 30th day of June, 2022,
by LaRae D. Dodson, the VP of Real Estate and Fleet of Qwest
Corporation, a Colorado corporation, on behalf of the company.



Mary Kay Engel

Notary Public

CITY OF MARSHALL

By: Sharon Hanson
Its: City Administrator
Signature Date: _____

ATTEST:

By: _____
Its: City Clerk

EXHIBIT A

ACCESS EASEMENT

THIS AGREEMENT, Is made and entered into this 4th day of October, 1993, by and between US West Communications, hereinafter referred to as Grantor and the City of Marshall, a municipal corporation, hereinafter referred to as Grantee.

RECITALS

1. Grantor owns Lot Four, Block Nine, of the Original Plat to the City of Marshall, Minnesota.
2. On the Westerly fifteen feet of said Lot Four, Block Nine, Original Plat of the City of Marshall, there is a driveway which provides access for parking on the Grantor's property directly east of said roadway.
3. The Grantee owns a parking lot directly to the West of the Grantor's roadway, but does not have access to said property from the Grantor's driveway but desires it.
4. That the Grantee's parking lot is located on Lot Five, Block Nine, Original Plat to the City of Marshall.
5. The Grantee desires to have access by use of the above described roadway for the purpose of ingress and egress to East Lyon Street and to the alley directly to the South of said roadway as it would serve the Easterly 22 feet of the City's property.

NOW, THEREFORE, It is hereby agreed between the Grantor and the Grantee as follows:

TERMS AND CONDITIONS

1. That Grantor does hereby grant to Grantee a nonexclusive, roadway easement across the Westerly fifteen feet of Lot Four, Block Nine, Original Plat of the City of Marshall, for the purposes of ingress and egress from East Lyon Street to the parking lot of

the Grantees located on the Easterly twenty-two feet of Lot Five, Block Nine of the Original Plat to the City of Marshall, Minnesota, which lies directly West of the roadway.

2. This Access Easement is granted for so long as Grantee's property which is described as Lot Five of Block Nine, Original Plat of the City of Marshall, is used by Grantee for a parking lot, and if ever the Grantee's property is not used by Grantee for a parking lot the easement shall automatically terminate and the Grantee shall execute all documents necessary to extinguish any rights to said easement.

3. That as and for the consideration of the establishment of said mutual driveway, the Grantee shall agree to remove all snow from said driveway as well as the Grantor's parking lot which is located 22 feet East of said driveway.

4. Said easement is given for the sole purpose of ingress and egress and it is agreed and understood by Grantee that it is not to be construed as an easement lien to the exclusion of Grantor, its heirs and assigns or to others later granted a similar right.

5. It is further understood that the Grantee agrees to pay all costs involved with removal and replacement of curb and gutter, paving, and other items necessary to provide the parking directly west of this proposed access easement. The Grantee further agrees to do all general maintenance, items including snow removal, patching, and cleaning in the area of the proposed access easement, the existing parking area adjacent and east of the proposed access easement and the City parking area adjacent to the west of the proposed access easement.

6. Grantor makes no warranty of title or otherwise in entering into this Agreement; provided, however, if it is determined that the Grantor does not have the right to authorize Grantee to use the lands affected by this Agreement for the purposes set forth herein, then Grantee's sole remedy shall be to recover from Grantor those payments for the rights which Grantors did not have the right to grant to Grantee. This easement is granted subject to all documents and interests of record which affect the Easement Area. Grantor shall have the right to further encumber the Easement Area.

7. Grantee shall indemnify, defend, and hold harmless Grantor, their principals, officers, directors, shareholders, partners, tenants-in-common, employees and agents and their respective officers, directors, shareholders, partners, employees, and agents and all of their respective successors and assigns harmless from any and all claims, actions, causes of action, suite, damages, losses, costs or expenses, including reasonable attorneys' fees, actually incurred by, imposed on or assessed against any of the indemnified parties which arise out of or in connection with the easement granted herein. This section shall survive a termination of this Agreement.

8. Except to the extent caused by the gross negligence or willful misconduct of Grantor, Grantee releases, waives, and discharges Grantor from all liability to Grantee for any and all loss or damages arising out of or in connection with the easement granted herein.

9. This instrument contains the entire agreement of the parties. There are no other or different agreements or



CenturyLink Parking Lot Parcel

City of Marshall
Municipal Lot
Parcel Area

CenturyLink
Parking Lot
Parcel Area

15-Ft Access
Easement

EXHIBIT B

6/3/2022

** Disclaimer: The City of Marshall does not guarantee the accuracy of the data included on this map. This map data is for referencing purposes only.

