

**PROJECT MANAGEMENT AGREEMENT:
SEWER LINE REPAIR – TEN MILE ROAD**

This PROJECT MANAGEMENT AGREEMENT: SEWER LINE REPAIR – TEN MILE ROAD (“Agreement”) is made and entered into this ____ day of _____, 2020, by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”) and Qwest Corporation d/b/a CenturyLink QC, a corporation organized under the laws of the State of Colorado (“CenturyLink”).

WHEREAS, a sewer main owned by City, located on the west side of S. Ten Mile Road, approximately 425 feet south of the intersection at S. Vanguard Way, in Meridian, Idaho, has been punctured and damaged by a conduit (“Damage”) owned by CenturyLink; and

WHEREAS, City has agreed to procure a general contractor and provide project management services in order to repair the Damage, pursuant to CenturyLink’s commitment to pay all costs related to such repair, as specified in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. CITY’S OBLIGATIONS

City shall provide each and all of the following services, at CenturyLink’s sole expense.

- A. **Project Management.** City shall solicit bids and execute all necessary contracts for repair of the Damage, which contract shall include, but shall not necessarily be limited to: general construction oversight, regulatory compliance, mobilization, coordinating with underground utility owners, excavation, traffic control, trench compaction testing, and roadway reconstruction (collectively, “Project”). The bid solicitation and contracting process shall comply in all respects with City’s purchasing policy and all applicable laws and regulations, and shall include, *inter alia*, a requirement that all work required for the Project shall be performed in conformance with the most current edition of the Idaho Standards for Public Works Construction (“ISPWC”) and the most current City of Meridian Supplemental Specifications to the ISPWC.
- B. **Pay invoices.** City shall pay all costs attributable to the Project within thirty (30) days of receipt of invoice.
- C. **Record staff time.** City shall track and record the time spent by City employees on Project, whether time is spent managing the Project, reviewing documents, inspecting work, or any other time attributable to any aspect of the Project. CenturyLink shall pay to City an hourly rate of \$50.03 (fifty dollars and three cents) for all time spent by City Public Works Department employees on Project.
- D. **Invoice CenturyLink.** City shall submit to CenturyLink monthly, itemized invoices, to include enumeration and documentation, as appropriate and available, of all costs and

expenditures to be reimbursed or otherwise paid by CenturyLink pursuant to this Agreement. City shall credit all deposits received by CenturyLink under this Agreement toward amounts due and owing for costs incurred by City in the course of completion of Project, and invoices provided by City to CenturyLink shall reflect such credits.

- E. **Refund overpayment.** If City's actual costs incurred to complete the Project are less than the deposits received from CenturyLink under this Agreement, the City shall, within thirty (30) days of City's final acceptance of Project work and closeout of the Project, refund to CenturyLink the difference between deposits received and the City's actual costs.
- F. **City Contact.** City shall provide CenturyLink the name, e-mail address, and telephone number of specific City personnel (hereinafter "City Contact") who shall serve as the primary contact between City and CenturyLink for all day-to-day matters regarding Project.

II. CENTURYLINK'S OBLIGATIONS

CenturyLink shall provide each and all of the following services and complete each and all of the following tasks, at CenturyLink's sole expense.

- A. **Provide plans.** CenturyLink shall provide to the City's Engineering Division a full set of professionally engineered and stamped construction drawings for Project, and shall work with the City Engineer to make any and all necessary corrections and modifications as directed by the City Engineer. Completed plans shall be stamped "Approved for Construction" by the City Engineer prior to commencing any work on the project. CenturyLink shall be responsible for delivery of Final Plans to City.
- B. **Initial and subsequent deposit.** Within fourteen (14) days of execution of this Agreement, CenturyLink shall pay to City one hundred thousand dollars (\$100,000.00). If the accepted bid for completion of the Project is over one hundred thousand dollars (\$100,000.00), within fourteen (14) days of award of the general contract for Project, CenturyLink shall pay to City the difference, if any, between one hundred thousand dollars (\$100,000.00) and the accepted bid. In no event shall City refund any amount of CenturyLink's deposit(s) received until final acceptance of Project work and closeout of the Project, as set forth in section I.E., above. Deposits received by City from CenturyLink pursuant to this provision shall be credited toward the total amount due and owing to City for repair of Damage and any related expenses of Project.
- C. **Reimburse City.** CenturyLink shall pay to City, in full, any and all amounts due and owing for all invoices received, within thirty (30) calendar days after the date of any invoice from City. CenturyLink shall reimburse City for:
1. The full cost of any and all payments made by City to contractors for repair of the Damage;
 2. The full cost of City employees' time spent on Project, at the hourly rate set forth in this Agreement, and

3. Any and all additional costs and expenses incurred by City for Project over and above costs and expenses specifically enumerated herein, which are otherwise related to repair of the Damage, including, without limitation, costs related to engineering, permits and licenses, change orders, easements, installations, adjustments, relocations, abandonments, changed conditions, redesign, plan errors and omissions, and/or delays.

D. **CenturyLink Contact.** CenturyLink shall provide City the name, e-mail address, and telephone number of specific CenturyLink personnel (hereinafter "CenturyLink Contact") who shall serve as the primary contact between CenturyLink and City for all day-to-day matters regarding Project.

III. GENERAL PROVISIONS.

A. **Notice.** Communication between City Contact and CenturyLink Contact shall occur via e-mail or telephone. All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when personally served, or mailed in the United States mail, addressed as follows:

City:
City of Meridian
City Attorney
33 E. Broadway Avenue
Meridian, Idaho 83642

CenturyLink:
CenturyLink
Brett McKinney
Sr. Mgr. Local Network Implementation
11425 W. Executive Dr.
Boise, ID 83713
brett.mckinney@centurylink.com
208-331-5307

Either party may change its authorized representative and/or address for the purpose of this paragraph by giving written notice of such change to the other party in the manner herein provided.

B. **Assignment.** Neither party shall assign or sublet all or any portion of its respective interest in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of the other party. This Agreement and each and all of the terms and conditions hereof shall apply to and are binding upon the respective organizations, legal representative, successors, and assigns of the parties.

C. **No agency.** For purposes of or in furtherance of this Agreement, neither party nor its respective employees, agents, contractors, officials, officers, servants, guests, and/or invitees shall be considered agents of the other in any manner or for any purpose whatsoever.

D. **Indemnification.** CenturyLink shall indemnify, save harmless and defend, regardless of outcome, City from expenses and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any negligent acts by CenturyLink or CenturyLink's officers, employees, agents or contractors while acting within the course and scope of their employment, which arise from or which are

in any way connected to the Damage or the Project, except to the extent such liabilities were caused by City's willful or criminal misconduct, gross negligence or fraudulent conduct.


- E. Compliance with laws.** In performing the scope of services required hereunder, City and CenturyLink shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
- F. Attorney Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
- G. Time of the essence.** The parties shall fulfill obligations described in this Agreement in a timely manner, as set forth herein. The parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a default of this Agreement.
- H. Termination.**
- 1. Grounds.** Grounds for termination of this Agreement shall include, but shall not be limited to: an act or omission by either party which materially breaches any term of this Agreement; an act of nature or other unforeseeable event which precludes or makes impossible the performance of the terms of this Agreement by either party; or a change in or occurrence of circumstances that renders the performance by either party a detriment to the public health, safety, or welfare.
 - 2. Process.** Either party may terminate this Agreement by providing ninety (90) days' notice of intention to terminate. Such notice shall include a description of the breach or circumstances providing grounds for termination. A fourteen (14) day cure period shall commence upon provision of the notice of intention to terminate. If, upon the expiration of such cure period, cure of the breach or circumstances providing grounds for termination has not occurred, this Agreement may be terminated upon mailing or e-mailing of notice of termination.
- I. Construction and severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
- J. Non-waiver.** Failure of either party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after the governing body of either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. No acknowledgments required hereunder, and no

modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by both Parties.

- K. No third party beneficiaries.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.
- L. Venue; choice of law.** Any action at law, suit in equity, or other proceeding for the enforcement of this Agreement shall be instituted only in the Fourth Judicial District, Ada County, Idaho. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.
- M. Reservation of Rights.** CenturyLink hired Track Utilities, LLC ("Track") to perform the work that led to the Damage. To date, Track has refused to pay for the Damage. Nothing in this Agreement will affect CenturyLink's ability to seek reimbursement from Track for monies spent as a result of this Agreement.
- N. Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. This Agreement may not be enlarged, modified, amended or altered except in writing signed by both of the parties hereto.
- O. Approval required.** This Agreement shall not become effective or binding until approved by the respective governing bodies of both City and CenturyLink. The parties signatory hereto represent and warrant that each is duly authorized to bind, respectively, City and CenturyLink to this Agreement in all respects.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the day and year herein first written.

CENTURYLINK:



Tara Acton
Counsel

CITY OF MERIDIAN:

Attest:

BY: _____
Robert E. Simison, Mayor

Chris Johnson, City Clerk