

RESOLUTION NO. 25-06

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CASTLE PINES, COLORADO, APPROVING A NON-
EXCLUSIVE PUBLIC UTILITY EASEMENT AGREEMENT
WITH QWEST CORPORATION D/B/A CENTURYLINK QC**

WHEREAS, the City of Castle Pines ("City") owns certain real property ("Subject Property") with a legal description as depicted in Exhibit A of the Non-Exclusive Public Utility Easement Agreement attached hereto as **Exhibit 1** ("Easement Agreement"); and

WHEREAS, the Subject Property is known as Tract A, The Canyons Filing No. 3, Amendment 1; and

WHEREAS, the City desires to grant a perpetual non-exclusive easement, five (5) feet wide, over, across, under and upon the Subject Property to Qwest Corporation, a Colorado corporation doing business as CenturyLink QC ("Grantee"), so Grantee may access, construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, inspect, improve, expand, and maintain fiber, conduit and related appurtenances for Grantee's communication system (collectively the "Facilities"); and

WHEREAS, the easement proposed to be granted across the Subject Property is described in Exhibit A to the Easement Agreement; and

WHEREAS, the City Council desires to approve the Easement Agreement and grant a perpetual, non-exclusive public utility easement to Grantee for the purpose of installing and maintaining the Facilities; and

WHEREAS, the City Council further desires to authorize the Mayor to execute the Easement Agreement on behalf of the City when in final form.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby: (a) grants, bargains, sells, and conveys to Grantee a perpetual non-exclusive easement, five (5) feet wide, over, across, under and upon the Subject Property for the purpose of installing and maintaining the Facilities, as more particularly described in Exhibit A to the Easement Agreement; (b) approves the Easement Agreement with Grantee in substantially the form attached hereto as **Exhibit 1**; (c) authorizes the City Attorney to make such changes as may be necessary to correct any non-material errors or language in the Easement Agreement that do not increase the obligations of the City; and (d) authorizes the Mayor to execute the Easement Agreement on behalf of the City when in final form.

Section 2. The City Council hereby directs the City Clerk to record the Easement Agreement with the Office of the Clerk and Recorder of the County of Douglas, State of Colorado, following its mutual execution by the City and Grantee.

Section 3. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

Section 4. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR, 0 AGAINST, AND 1 ABSENT THIS 28th DAY OF JANUARY, 2025.



ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

Tracy Engerman
Tracy Engerman (Feb 3, 2025 21:59 MST)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda C Michow

Linda C. Michow, City Attorney

EXHIBIT 1
NON-EXCLUSIVE PUBLIC UTILITY EASEMENT AGREEMENT

(see attached document)

NON-EXCLUSIVE PUBLIC UTILITY EASEMENT AGREEMENT

This **NON-EXCLUSIVE PUBLIC UTILITY EASEMENT AGREEMENT** ("Agreement") is entered into by and between the **CITY OF CASTLE PINES, COLORADO**, a home rule municipality of the State of Colorado with offices at 7437 Village Square Drive, Suite 200, Castle Pines, Colorado 80108 (the "City" or "Grantor"), and **Qwest Corporation d/b/a CenturyLink QC**, a Colorado corporation with an address of 931 14th Street, Denver, Colorado 80202 (the "Grantee") (together the "Parties"). This Agreement shall be effective upon the date of its mutual execution by the Parties ("Effective Date").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby grants, bargains, sells, and conveys to the Grantee a perpetual non-exclusive easement, five (5) feet wide, over, across, under and upon the Subject Property (defined below) easement area more particularly described in **EXHIBIT A**, attached hereto and incorporated herein by this reference (the "Easement"), to access, construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, inspect, improve, expand, and maintain fiber, conduit and related appurtenances for Grantee's communication system (collectively the "Facilities"), pursuant to the following terms and conditions:

1. Subject Property. The City is the owner of certain real property having a State Parcel Number of 235112316001, located in Section 12, T7S & R67W, 6th P.M., legally described as Tract A, The Canyons Filing No. 3, Amendment 1, as filed in the Douglas County Clerk and Recorder's Office at Reception No. 202301411, as more particularly described in **Exhibit A** (the "Subject Property").
2. Placement of Grantee's Facilities. Grantee shall install and place, maintain and upgrade its Facilities within the Easement. Grantee covenants and agrees that the installation and maintenance of the Facilities will not substantially interfere with any structures or other improvements existing as of the Effective Date of this Agreement located on the Subject Property or any structures or other improvements planned to be constructed on the Subject Property by the City as of the Effective Date of this Agreement. Any Grantee Facilities installed above-ground shall not interfere with the City's use of the Subject Property, and shall require written approval from the City prior to their installation on the Subject Property.
3. Grantee's use of Subject Property. Grantee agrees that its use of and access to the Easement for the purposes stated herein shall not interfere with or obstruct the Grantor's use of the Subject Property.
4. Access to Easement. The Grantee, its agents, successors, and permitted assigns shall have and exercise the right of permanent and perpetual ingress and egress in, on, to, through, over, under, and across the Subject Property to the Easement for any purpose necessary and at any and all times necessary or convenient for the full enjoyment of the rights granted to it in this Agreement. The Grantee shall be liable to the extent allowed by law for loss and damage which is caused by any wrongful exercise of Grantee's rights of ingress and egress or by the wrongful or negligent act or omission of its agents or employees in the course of their employment in exercising the rights of ingress or egress to the Easement granted by this Agreement.

5. Use of Easement. The Grantee shall not use the Easement for any use other than those uses listed herein. The Grantee, its agents, successors, and permitted assigns shall have the right to enter upon the Easement and to survey, construct, reconstruct, install, operate, use, maintain, repair, upgrade, replace, and/or remove the Grantee's Facilities within the Easement. The Grantee shall not be authorized to use, occupy or access any portion of the Subject Property outside the Easement boundaries without the prior written approval of the Grantor.
6. Restoration of Easement and Subject Property. To the extent that the Easement is no longer required by Grantee, the Grantee, to the extent practicable, shall restore: (a) the Easement, including the surface of the ground and all landscaping; and (b) such portions of the Subject Property used by the Grantee as may be permitted by this Agreement, to substantially the condition said areas were in immediately prior to the installation of the Grantee's Facilities, except as necessarily modified to accommodate the Grantee's Facilities. The Grantee, for itself, its successors and assigns, agrees that it will pay the reasonable value of actual physical damage done to the Subject Property arising at any time out of the exercise by Grantee of the rights herein granted.
7. Future Growth of Trees and Brush. Grantee, its successors and assigns, shall have the right to remove trees and brush located within the Easement which may, in Grantee's judgment, interfere with the operation of and access to the Grantee's Facilities within the Easement. Notwithstanding the foregoing, Grantee shall not alter any landscaping outside of the Easement without the prior written approval of Grantor.
8. Ownership and Maintenance of Grantee Facilities. Grantor agrees that Grantee's Facilities installed on the Subject Property installed by Grantee at the Grantee's expense shall remain the property of the Grantee, removable at the option of the Grantee. Grantee shall maintain the Grantee Facilities in a sightly and clean manner, and Grantee shall repair and reconstruct any Grantee Facilities reasonably determined by the Grantor to be in a state of disrepair.
9. Future Reversion. The Grantee agrees that in the event that and at such time as the Easement described herein is abandoned by the Grantee and any assignee permitted under this Agreement, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantor, its successors, and/or assigns.
10. Reservation of Grantor's Rights. The Grantor reserves the right to use the Subject Property for purposes which are consistent with the rights and privileges herein granted, which will not interfere with or endanger the Grantee's Facilities therein or interfere with the uses or any of the rights herein granted. As a non-exclusive public utility easement, the Grantor reserves the full right to dedicate or convey easement rights to others, provided such easements do not substantially interfere with the use of the Easement by Grantee.
11. No Assignment. It is expressly acknowledged and agreed that the Grantee may assign this Agreement without Grantor's consent to any Grantee Affiliates (as defined below). Any such assignee will have a similar right to assign this Agreement without Grantor's consent to any of its own Grantee Affiliates. As used in this paragraph, "Grantee Affiliates" means: (a) any entity that controls, is controlled by or is under common control with Grantee; (b) any entity that purchases all or substantially all of Grantee's assets located in Douglas County; (c) any entity that acquires a majority of the equity interests in

Grantee or a direct or indirect parent company of Grantee; and (d) any newly created or surviving successor entity that results from a merger, reorganization or consolidation involving Grantee or any of its direct or indirect parent companies. Except to the extent provided for herein, Grantee shall not have the right nor the authority to assign to any third party the rights or obligations granted by virtue of this Agreement without prior written approval from Grantor.

12. Successors and Covenants Running with the Land. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, and permitted assigns of the Grantor and the Grantee. The rights and responsibilities set forth in this Agreement are intended to be covenants on the Easement and are to run with the land until the Easement is abandoned or terminated pursuant to the terms set forth herein.
13. No Waiver of Immunity. Nothing in this Agreement is intended to waive any protection afforded to the Grantor, or its respective officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, or any other applicable law providing immunity to the Grantor, its officials, employees, and agents.
14. Recordation. This Agreement shall be recorded in the offices of the County Clerk and Recorder for Douglas County, Colorado.
15. Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.
16. Section Headings. Any section headings contained herein are included for reference purposes only.
17. Attorneys' Fees. In the event either party seeks to enforce its rights hereunder through litigation or another legal proceeding, the court or panel shall award to the prevailing party in such litigation or other legal proceeding, as part of its judgment or award, its reasonable attorneys' fees and costs.
18. Governing Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado.
19. Police Powers Reserved. Nothing in this Agreement waives or is intended to waive the Grantor's authority to exercise its police powers.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

GRANTOR:

CITY OF CASTLE PINES, a home rule municipality
of the State of Colorado

By: _____
Tracy Engerman, Mayor

Date of execution: _____

ATTEST:

APPROVED AS TO FORM:

Tobi Duffey, MMC, City Clerk

Linda Michow, City Attorney

GRANTEE:

Qwest Corporation d/b/a CenturyLink QC, a
Colorado corporation

By: _____

Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Non-Exclusive Public Utility Easement Agreement was subscribed, sworn to and
acknowledged before me this ____ day of _____, 202__, by
_____ as _____ of Qwest Corporation, d/b/a
CenturyLink QC, a Colorado corporation.

My commission expires: _____

(S E A L)

Notary Public

EXHIBIT A
EASEMENT LEGAL DESCRIPTION AND LOCATION

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CASTLE PINES, COUNTY OF DOUGLAS, STATE OF COLORADO, ALSO BEING A PORTION OF TRACT A, THE CANYONS FILING NO. 3, AMENDMENT 1, FILED IN THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE AT RECEPTION NO. 202301411, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:


BASIS OF BEARING OF THIS DESCRIPTION IS ALONG THE WEST LINE OF RECEPTION NO. 193772, ASSUMED TO BEAR N01°27'59"E A DISTANCE OF 300.00 FEET FROM THE SOUTHWEST CORNER OF SAID RECEPTION NO. 193772 TO THE NORTHWEST CORNER OF SAID RECEPTION NO. 193772;

BEGINNING AT SAID NORTHWEST CORNER;

THENCE S01°27'59"W ALONG SAID WEST LINE A DISTANCE OF 5.02 FEET; THENCE N62°23'26"W A DISTANCE OF 8.77 FEET; THENCE ON A NON-TANGENT CURVE TO THE LEFT AN ARC LENGTH OF 5.07 FEET WITH A RADIUS OF 255.00 FEET, CENTRAL ANGLE 01°08'19", AND A CHORD WHICH BEARS N36°56'47"E A DISTANCE OF 5.07 FEET; THENCE S62°23'26"E A DISTANCE OF 6.73 FEET TO THE NORTH LINE OF SAID RECEPTION NO. 193772; THENCE N88°41'35"W ALONG SAID NORTH LINE A DISTANCE OF 1.11 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 36 SQUARE FEET OR 0.001 ACRES, MORE OR LESS.

I, THE UNDERSIGNED, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.


CHRISTOPHER P. JULIAN, P.L.S. 31158 08/23/24
DATE
FOR AND BEHALF OF PRECISION SURVEY & MAPPING, INC.



9025 E. Morgan Ave., Suite 100, Denver, CO 80237
Tel: (303) 753-0780 Fax: (303) 753-4044

DRN. BY: JB

CHKD. BY: JN

DATE: 08/23/24

SCALE: 1" = 20'

FILE: R13918

SHEET: 2 OF 2

**UTILITY
EASEMENT**

EXHIBIT A CONTINUED

