CITY OF WEST DES MOINES
CITY COUNCIL COMMUNICATION

DATE: May 3, 2021

ITEM:

Resolution – Cost-Sharing Fiber Agreement between the City of West Des Moines and CenturyLink Communications, LLC for the Installation of Fiber Conduit

FINANCIAL IMPACT:

The total cost of this work is anticipated not to exceed $400,000 for the installation of fiber conduit, of which it is anticipated the City's share will not exceed $200,000.

BACKGROUND:

As part of the Economic Development Digital Enterprise, the City is installing conduit throughout the city for use by private internet service providers. In furtherance of the project, City representatives have negotiated the attached Agreement with CenturyLink Communications to share the cost of installing conduit in public right-of-way from the intersection of Railroad Avenue and 1st Street to the intersection of Park Avenue and 1st Street, a distance of 4,234 feet. Due to the significant expense of boring through a large berm and under the Raccoon River, cost-sharing in the design, permitting and installation of the conduit is beneficial to both parties. The project will be publicly bid, and upon completion each party will have sole ownership and use of the conduit installed on its behalf.

The Agreement provides specific remedies for default by either party or if construction is not at least fifty percent complete by August 20, 2021, the anticipated date for full project completion.

OUTSTANDING ISSUES: None.

RECOMMENDATION: Approve the Cost-Sharing Fiber Agreement between the City of West Des Moines and CenturyLink Communications, LLC

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney RJS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed			
Recommendation			

RESOLUTION APPROVING A COST-SHARING FIBER AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND CENTURYLINK COMMUNICATIONS, LLC

WHEREAS, the City Council of the City of West Des Moines has previously directed the installation of fiber conduit throughout the City in conjunction with the Economic Development Digital Enterprise Project; and

WHEREAS, in furtherance of the Project, a Cost-Sharing Fiber Agreement for the Installation of Fiber Conduit has been negotiated between the City and CenturyLink Communications, LLC for the installation of approximately 4,200 feet of conduit in the City; and

WHEREAS, approval of the Agreement is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, THAT:

1. The Cost-Sharing Fiber Agreement between the City of West Des Moines and CenturyLink Communications, LLC for the Installation of Fiber Conduit is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND APPROVED this 3rd day of May, 2021.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

FIBER AGREEMENT

(Construction of Fiber Conduit Project)

This Fiber Agreement ("**Agreement**") is made as of the _____ day of _____, 2021, by and between the City of West Des Moines, Iowa (the "**City**"), a municipal corporation, with its principal offices located at 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, and CenturyLink Communications, LLC, with its offices located at 1025 Eldorado Blvd, Broomfield, CO 80021. (the "**Carrier**").

WITNESSETH:

WHEREAS, City is presently planning the construction of a fiber conduit network to promote broadband access throughout the City of West Des Moines; and

WHEREAS, in order to preserve limited public right-of-way and reduce costs for City taxpayers and private carriers City will consider joint-build fiber conduit projects, and

WHEREAS, Carrier is interested in a joint-build fiber conduit project for the purposes of expanding its existing fiber conduit network in the metropolitan area and specifically as further described by map and scope in Exhibit A, and

WHEREAS, it has been determined that a joint-build fiber conduit in this area would also improve public safety and reduce environmental impact; and

WHEREAS, the City is willing to enter into one or more third-party Construction Contracts to facilitate construction of the joint-build fiber conduit project as a city project, consistent with all applicable bidding and other requirements for city projects; and

WHEREAS, the Carrier has agreed to share fifty percent (50%) of all reasonable build costs associated with designing, permitting and constructing the Fiber Conduit Project as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

SECTION 1: DEFINITIONS

1.1 Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined in this Agreement shall have the following meanings unless a different meaning clearly appears from the context:

Construction Contracts mean the third-party construction contracts between the City and third-party contractors to facilitate design and construction of the Fiber Conduit Project. The Construction Contracts will be in the City's then standard form of construction contract and shall be entered into by the City pursuant to all applicable bidding, bonding and other requirements for a city project.

Construction Expenses means the out-of-pocket costs incurred or payments made by the City under the Construction Contracts (materials, labor, and any related costs or expenses), and any other reasonable out-of-pocket costs incurred by the City to complete the construction of the Fiber Conduit Project or identified as Construction Expenses in this Agreement

Design and Construction Schedule means the design and construction schedule with respect to the Fiber Conduit Project mutually approved by City and Carrier, which includes the following milestones:

Final Plans for the Fiber Conduit Project shall be prepared by April 23, 2021.

Construction of the Fiber Conduit Project shall be completed by August 20, 2021.

Carrier means CenturyLink Communications, LLC.

Fiber Conduit Project means a project to enable enhanced fiber connectivity for City and Carrier as described in Exhibit A, including but not limited to:

(a) installing Carrier specific Conduits along the Route as designed in the Final Plans;

(b) installing vaults and pull boxes exclusively for Carrier's use that are necessary for the installation and maintenance of fiber in the Conduit (the City and/or its contractors will not install any inner-duct or fiber in any of the conduit as a part of this Project);

(c) any other items set forth in the Final Plans.

Final Plans means designs for the Fiber Conduit Project approved by Carrier.

Indemnified Parties means the City and the governing body members, officers, agents, servants and employees of the City.

SECTION 2: FIBER CONDUIT PROJECT

2.1 Design and Construction. The City agrees to design and construct the Fiber Conduit Project as a city project in accordance with the terms and conditions set forth herein. In connection therewith, subject to the terms and conditions set forth herein, the City shall, among other things:

(a) cause a final design of the Fiber Conduit Project (including preparation of the Final Plans) for review and approval of Carrier by April 23, 2021.

(b) enter into one or more Construction Contracts to complete construction of the Fiber Conduit Project in accordance with the Construction Contracts, the Final Plans, the Design and Construction Schedule, this Agreement and applicable law;

(c) obtain any permits, licenses and other rights from third parties as necessary for the Fiber Conduit Project.

(d) City to provide to Carrier weekly construction progress updates, including but not limited to outcome of City Council meeting and bidding process.

(e) City and Carrier agree upon joint review of the bids received prior to the City awarding or entering a Construction Contract and if the bids for construction costs exceed $650,000, either party may terminate this Agreement or agree to continue with the Fiber Conduit Project.

(f) If Carrier terminates this Agreement pursuant to subsection (e) above or if City terminates this Agreement for any reason, the City shall assign all permits acquired for the Fiber Conduit Project prior to such termination to Carrier and allow Carrier to proceed with the Fiber Conduit Project.

2.2 Final Plans. The specific details for the construction of the Fiber Conduit Project will be set forth in the Final Plans prepared by or for City and in conformity with specifications provided by Carrier.

2.3 Review of Plans. The Final Plans will be subject to review and approval by Carrier. The City's obligation to construct the Fiber Conduit Project for Carrier will be conditioned upon receiving prior written approval of the Final Plans as set out in Exhibit B.

2.4 Deviation During Construction. If the City intends to make any material deviation from the Final Plans during its construction, the City shall promptly notify the Carrier in writing and provide Carrier with the proposed change. The City will not implement any such deviation until Carrier provides its written approval.

SECTION 3: PERMITTING AND RIGHT OF WAY

3.1 Permits. The City shall work cooperatively with Carrier to negotiate with the United States Corps of Engineers, the Iowa Department of Transportation and any other applicable governmental or regulatory entities to obtain permits that are necessary to construct the Fiber Conduit Project. Any related reasonable out-of-pocket costs incurred by the City in connection therewith will be deemed Construction Expenses to be shared by Carrier as set forth in this Agreement. The City shall thereafter assign those permits and/or use rights to Carrier upon Completion. If City terminates this Agreement for any reason, the City shall

assign all permits acquired for the Fiber Conduit Project prior to such termination to Carrier.

3.2 Right of Way; Right of Way Expenses. To the extent the Fiber Conduit Project utilizes rights of way on City-owned property, the City agrees to provide Carrier with a permanent license or similar right to use and access to those rights of way for the Fiber Conduit Project at no cost to Carrier.

3.4 Other Conduits. Carrier acknowledges and agrees that additional conduit constructed by or on behalf of the City, at City's or a third-party's sole cost and responsibility, may be installed at the same time as the installation of the Carrier conduit along the route

SECTION 4: CONSTRUCTION OF FIBER CONDUIT PROJECT AND CONTRACT ADMINISTRATION

4.1 Construction Contracts. Upon receipt of Written Approval from Carrier of the Final Plans for the Fiber Conduit Project, the City will enter into one or more Construction Contracts to facilitate construction of that Route of the Fiber Conduit Project in accordance with the approved Final Plans.

4.2 City Requirements. In facilitating the construction of the Fiber Conduit Project, the City will comply with all bidding and other requirements for a City project. The City will comply with its obligations under the Construction Contracts and cause any contractor, as applicable, to comply with such contract. During the term of this Agreement, the City shall require and cause all third- party contractors under the Construction Contracts to obtain and maintain performance and completion bonds in accordance with the City's bonding requirements.

4.3 Non-performance.

(a) The City does not guarantee the performance of any third-party contractor under a Construction Contract. Likewise, the City does not make any warranties related to the design or construction of the Fiber Conduit Project.

(b) If at any time prior to the completion of the Fiber Conduit Project and otherwise before expiration of the applicable statute of limitations Carrier informs the City or it otherwise becomes aware of an event of default by any third-party contractor under a Construction Contract, upon Carrier's request and at Carrier's discretion, the City will (i) assign to Carrier any available right under the Construction Contract (as the case may be) to seek specific performance or otherwise seek a remedy for the event of default, including without limitation commencement of litigation and exercising all rights to indemnification and any security, or (ii) exercise those rights itself.

(c) Should the City attempt to procure a remedy to the event of default by the third-party contractor under a Construction Contract, then: (i) all reasonable out-of-

pocket costs and expenses reasonably incurred by the City in pursuing those remedies and substantiated in detail pursuant to this Section 4.3 will be deemed Construction Expenses to be shared by Carrier as forth in this Agreement; and (ii) any monetary remedies owing to be collected by the City from the third-party contractor as a result of those efforts will be shared with Carrier as set forth in this Agreement. No such claim may be settled by the City without Carrier's prior written approval.

(d) Moreover, should Carrier or the City pursue any claim against a third-party contractor related to their performance under their respective contracts, and should the third-party contractor bring a cross, counter, or third-party claim against the City related to the Fiber Conduit Project, Carrier will indemnify and hold the City harmless with respect to any such claim brought by the third-party contractor against the City. Notwithstanding the foregoing, Carrier's obligation to indemnify and hold the City harmless will not apply to a claim against the City by a third-party contractor that the City (i) failed to pay the contractor pursuant to the Construction Contractor or (ii) the cause of the claim was the City's negligence or willful misconduct.

SECTION 5: COMPLETION, INVOICING ASSIGNMENTS, EASEMENTS AND ACCESS.

5.1 Certificate of Completion and Invoicing. Upon completion of the Fiber Conduit Project City will request Carrier to furnish the City with a written Certification of Completion as set out in Exhibit C. Such certification shall be a conclusive determination that the City has satisfactorily completed its obligations under this Agreement. City will also provide Carrier with an invoice detailing all expenses and a request for payment of fifty percent (50%) of such expenses. Payment in full is due within forth-five (45) days of signature of the Certificate of Completion.

If Carrier refuses to provide such certification in accordance with the provisions of this Section 5.1, Carrier shall, within thirty (30) days after receiving the City's written request for such certification, provide a written statement indicating in adequate detail in what respects the City has failed to complete the Fiber Conduit Project in accordance with the provisions of this Agreement, and what measures or acts will be necessary, in the opinion of the Carrier, for the City to take or perform in order to obtain such certification. The City shall work with any third-party contractor(s) to expeditiously correct the identified deficiencies, and any associated expense will be considered a Construction Expense to be shared by Carrier under this Agreement (except any expense arising from any default, negligence or willful misconduct of the City or such contractor). The City may subsequently renew its request for Carrier to execute the Certificate of Completion and make payment.

If Carrier fails to provide the City with a certification or a valid written statement of deficiency within the 30-day period, then such failure shall have the same force and effect as if Carrier had certified completion of the Fiber Conduit Project ("**Execution by Acquiescence**") and payment in full is due.

5.2 Release. By executing (actual or by Acquiescence) the certification, Carrier releases and forever discharges any claim against the Indemnified Parties associated with the location, design or construction of the Fiber Conduit Project, except for any claim arising from the City's negligence or willful misconduct. The foregoing is not a waiver of claims against or a release of a third- party contractor under any of the Construction Contracts.

5.3 Schedule. Although the City will identify an estimated schedule for the completion of the conduit project, the City is not promising that the schedule will be met. The City will not be responsible for delays in completion of the Project arising from any events outside the City's reasonable control but shall exercise commercially reasonable efforts to ensure that each the conduit project is completed in accordance with the Final Plans. In the event that the City has not completed 50% of the Project by August 20, 2021, Carrier may terminate this Agreement and pay City Carrier's proportionate share of the costs incurred to the date of termination. Carrier, itself, may then complete the installation of its conduit. Carrier will not be responsible for any Construction Expenses incurred after the date of such termination.

5.4 Licenses and Permits. Upon the Fiber Conduit Project being completed and payment received, the City will:

(a) Assign to Carrier or its designee (i) the Carrier Conduit, any vaults or pull boxes connected to Carrier Conduit, (ii) any associated permits, licenses or easements with respect to the Fiber Conduit Project, including those acquired from third parties; provided that, and conditioned upon, Carrier or its designee first becoming a member of Iowa One Call with respect to the Carrier Conduit,(iii) any inner-duct or fiber installed therein, and (iv) all warranties provided to the City under the Construction Contracts. The City shall retain exclusive ownership of, control over, and unfettered use of any City-owned right of way containing the Carrier Conduit, subject to Section 5.4(b). The City shall not use such right of way in any manner that would materially and adversely affect any of the Carrier Conduit or any vaults, pull boxes, inner-duct, fiber or other facilities relating thereto (collectively, "**Fiber Facilities**"), or Carrier's use or operation thereof, but Carrier shall be required to relocate the Fiber Facilities at its cost due to road improvement, realignment or reconstruction done by or on behalf of the City or the Iowa Department of Transportation within the requesting entity's respective right of way;

(b) Provide Carrier or its designee with one or more licenses in substantially the form attached hereto as Exhibit D that allows Carrier or its designee to access City-owned rights of way to repair and maintain the Fiber Facilities. Thereafter, Carrier or its designee shall have sole responsibility for the repair and maintenance of the Fiber Facilities (except for any damage arising from the City's negligence or willful misconduct, which shall be repaired by the City to Carrier's reasonable satisfaction), and Carrier agrees to indemnify

and hold harmless the City for any claims, actions or damages to person or property related to Carrier's or its agent's negligence or intentional acts regarding any such installation, repair and maintenance of the Fiber Facilities.

SECTION 6: EVENTS OF DEFAULT

6.1 Events of Default Defined. The following shall be Events of Default under this Agreement and the term Event of Default shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by either party to substantially observe or perform any covenant, condition, obligation or agreement under this Agreement;

(b) The Carrier shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(ii) make a general assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Carrier as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Carrier or part thereof, shall be appointed in any proceedings brought against the Carrier and shall not be discharged within ninety (90) days after such appointment, or if the Carrier shall consent to or acquiesce in such appointment;

(c) Any representation made by the Carrier in this Agreement, or made by the Carrier in a certificate furnished by the Carrier pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof; or

(d) Any representation made by the City in this Agreement shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance.

6.2 City's Remedies on Default. Whenever any Event of Default on behalf of Carrier referred to in Section 6.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (b) of said Section 6.1) the giving of thirty (30) days written

notice by the City to the Carrier of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Carrier does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Carrier, deemed adequate by the City, that the Carrier will cure its default and continue its performance under this Agreement;

(b) The City may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to recover damages or enforce performance and observance of any obligation, agreement, or covenant of the Carrier under this Agreement.

6.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Carrier is intended to be exclusive of any other remedy or remedies available at law or equity, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

6.4 Carrier's Remedies on Default. Whenever any Event of Default on behalf of the City referred to in Section 6.1 of this Agreement occurs and is continuing, Carrier, as specified below, may take any one or more of the following actions after the giving of thirty (30) days written notice by Carrier to the City of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the City does not provide assurances reasonably satisfactory to Carrier that the Event of Default will be cured as soon as reasonably possible:

(a) Carrier may suspend its performance under this Agreement until it receives assurances from the City, deemed adequate by Carrier, that the City will cure its default and continue its performance under this Agreement;

(b) Carrier may terminate this Agreement.

(c) Carrier may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to recover damages or enforce performance and observance of any obligation, agreement, or covenant of the City under this Agreement.

6.5 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by the Carrier or the City and thereafter waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

6.6 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees and costs.

SECTION 7: MISCELLANEOUS

7.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

7.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. Lawsuits brought by either party in connection with this Agreement shall be heard and tried in Polk County District Court, Des Moines, Iowa.

7.3 No Third-Party Beneficiary. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

7.4 Limitation of Liability. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

7.5 Lawful Authority. Carrier and the City acknowledge and agree that all of the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

7.6 No Partnership. The relationship herein created between the parties is contractual in nature and is in no way to be construed as creating a partnership or joint venture between Carrier and the City.

7.7 Integration. This Agreement constitutes the entire agreement of the parties and supersedes all prior offers, agreements, arrangements and contracts, whether oral or written, concerning the subject matter hereof. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

7.8 Confidentiality. In connection with this Agreement, Carrier may furnish to the City certain proprietary or confidential information ("Confidential Information"). This Confidential Information may include, among other things, specifications, designs, plans, drawings, data, prototypes, and other technical or business information. The City shall hold the Confidential Information in confidence, restrict disclosure of the Confidential Information to solely those of its employees who have a need to know in connection with the

performance of this Agreement, not disclose the Confidential Information to any other person or entity without the prior written consent of the Carrier, and use the Confidential Information only in connection with the performance of this Agreement, except as the Carrier may otherwise agree in writing, and solely to the extent authorized by law.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year above first written.

[The remainder of this page is intentionally blank; signatures start on the next page]

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 20__, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

CENTURYLINK COMMUNICATIONS, LLC

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This record was acknowledged before me on this ___ day of _____, 2021 by _____ and _____, as _____ and _____, respectively, of CenturyLink Communications, LLC, a Delaware corporation, on behalf of whom the record was executed.

_____
Notary Public

Exhibit A

ROUTE AND SCOPE OF WORK
~ 4,234 linear feet

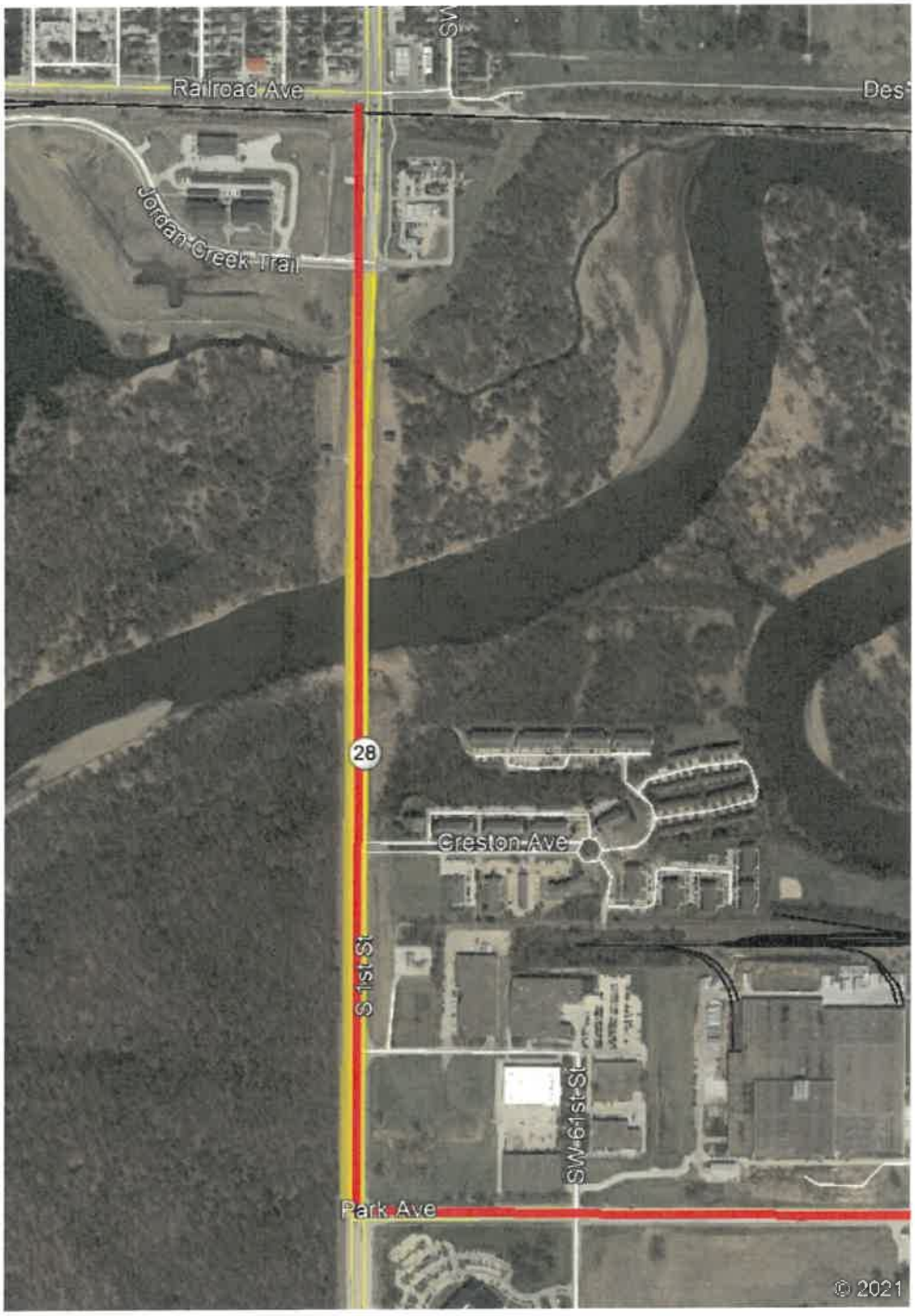

Exhibit B

WRITTEN APPROVAL OF FINAL PLANS

WHEREAS, the CITY OF WEST DES MOINES, IOWA, a municipality (hereinafter called "City"), established pursuant to the Code of the State of Iowa, and CenturyLink Communications, LLC_ (Carrier), did on or about the _____ day of _____, 20__, make, execute and deliver, each to the other a Fiber Agreement ("Agreement"); and

WHEREAS, the Agreement obligated the City to construct a Fiber Conduit Project (as defined therein) in accordance with the Agreement; and

WHEREAS, the City's obligation to construct any Fiber Conduit Project is conditioned on Carrier approving the Final Plans for that Route.

NOW, THEREFORE, pursuant to the Agreement, this is to certify that Carrier has reviewed and hereby approves of the Final Plans for the Fiber Conduit Project. By executing this Written Approval, Carrier certifies that the Final Plans meet Carrier's specifications, and Carrier releases and forever discharges any claim against the Indemnified Parties with respect to such approved Final Plans not meeting Carrier's specifications. The foregoing approval and release is subject to all terms and conditions of the Agreement.

CARRIER

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

Exhibit C

CERTIFICATE OF COMPLETION

WHEREAS, the CITY OF WEST DES MOINES, IOWA, a municipality (hereinafter called "City"), established pursuant to the Code of the State of Iowa, and CenturyLink Communications, LLC ("Carrier"), did on or about the _____ day of _____, 20___, make, execute and deliver, each to the other a Fiber Agreement ("Agreement") (All capitalized terms used but not defined herein have the meanings ascribed to them in the Agreement); and

WHEREAS, the Agreement obligated the City to construct a Fiber Conduit Project (as defined therein) in accordance with the Agreement; and

WHEREAS, the City has performed said covenants and conditions insofar as they relate to the construction of the Fiber Conduit Project.

NOW, THEREFORE, pursuant to the Agreement, this is to certify that the Fiber Conduit Project has been completed and the City has satisfactorily completed its obligations under the Agreement to cause construction of the Fiber Conduit Project in substantial conformance with the Final Plans. Carrier hereby releases the Indemnified Parties from any claims associated with the location, design or construction of the Fiber Conduit Project, except as set forth in Section 4.3 of the Agreement. The foregoing is not a waiver of claims against or a release a third-party contractor under any of the Construction Contracts.

Notwithstanding the foregoing, this Certificate of Completion will not be deemed a waiver of either party's rights and obligations under the Agreement, including Section 4.3 thereof. This Certificate of Completion is given solely for the City's benefit. It may not be relied on by any third party, nor will it create any liability on behalf of Carrier.

The Certificate shall not inure to the benefit of any third party, and Carrier is not releasing any claims or warranties against any third-party contractors.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

CARRIER

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

Exhibit D

ROW License

CITY OF WEST DES MOINES
DEPARTMENT OF PUBLIC WORKS

LICENSE FOR COMMUNICATIONS SYSTEM
WITHIN PUBLIC RIGHT-OF-WAY

PROJECT LOCATION: _____
Licensee: _____ Date of Issuance: __/__/__

This perpetual, exclusive, and transferable License authorizes installation, construction, reconstruction, repair and operation of a communications system upon, under, over or within public right-of-way in the City of West Des Moines as described in the application and plans. The authority granted by the City to the Licensee under this License shall be exercised by the Licensee in conformity with the application and plans and in accordance with all applicable State and Federal laws and ordinances of the City of West Des Moines, including, but not limited to, the specific licensing regulations of Title 7, Chapter 2 of the Municipal Code of the City of West Des Moines, a copy of which regulations is attached hereto and incorporated by this reference herein. Notwithstanding anything to the contrary herein, this License is being granted free of charge and without any license fee to Licensee.

NOTICE! This License does not authorize the Licensee to dig into, excavate in or in any manner break up any public right-of-way in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the licensed communications system. Before commencing any of this work, the Licensee shall first obtain a Street Excavation Permit from the Public Works Department in accordance with Title 7, Chapter 1, Article B of the Municipal Code of West Des Moines.

This License shall not be valid unless executed by the Licensee below.

The Licensee hereby accepts this License and agrees to all conditions associated with it. (See attached copy of City Ordinance). Also, if Licensee fails to maintain said cable and conduit, upon delivery of reasonable prior written notice to Licensee, the City of West Des Moines may maintain same at Licensee's reasonable cost. The person executing this License certifies that they have the authority to execute this License on behalf of the Licensee.

_____
Name of Licensee

By: _____
Signature

_____
Title

_____
Date

CITY OF WEST DES MOINES

By: _____
Bret Hodne
Director of Public Works