Executive Summary
Staff has prepared an agreement with Century Link to modify and/or relocate some or all of its facilities for the three Ustick Rd projects. The projects will widen the Ustick Rd & Meridian Rd intersection as well as Ustick Rd between Linder Rd and Locust Grove Rd to include five lanes, curb, gutter, sidewalk, and bike lanes. Per the agreement Century Link will perform the work at their expense and ACHD will reimburse them. Staff recommends approval of the agreement.

Facts & Findings
Century Link will coordinate and perform the work necessary in its entirety prior to construction beginning on the roadway. The following are two specific highlights of the agreement:

- Century Link will arrange for all labor, materials, and equipment necessary for the completion of the utility relocation.
- ACHD will reimburse Century Link for ACHD’s portion of the work for actual costs incurred.

The ACHD Legal Department has reviewed and approved the agreement.

Fiscal Implications
ACHD’s portion of the Century Link work is estimated at $200,000. This amount is included in the proposed FY17 budget.

Policy Implications
These projects were approved as part of the FY16 Budget and the 2016-2020 Integrated Five Year Work Plan, adopted by the Commission on October 28, 2015.
Alternatives
1. Approve the Century Link agreement and authorize the Commission President and Director to sign.
2. Do not approve the agreement.

Recommendation
Staff recommends Alternative 1, approve the Century Link agreement and authorize the Commission President and Director to sign.

Attachment(s): Agreement with Century Link

C: Dorrell Hansen P.E.
Dyan Bevins P.E.
File/Central Files
UTILITY MODIFICATION AND/OR
RELOCATION AGREEMENT

Project Name: Ustick & Meridian Intersection ("Project")
ACHD Project No. 313039
BAN No. N087901

THIS UTILITY MODIFICATION AND/OR RELOCATION AGREEMENT ("Agreement") is made and entered into this 2nd day of May 2016, by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic corporate of the State of Idaho ("District"), and QWEST CORPORATION D/B/A CENTURYLINK QC, a Colorado Corporation ("COMPANY"). The District and Company are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

PURPOSE

The District proposes to construct the Project upon real property over which COMPANY claims an easement interest ("Easement"). The Easement is identified and depicted in the Project drawings attached hereto as Exhibit A ("Project Drawings"). COMPANY owns no other documented, private easements at the particular Project site that are subject to and/or impacted by the Utility Relocation and/or Modification work described in this Agreement other than the Easement shown on the Relocation Map. COMPANY may have other documented, private easements in the general Project area or otherwise may have lawful access or use of platted or public utility easements that are not the subject of this Agreement or affected by the Utility Relocation and/or Modification work described in this Agreement, and rights to those easements are reserved and in no way affected or waived by this Agreement.

To accommodate the District’s Project, it will be necessary for COMPANY to modify and/or relocate some or all of its facilities located in or about the construction area. This Agreement sets forth the terms and conditions under which the District will reimburse COMPANY for COMPANY’s modification and/or relocation of its facilities.

THE PARTIES, and each of them, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, agree as follows:

DEFINITIONS

Project – The work defined by the plans and specifications developed by the District as depicted in Exhibit B and assigned the above-referenced Project Number.

Facilities – COMPANY’s telecommunication equipment and/or related facilities that are subject to Utility Modification and/or Relocation.
Utility Modification – The modification in place or reconstruction of COMPANY Facilities necessary to accommodate the Project.

Utility Relocation – The relocation of COMPANY Facilities necessary to accommodate the Project.

Public Right-of-Way – Roads, streets and alleys owned by the District and all other District dedicated public rights-of-way for, on, under, along or over which COMPANY has no prior, pre-existing, superior, easement, contractual, property or compensatory right or interest.

Project Right-of-Way – The area outside of the Public Right-of-Way obtained by the District for the Project. The Project Right-of-Way applicable to this Agreement shall be from the back of the new street curbing to the Public Right-of-Way.

Cost of Utility Modification and/or Relocation – The sum of those costs that are actually incurred by COMPANY as a result of Utility Modification and/or Relocation as agreed to by the Parties. The Cost of Utility Modification and/or Relocation excludes the cost of betterments and upgrades to COMPANY’s Facilities resulting from the Utility Modification and/or Relocation, except as set forth in the Terms of this Agreement, Section 4. As used in this Agreement, the Cost of Utility Modification and/or Relocation shall not include:

- Costs to modify and/or relocate COMPANY’s Facilities which are not required to be modified and/or relocated by the District as part of the Project;
- Costs to modify and/or relocate COMPANY Facilities which are required to be modified and/or relocated by the District as part of the Project, but which are located within the Public Right-of-Way; however, Cost of Utility Modification and/or Relocation shall include COMPANY Facilities in Public Right-of-Way that extend into an Easement and that COMPANY and District agree in writing in advance of the Project must be modified and/or relocated solely and only to the extent that COMPANY and District agree is reasonably necessary to complete the Utility Modification and/or Relocation of the Facilities in or from the Easement and
- Costs to modify and/or relocate COMPANY Facilities which are not within the Project Right-of-Way, unless the modification and/or relocation of COMPANY Facilities are required as a result of the District Project or necessary to accommodate the District Project and COMPANY has documented or otherwise established rights to said costs, in which case the COMPANY will be entitled to reimbursement of those costs subject to the terms of this Agreement.

TERMS

UTILITY MODIFICATION AND/OR
RELOCATION AGREEMENT - 2
Ustick & Meridian Intersection
1. **Property Rights.**

The Parties acknowledge the COMPANY has Facilities placed within Easement or placed pursuant to pre-existing rights along, in and near the Project area. Conditioned upon first receiving (i) a substitute easement for COMPANY’s relocated facilities acceptable to COMPANY; or (ii) reimbursement for all costs incurred in securing an alternative easement or property rights acceptable to COMPANY, COMPANY will quitclaim to the District all property rights, title and interest in the Easement located within the Project Right-of-Way, including the right to enter and occupy the Easement located within the Project Right-of-Way as depicted in the Project Drawings.

Subject to the above paragraph, the Facilities will be relocated to a location that is mutually acceptable to the Parties. The Parties will work in good faith to determine the most efficient, safe and cost effective location for the relocated Facilities.

2. **Relocation and/or Modification Of Facilities.**

The District will reimburse the COMPANY for all reasonable costs actually incurred as a result of Utility Modification and/or Relocation to the new location in an area acceptable to both parties, such as relocation to a utility easement. Similarly, in the event the Project requires COMPANY to relocate its Facilities outside of the Project Right-of-Way, the District will reimburse the COMPANY for all costs incurred as a result of Utility Modification and/or Relocation to the new location and all costs incurred in securing new easements or property rights outside Project Right-of-Way. The new location of COMPANY’S Facilities will be shown on the Project Drawings.

3. **Modification And/Or Relocation Of Facilities Within The Public Right-Of-Way.**

There shall be no reimbursement by the District for the modification and/or relocation of COMPANY Facilities that are located within the boundaries of the Public Right-of-Way; however, Cost of Utility Modification and/or Relocation shall include COMPANY Facilities in Public Right-of-Way that extend into an Easement and that COMPANY and District agree in writing in advance of the Project must be modified and/or relocated solely and only to the extent that COMPANY and District agree is reasonably necessary to complete the Utility Modification and/or Relocation of the Facilities in or from the Easement.

4. **Scope of Reimbursable Cost of Utility Modification And/Or Relocation.**

   a. For modification and/or relocation of Facilities, the District will reimburse COMPANY the actual Cost of Utility Modification and/or Relocation.

   b. The Cost of Utility Modification and/or Relocation shall not include betterment or upgrades to COMPANY’s Facilities, except to the extent that the actual cost for betterment or upgrades are:

      i. Required by the Project;

**UTILITY MODIFICATION AND/OR RELOCATION AGREEMENT - 3**
Ustick & Meridian Intersection
ii. Replacement devices or materials that are of substantially equivalent standards and at reasonably equivalent cost, although not identical;

iii. Replacement of devices or materials no longer regularly manufactured with substantially equivalent cost, grade, or size; and

iv. Required by law under governmental and appropriate regulatory commission code.

c. The District will reimburse COMPANY for the actual Cost of Utility Modification and/or Relocation eligible for reimbursement as defined by the District’s reimbursement policies, as may be amended from time to time, unless otherwise provided by agreement between the Parties.

d. Eligible reimbursement costs shall include COMPANY’s actual out-of-pocket costs incurred, as follows:

i. When work is performed utilizing COMPANY employees, reimbursed rates shall not exceed the amount actually paid by COMPANY on an hourly basis for such employees (plus employment burden and applicable overhead costs).

ii. Eligible reimbursement costs shall not include the following:

(1) COMPANY-owned equipment not reasonably necessary for the Utility Modification and/or Relocation work, unless prior written approval from the District is obtained and the rates do not exceed the prevailing rental rate for such equipment;

(2) Costs directly incurred for Utility Modification and/or Relocation which was not performed as a requirement of the District and/or necessitated by the District’s construction of the Project ("Other Relocation"); and

(3) Costs for any upgrades or betterments to COMPANY’s Facilities, as provided in Section 4.b. above.

iii. COMPANY shall use reasonable efforts to simultaneously perform all work associated with Utility Modification and/or Relocation and COMPANY shall account separately for work inside the Public Right-of-Way and Project Right-of-Way separately.

5. **Modification And/Or Relocation Of Facilities.**

a. COMPANY shall arrange for all labor, materials and equipment necessary for completion of Utility Modification and/or Relocation as shown on the Project Drawings.

b. Utility Modification and/or Relocation may either be done with COMPANY forces and equipment, by the forces and equipment of an existing COMPANY contractor and/or that contractor’s subcontractors (which may include utilizing COMPANY forces and
equipment), or by a contract awarded by COMPANY. The use of rental equipment shall require prior written approval of the District in order to be reimbursable. The rates for such rental shall not exceed those generally available in the market and the length of the rental equipment shall only be paid for periods of time the rental equipment is in actual use, plus transit time and reasonable amounts of idle time. Work shall be coordinated to minimize idle time to the extent reasonably practical.

Subject to circumstances beyond the control of the COMPANY, including but not limited to Utility Relocation and/or Modification permitting, weather conditions, development of final Project plans, easement and work authorization delays, Utility Modification and/or Relocation shall be commenced after execution of this Agreement and COMPANY shall make reasonable efforts to complete the work in conjunction with the District’s Project and the approved Project schedule.

c. Time is of the essence in the performance of all Utility Modification and/or Relocation work specified herein.

d. COMPANY shall be liable to the District for all damages incurred by the District as a result of COMPANY’s interference with construction of the Project.

e. Prior to commencement of construction of the Project, COMPANY shall furnish available non pro-proprietary and non-confidential detailed plans, specifications, lists of materials and estimates of cost that may be required in addition to those prepared by the District. Upon written approval by the District, such documents will be made a part of this Agreement by reference and included as part of Utility Modification and/or Relocation.

f. Within sixty (60) days of the date when Utility Modification and/or Relocation is completed, COMPANY shall provide the District with non-pro-proprietary and non-confidential information acceptable to the District showing the actual, detailed location of any relocated underground Facilities and other Facilities installed as part of the Utility Modification and/or Relocation within the Public Right-of-Way.

6. **Estimated Cost, Submission And Payment Of Billings.**

   a. The estimated Cost of Utility Modification and/or Relocation is $200,000 (“Estimated Cost”). The Parties recognize and agree that the Estimated Cost is provided solely for budgeting purposes, may be greater or lesser than the actual Cost of Utility Modification and/or Relocation, and is not binding on either Party.

   b. Upon written request by the District, COMPANY will provide reasonable non-proprietary and non-confidential documentation and support, as well as updated cost-documentation and support as more specific information becomes available, of the modification and/or relocation costs sought by COMPANY, including documentation for each type of betterment and upgrade noted in Section 4.b. above that may be included in the Cost of Utility Modification and/or Relocation.
c. COMPANY may submit billings for reimbursement of the Cost of Utility Modification and/or Relocation to the District for progress payments during the progress of the work. COMPANY shall submit a final bill to the District for reimbursement of the total Cost of Utility Modification and/or Relocation within one hundred twenty (120) days after completion of the work.

d. The District shall pay progress billings within forty-five (45) days and final billing within ninety (90) days after receipt of the bills. All payments are subject to the findings of a final audit by the District.

e. Reference to the Project Number shall be indicated on all bills, correspondence, and records pertaining to the Project.


The Parties acknowledge and agree that materials recovered, if any, by the COMPANY during the Utility Relocation and/or Modification, including but not limited to salvage materials, do not require inspection by the District prior to disposal by sale or scrap. However, the COMPANY is responsible for proper removal and disposal of materials recovered, if any, in accordance with applicable law and with the approved work schedule and plans.

8. Indemnification.

COMPANY agrees to indemnify, save harmless and defend, regardless of outcome, the District from any and all expenses, costs and reasonable fees incurred from third-party suits, actions, claims, damages or losses of every kind, nature and description to the extent incurred by reason of any negligent act or omission, neglect or misconduct of COMPANY or its agents, employees or contractors in the design, construction and maintenance of the Utility Modification and/or Relocation or any COMPANY or COMPANY agent, employee or contractor activities related to Utility Modification and/or Relocation which are covered by this Agreement. This indemnification provision includes any and all damages caused to the Public Right-of-Way, the Project Right-of-Way or adjacent property to the extent of and as a result of COMPANY’s negligent activities related to the Utility Modification and/or Relocation for this Project covered by this Agreement, including, but not limited to, any negligent act or omission, neglect or misconduct design, construction, maintenance, modification and/or relocation activities by COMPANY or its agents, employees or contractors.

The District agrees to indemnify, save harmless and defend regardless of outcome the COMPANY from the expense of and against third-party suits, actions, claims, or losses of every kind, nature and description, including cost, expenses and reasonable attorney fees to the extent incurred by reason of any negligent act or omission, neglect or misconduct of the District in connection with this Project, which is covered by this Agreement.

9. Contact Personnel.

a. For The District: COMPANY is to submit billings, documents and coordinate all Utility Modification and/or Relocation activities through:

UTILITY MODIFICATION AND/OR RELLOCATION AGREEMENT - 6
Ustick & Meridian Intersection
b. For COMPANY: The District is to coordinate all Utility Modification and/or Relocation activities through:

CenturyLink
Attn: Kim Ruettgers
Engineering and Construction Manager
3110 Commercial Way
Caldwell, ID 83605

COMPANY may change its contact person by notifying the District in writing.

Any other notice sent to COMPANY under or relating to this Agreement shall be sent by first class mail, postage paid, to the following:

CenturyLink
Attn: Kim Ruettgers
Engineering and Construction Manager
3110 Commercial Way
Caldwell, ID 83605

With a copy to:
CenturyLink
Attn: Network Legal
1801 California Street
9th Floor
Denver, Colorado 80202

COMPANY may change its contact person by notifying the District in writing.

10. **Choice Of Law And Severability.**

a. This Agreement is governed by the laws of the State of Idaho. If a term of this Agreement is determined to be illegal by competent authority, it will not invalidate the remaining terms of this Agreement.
b. Any lawsuit or litigation against the District is to be filed in a court located in Ada County, Idaho.

11. **Modifications To This Agreement Or Utility Modification And/Or Relocation.**

   Proposed modifications to this Agreement or to the Utility Modification and/or Relocation as defined by the Project shall be approved by both Parties in advance by a change order issued from the District and signed by the Parties.

12. **Successors And Assigns.**

   This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and assigns.

   **IN WITNESS WHEREOF,** the Parties have executed this Agreement by their duly authorized representatives as of the day and year first written above.

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**THE DISTRICT**

Ada County Highway District, a body politic corporate of the State of Idaho

By: __________________________

Its: __________________________

**COMPANY**

QWEST CORPORATION D/B/A
CENTURYLINK QC a Colorado Corporation

By: __________________________

Its: __________________________

**ATTEST:**

By: __________________________

Dated: __________________________

**ATTEST:**

By: __________________________

Dated: __________________________
EXHIBIT A

Cost Estimate for Reimbursement: High level Estimate= $200,000 ; Utility Relocation and/or Modification Plans: See attached drawing. Will be replacing like for like the RT cabinet and Power ped to the new Easement provided by ACHD. New power conduit will have to be ran for power and we will have to get a transfer of power service with Idaho Power. The copper cables that run from the manhole to the North and to the South all need to be replaced from the Manholes to the new cabinet in order to move this cabinet. There is also an Inner-duct with Fiber that must be replaced from the manhole to the south to the new Cabinet location as well, per attached drawing. All other copper and or fiber running through this project that are not tied to this RT cabinet will be replaced or adjusted on a separate associated job that CenturyLink is funding for this road project. Relocation Map: See attached; Project Drawings and Schedule; Schedule to be determined once CTL design completed and ready for construction.
EXHIBIT B

District Project Plans and Specifications

Website address to be added prior to final signatures.